

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

LARRY W. BRYANT
3518 Martha Custis Drive
Alexandria, VA 22302

Plaintiff,

v.

Civil Action No. _____

DONALD H. RUMSFELD
Secretary of Defense
United States Department of Defense
Washington, DC 20310

and

FRANCIS J. HARVEY
Secretary of the Army
The Pentagon
Washington, DC 20310

and

ACTING SECRETARY OF THE AIR FORCE
(To be Appointed)
The Pentagon
Washington, DC 20330

and

GORDON R. ENGLAND
Secretary of the Navy
The Pentagon
Washington, DC 20350

and

GEN. M. W. HAGEE, USMC
Commandant, U.S. Marine Corps
2 Navy Annex
Washington, DC 20380

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT,
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, DAMAGES, AND
ATTORNEYS' FEES**

COMES NOW the Plaintiff, Larry W. Bryant, by and through his attorneys, Jonathan L. Katz, and the law firm of Marks & Katz, LLC, and represents to this honorable Court as follows:

I. NATURE OF ACTION

1. This is an action to order the Defendants to reverse their rejection of Plaintiff's paid advertisements ("Advertisements") submitted for publication in selected Civilian Enterprise Newspapers ("CEN's"), which serve various military installations and units; to declare the rejections to be in violation of the First Amendment of the United States Constitution and other relevant provisions of the United States Constitution; and for the issuance of preliminary and permanent injunctive relief against Defendants requiring them to reverse their rejection of such Advertisements forthwith. Plaintiff also seeks to recover any damages that he has sustained and will sustain, and his reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and all other provisions of law. Plaintiff also demands a jury trial on all issues so triable.

II. JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 to prevent certain actions by Defendants in violation of Plaintiff's rights under the First, Fifth and Fourteenth Amendments to the United States Constitution, and for a declaratory judgment pursuant to 28 U.S.C. § 2201.

3. Subject matter jurisdiction over Plaintiff's federal claims is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Venue of this action is placed in the Court pursuant to 28 U.S.C. § 1391(b).

III. PARTIES

5. Plaintiff LARRY W. BRYANT (hereinafter "Bryant"), is a Virginia resident, living at

3518 Martha Custis Drive, Alexandria, VA 22302. He is a United States citizen, a retired Army employee, and an independent writer. As an independent writer, he has published articles, essays, commentaries, and book reviews dealing with such public-interest matters as official information access, national security affairs, and First Amendment jurisprudence. His continuing series of whistleblower solicitation advertisements ("Issue Ads") submitted to and published by certain military Civilian Enterprise Newspapers dates back to the mid-1980's.

6. The Defendants are being sued in their official capacities. The policies and actions complained of in this civil action were initiated and/or exercised by Defendants' subordinates.

Defendant DONALD H. RUMSFELD is the United States Secretary of Defense.

Defendant Francis J. Harvey is the Secretary of the United States Army.

Defendant Acting Secretary of the Air Force is the head of the United States Air Force.

Defendant Gordon R. England is Secretary of the Navy.

Defendant M. W. Hagee is the Commandant of the United States Marine Corps.

IV. ALLEGATIONS

7. At all times relevant to this civil action, Plaintiff has pursued an advertising campaign to research, inquire into, write about, and publish results thereof as regards several matters of wide-ranging public interest. In so doing, Plaintiff has sought the emergence of pertinent eyewitnesses as well as the production of documentary evidence from government sources.

8. All paid Advertisements involved in this civil action were submitted by Plaintiff for publication in Civilian Enterprise Newspapers.

9. Department of Defense Instruction ("DDI") No. 5120.4 places unbridled and unconstitutional discretion in Defendants to seek the omission of submitted paid advertisements in Civilian Enterprise Newspapers, and to prohibit distribution of the CEN's if unable to exclude the advertisement. In that regard, DDI No. 5120.4, § E4.1.7.3 provides that:

Before each issue of a CE publication is printed, the public affairs staff shall review advertisements to identify any that are contrary to law or to DoD or Military Service regulations, including this Instruction, or that may pose a danger or detriment to DoD personnel or their family members, or that interfere with the command or installation missions. It is in the command's best interest to carefully apply DoD and Service regulations and request exclusion of only those advertisements that are clearly in violation of this Instruction. If any such advertisements are identified, the public affairs office shall obtain a legal coordination of the proposed exclusion. After coordination, the public affairs office shall request, in writing if necessary, that the commercial publisher delete any such advertisements.

