

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

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U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

American Atheists, Inc..

and

CASE NO :  
DIVISION:

3:06-cv-720-J-STEM

Mark W. Butler

PLAINTIFFS

v.

The City of Jacksonville, Florida and

Mayor John Peyton individually and in his official capacity as the Mayor of the City of Jacksonville, Florida and

Sheriff John Rutherford, individually and in his official capacity as the Sheriff for the City of Jacksonville, Florida

Council President Michael Corrigan, individually and in his official capacity as Council President for the Jacksonville, Florida

DEFENDANTS

**VERIFIED COMPLAINT WITH JURY DEMAND**

The Plaintiffs, American Atheists, Inc. and Mark W. Butler file this action pursuant to 42 U.S.C. § 1983 seeking injunctive relief, damages and attorney fees, and for their cause of action state as follows:

**Jurisdictional Allegations**

1. This cause of action arises under the U. S. Constitution, particularly, but not limited to, the Establishment Clause of the First and Fourteenth Amendments thereto, and pursuant to 42 U.S.C. § 1983 *et. seq.* and 42 U.S.C. § 1988.
  
2. Subject matter jurisdiction over this cause of action is pursuant to 23 U.S.C. §§ 1331, 1343, 1367, and 2201.
  
3. The Plaintiff, American Atheists, Inc. (hereinafter American Atheists) is, and has been at all times pertinent to this cause of action, a non-profit corporation lawfully incorporated under the laws of the State of Texas and is therefore a citizen of the United States. The Plaintiff American Atheists is a volunteer organization active in protecting the First Amendment constitutional rights of Atheists who are Florida citizens. American Atheists has, and will continue to have, citizens of Florida, some of whom are residents of Jacksonville, Florida, among its members.
  
4. The Plaintiff, Mark W. Butler is, and has been at all times pertinent to this cause of action, a citizen of the United States and as such is subject to the rights, privileges and /or immunities granted him under the U.S. Constitution and the First Amendment. The

Plaintiff, Mark W. Butler at all times pertinent to this cause of action is and has been a resident of the State of Florida, the City of Jacksonville and Duval County.

.5. Based on the facts alleged herein in ¶s 3 and 4 venue is proper pursuant to 28 U.S.C. § 1391.

6. At all times pertinent to this cause of action the Plaintiffs' American Atheists and Mark W. Butler, as citizens of the United States have all the rights, privileges and /or immunities secured by the Constitution of the United States including the right to be free from the State of Florida establishing, supporting or otherwise sponsoring a religious prayer meeting in violation of the First Amendment to the U.S. Constitution or in officially preferring and endorsing religious belief over non belief.

#### **Factual Allegations**

7. Upon information and belief, on or about August 12, 2006 Mayor John Peyton, Sheriff John Ruthford, Council President Michael Corrigan and the Members of the Jacksonville City Council are holding, endorsing, sponsoring and otherwise conducting a prayer rally in their official capacities as government officials.

8. The people stated in ¶ 7 are, and at all times pertinent to this cause of action, were government officials and are acting in their official capacities as government officials and are inviting the public to “A Day of Faith” stating in an invitation to the Public they are “Arming Our Prayer Warriors”. They, in their official capacities as government officials and individually, are inviting members of “every worship center and faith organization” stating our faith is our greatest strength. A copy of said invitation is attached hereto, and incorporated by reference as fully as if set forth verbatim herein, as Plaintiffs ‘Exhibit 1.

9. By their actions as stated in ¶’s 7-8 the Defendants, in their official capacity as government officials and individually, have acted with the ostensible and predominant purpose of advancing religion over no religion and in giving official approval to religious citizens over irreligious citizens. all in violation of the Establishment Clause of the First Amendment as having been incorporated to the states and their subdivisions through the Fourteenth Amendment. and as a direct and proximate cause of their actions, have violated, and will continue to violate, the rights of the Plaintiffs, American Atheists and Mark W. Butler.

10. The Plaintiffs’, American Atheists and Mark W. Butler, pursuant to the First Amendment to the U.S. Constitution. as applied to the State of Florida and its subdivisions by the Fourteenth Amendment, have the right to be free from any violation of the Establishment Clause of the First Amendment and will be irreparably harmed if their government officials are permitted to carry on their threatened unconstitutional prayer rally on August 12, 2006.

11. Based on the allegations stated in ¶s 3, 4, 6, 7, 8, 9, and 10 the Plaintiffs', American Atheists and Mark W. Butler, pursuant to 42 U.S.C. § 1983 *et seq*, are entitled to damages for the violation of their constitution rights. In addition the Plaintiffs' American Atheists and Mark W. Butler are entitled to attorney fees pursuant 42 U.S.C. § 1988.