If the publisher prints the issue containing the objectionable advertisement(s), the commander may prohibit distribution in accordance with DoD Directive 1325.6 (reference (u)).

A further unconstitutional provision used by Defendants to reject Plaintiff's paid Advertisements is DDI No. 5120.4, § E4.11, which provides:

DoD publications shall not contain campaign news, partisan discussions, cartoons, editorials, or commentaries dealing with political campaigns, candidates, issues, or which advocate lobbying elected officials on specific issues. DoD CE publications shall not carry paid political advertisements for a candidate, party, which advocate a particular position on a political issue, or which advocate lobbying elected officials on a specific issue. This includes those advertisements advocating a position on any proposed DoD policy or policy under review.

10. Plaintiff contends that the foregoing DDI No. 5120.4 is unconstitutional on its face and as applied to Plaintiff's paid Advertisements, by violating his rights to free expression and to freedom of the press under the First, Fifth, and Fourteenth Amendments to the United States Constitution.

11. Defendants have unlawfully and unconstitutionally rejected the publication of Plaintiff's paid advertisements entitled as follows: (a) "Blow the Whistle on Iraqnam's Battle-of-Baghdad Cover-Up!," (b) "Blow the Whistle on ALL Atrocities at Abu Ghraib!," (c) "Blow the Whistle on the Army-CIA McCarthy Saga!," (d) "Join the Revolt Against the 'Feres Doctrine!'," (e) "Blow the Whistle on the Military's Psychiatric Retaliation Against Whistleblowers!," and (f) "Resist the Government's Drafty Spin!."

12. Plaintiff's paid Advertisement entitled "Blow the Whistle on Iraqnam's Battle-of-Baghdad Cover-Up!" reads as follows:

Blow the Whistle on Iraqnam's Battle-of-Baghdad Cover-up!

A group of current/former U.S. servicemembers -- known as the Ghost Troop (<http://geocities.com/onlythecaptain/>) -- has found the 'bloody knife' exposing the OFFICIALLY UNRELEASED number of Americans who died during the fierce battle at Iraq's capital in the spring of 2003. That number, of course, dwarfs the officially released count. To help determine the discrepancy's cause/perpetuators/accountability, the group is seeking all related documentary evidence and sworn testimony from all BOBCUP whistleblowers brave enough to come forward. Armed with your accounts, the group can help persuade Congress to exercise its oversight authority in this matter. Contact: Larry W. Bryant at: 703-931-3341 (e-mail: overtCI@cavtel.net).

13. Plaintiff's paid Advertisement entitled "Blow the Whistle on ALL Atrocities at Abu Ghraib!" reads as follows:

Blow the Whistle on ALL Atrocities at Abu Ghraib !

Now that the Center for Public Integrity has received "leakage" of highly incriminating documentation about the U.S.-led debacle in Iraqnam's Abu Ghraib prison (see: <http://www.publicintegrity.org>), you have a chance to add YOUR whistleblower voice to this expose if you (or someone you know) possess additional evidence of such gross impropriety. Contact: Larry W. Bryant at (703) 931-3341; e-mail: overtci@cavtel.net.

14. Plaintiff's paid Advertisement entitled "Blow the Whistle on the Army-CIA McCarthy Saga!" reads as follows:

Blow the Whistle on the Army-CIA McCarthy Saga !

Near the end of the Vietnam war, then-special forces captain John J. McCarthy, Jr., found himself involuntarily transferred to clandestine duty with a CIA-run operation called "Project Cherry." There, close to the Cambodian border, he had no idea what lay ahead for his Army career -- and for his well-being as a U. S. citizen. That transfer resulted in his being railroaded as an expendable pawn in rogue activity that, to this day, eludes even congressional oversight. And, even in today's wartime situation, we see that the inadequate oversight perpetuates treasonous conduct amidst the president's closest advisors, the "intelligence community." McCarthy's continuing story provides enough foreign intrigue, official skulduggery, and personal pathos to warrant an Oliver Stone-type docudrama. But before such a blockbuster expose of official U.S.-led treachery and treason in wartime can reach the screen (and hence consign

him to history as hero rather than villain), he needs to hear from all prospective whistleblowers brave enough to help bring to account all perpetrators of this career-ending episode in U. S. military-intelligence abuse and of its subsequent, ongoing cover-up. Contact: Larry W. Bryant at (703) 931-3341; e-mail: overtci@cavtel.net .

15. Plaintiff's paid Advertisement entitled "Join the Revolt Against the 'Feres Doctrine!'"

reads as follows:

Join the Revolt Against the "Feres Doctrine"

Most prospective (and too many current) servicemembers who sign up for military service fail to realize that their doing so automatically cancels out their constitutional right to seek litigative redress for official wrongs done unto them during any period of service. This 50-some-year-old congressionally devised, dehumanizing booby trap is being challenged by a dedicated group of military veterans known as the Veterans Equal Rights Protection Advocacy (<http://www.verpa.org>). Of course, VERPA members keenly realize the urgency of their revolt, now that our nation's younger citizenry might face the renewal of conscription because of Iraqnam. What's more: should certain U.S.-led activity in Iraqnam ever get adjudged as criminality by a Nuremberg-styled court of inquiry, imagine how many servicemenbers (and their families) will flood the ranks of "Feres" victimhood! If you (or someone you know) already have been victimized by "Feres," VERPA wants to add your account to its case for reform. Contact: Larry W. Bryant at (703) 931-3341; e-mail: overtci@cavtel.net.

16. Plaintiff's paid Advertisement entitled "Blow the Whistle on the Military's Psychiatric

Retaliation Against Whistleblowers!" reads as follows:

Blow the Whistle on the Military's Psychiatric Retaliation Against Whistleblowers

Supposing you've acquired hard evidence of waste/fraud/abuse (and/or cover-up thereof) during the course of your military duty, and decide to blow the whistle on that wrongdoing. Warning: be prepared for retaliation. According to accounts now arriving at the web site of verpa.org, certain military officials would have no compunction about requiring you to undergo a psychiatric exam, whereby the preordained results can get you administratively dismissed from service. That such an abuse of publicly funded mental-health resources can occur on American soil is bad enough, but the felony gets compounded whenever any servicemember falls prey to it, for that victim has no legal right to sue its perpetrators for damages. If you (or someone you know) have been victimized by (or have witnessed) this psychiatric warfare against the

bearer of bad news, now's the time to -- well -- blow the whistle on the practice. The more of you who decide to come forward with your evidence, the better such veterans groups as VERPA can help bring about reform.
Contact: Larry W. Bryant at (703) 931-3341; e-mail: overtci@cavtel.net .

17. Plaintiff's paid Advertisement entitled "Resist the Government's Drafty Spin!" reads as follows:

Resist the Government's Drafty Spin !

In a year or so, the "politics of conscription" will reach denouement upon the military stage of World War 2.5 (aka "United States v. Iraqnam, Iranlam, et al."). If you (or someone you know) face being drafted into this war, you have little time to assess and counter the official spin on this prospect. Keep watching this ad space for related developments and for opportunities to add your voice of reason and dissent. Contact: Larry W. Bryant at (703) 931-3341; e-mail: overtci@cavtel.net .

18. Plaintiff submitted the foregoing advertisements on the following dates, with the following results:

A. Blow the Whistle on Iraqnam's Battle-of-Baghdad Cover-up!

(1) Plaintiff Submitted the Advertisement on September 24, 2004, to the commander of Navy Region Mid-Atlantic for publication in the *Flagship* newspaper, via a public affairs officer at Robert.mehal@navy.mil. The ad was rejected on Oct. 5, 2004. The reason provided for the rejection was the anti-political ads provision of DoD Instruction 5120.4.

(2) Plaintiff submitted the paid Advertisement on September 26, 2004, to the commander of the Marine Corps Base in Quantico, Virginia, for publication in the *Sentry* newspaper. By phone call to Plaintiff on September 27, 2004, the Ad was rejected via public affairs officer William Matory, William.matory@nmci.usmc.mil. The reason provided for the rejection was the anti-political ads provision of DoD Instruction 5120.4. By a letter to Plaintiff dated December 8, 2004, the United States Marine Corps Headquarters' Inspector General affirmed Capt. Matory's rejection.

(3) Plaintiff submitted the paid Advertisement on September 25, 2004, to the commander of the United States Air Force First Fighter Wing, Langley Air Force Base, Virginia, for publication in the *Flyer*, via public affairs officer Captain Glenn, Jeffry.glenn@langley.af.mil. By a telephone answering machine message left at Plaintiff's residence on October 27, 2004, Capt. Glenn informed Plaintiff that "We are not allowed to run your ad [because] this ad encourages disloyalty by military members."