**REQUEST FOR TEMPORARY RESTRAINING ORDER**

12. Plaintiffs have suffered, are suffering, and will continue to suffer, unless the Defendants are enjoined by this Honorable Court and prevented from holding this prayer meeting. Immediate and irreparable harm and injury to the rights secured by the Plaintiffs by the constitution and laws of the United States will result if injunctive relief is not granted. Plaintiffs have a high likelihood of prevailing in this action. Plaintiffs have no clear, speedy or adequate remedy available to them at law, save a temporary restraining order and the injunction of this Court pursuant to Fed. Rule. Civ. Pro. 65 (a) and (b) and permitted and required by 42 USC 1983. *et seq*. The violation is so patent, and so clearly unlawful, that a security pursuant to Fed. Rule Civ. Pro. 65(c) should not be required.

13. On August 4, 2006 the Plaintiff Mark W. Butler just learned of The Day of Faith government sponsored prayer meeting was to be held August 12, 2006 through a chance advertisement and was immediately harmed thereby as an atheist. He contacted the Plaintiff, American Atheists for legal guidance. The National Legal Director for the

Plaintiff, American Atheists, Edwin Kagin immediately contacted Lisa A. Lovingood, Attorney at Law to determine if she could represent The Plaintiffs' American Atheists and Mark W. Butler. After three days of correspondence between the National Legal Director of the Plaintiff, American Atheists, Edwin Kagin and the President of the Plaintiff, American Atheists, Ellen Johnson, on August 7, 2006 Lisa A. Lovingood was hired to represent both Plaintiffs.

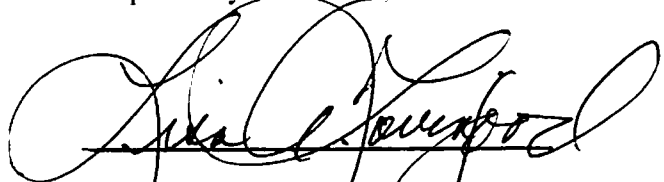
14. Since August 7, 2006 the under-signed has meet with the Plaintiff, Mark W. Butler and performed research and certifies to the Court she has not had adequate time to give notice to the opposing parties or their counsel. The undersigned was not contacted in enough time to give notice as the National Legal Director for the Plaintiff, American Atheists practices in Kentucky and he was not made aware of the intended prayer meeting until the time stated in ¶ 13.

**WHEREFORE,** The Plaintiffs' American Atheists and Mark W. Butler demand relief as follows:

1. A temporary restraining order without notice to the adverse parties be granted immediately pursuant to Fed. Rule.Civ.Pro.65(b) and injunctive relief, permanently, enjoining the Defendants from holding the prayer rally scheduled for August 12,2006 or at any other latter date, and:


2. A judgment against the Defendants individually, and in their official capacities as the City of Jacksonville officials, for compensatory and punitive damages in an amount to be determined by a jury and pursuant to 42 U.S.C. § 1983, and;
3. Attorney fees and costs allowable by the applicable rules and pursuant to 42 U.S.C. § 1988, and;
4. A trial by jury on all issues so triable, and;
5. Any and all relief, both legal and equitable, to which the Plaintiffs are entitled by all applicable law whether prayed for herein or not.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lisa A. Lovingood", written over a horizontal line.

Lisa A. Lovingood, Trial Counsel  
and Attorney for the Plaintiffs  
Florida Bar #0884250.  
14865 Plumosa Dr.  
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I, Mark W. Butler, have read the forgoing Complaint and verify the facts contained herein are true.

  
Mark W. Butler

Mayor John Peyton and Sheriff John Rutherford  
Council President Michael Corrigan  
and Members of the Jacksonville City Council invite you to:



A  
DAY OF  
FAITH

.....  
ARMING OUR  
PRAYER WARRIORS

A rally against violence  
in our community

Saturday, August 12, 2-4 p.m.

(doors open at noon)

**Veterans Memorial Arena**

300 A. Philip Randolph Boulevard

Free Parking

Our faith is our greatest strength and our faith community our greatest asset.  
We invite members of every worship center and faith organization to join hands  
and take back our neighborhoods.

This event is free and open to the public. For more more information visit  
[www.coj.net](http://www.coj.net) or call (904) 630-CITY

Volunteers are needed for this event. *To volunteer*, call the City of Jacksonville's  
Office of Volunteer Services at (904) 630-1020 or e-mail [volunteer@coj.net](mailto:volunteer@coj.net).