(4) Plaintiff submitted the paid Advertisement on September 25, 2004, to the commander of the Army base at Fort Eustis, Virginia., for publication in the *Wheel* newspaper, via a public affairs officer at yourc@eustis.army.mil. The Army, through a reply by Cindy L. Your, rejected the ad on Oct. 12, 2004, without any substantive explanation: "After careful deliberation and at the advice of the Staff

Judge Advocate, the Garrison Commander has declined your request to advertise in the Wheel newspaper."

(5) Plaintiff submitted the paid Advertisement on September 28, 2004, to the commander of the Army's Fort Lee in Virginia for publication in the *Traveller* newspaper, via a public affairs officer at sweeney@lee.army.mil. The ad was tentatively rejected on Oct. 8, 2004, and Plaintiff awaits the commander's final decision. The reason given for the problem with the ad was that the ad is political in nature.

(6) Plaintiff submitted the paid Advertisement on September 25, 2004, for publication in the *Eagle* newspaper, via Army (Fort Belvoir) public affairs officer Donald N. Carr, at carrdona@belvoir.army.mil. The ad was rejected on Oct. 8, 2004, with the following reason: "Larry, we won't be using the ad in our Command Information newspaper. Recommend you consider the commercial press as a more appropriate outlet." -- Donald N. Carr.

(7) Plaintiff submitted the paid Advertisement on September 28, 2004, to the commander of Andrews Air Force Base, Md., for publication in the *Capital Flyer* newspaper, via a public affairs officer. The ad was rejected on October 14, 2004, without a substantive explanation.

(8) Plaintiff submitted the paid Advertisement on October 6, 2004, to the Superintendent of the United States Military Academy (West Point, N.Y.) for publication in the *Pointer View* newspaper, via a public affairs officer at kent.cassella@usma.edu. The ad was rejected on Oct. 7, 2004, with the following; reason: "Your ad below does not clear our review process as it appears to be in conflict with the official DoD position on the matter." -- Joseph V. Tombrello.

(9) Plaintiff submitted the paid Advertisement on October 2, 2004, to the commander of Marine Corps Base Camp Lejeune, N.C., for publication in the *Globe* newspaper, via a public affairs officer. Plaintiff awaits a response.

(10) Plaintiff submitted the paid advertisement on October 3, 2004, to the commander of Army Fort Benning, Ga., for publication in the *Bayonet* newspaper, via a public affairs officer. The ad was rejected on Oct. 18, 2004, for the following reason: "We are prohibited by Army Regulation from carrying political ads." -- Rich McDowell.

(11) Plaintiff submitted the paid Advertisement on October 3, 2004, to the garrison commander of the Walter Reed Army Medical Center, Washington, D.C., for publication in the *Stripe* newspaper, via a public affairs officer. Plaintiff awaits a response.

(12) Plaintiff submitted the paid Advertisement on October 11, 2004, to the commander of Scott Air Force Base, Illinois, for publication in the *Command Post* newspaper, via a public affairs officer. Plaintiff awaits a response.

(13) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Army Fort Campbell, Ky., for publication in the *Courier* newspaper, via a public affairs officer. Plaintiff awaits a response.

(14) Plaintiff submitted the paid Advertisement on October 11, 2004, to the commander of MacDill

Air Force Base, Fla., for publication in the *Thunderbolt* newspaper, via a public affairs officer. Plaintiff awaits a response.

(15) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Holloman Air Force Base, N.M., for publication in the *Sunburst* newspaper, via a public affairs officer. Plaintiff awaits a response.

(16) Plaintiff submitted the paid Advertisement on October 6, 2004, to the commander of Army Fort Leavenworth, Kansas, for publication in the *Lamp* newspaper, via a public affairs officer. Plaintiff awaits a response.

(17) Plaintiff submitted the paid Advertisement on October 6, 2004, to the commander of Army Fort Sam Houston, Texas, for publication in the *News Leader* newspaper, via a public affairs officer. Plaintiff awaits a response.

(18) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Wright-Patterson Air Force Base, Ohio, for publication in the *Skywrighter* newspaper, via a public affairs officer. The advertisement was rejected on October 25, 2004, citing the anti-political ads provision of both DDI 5120.4 and Air Force Instruction 35-101.

(19) Plaintiff submitted the paid Advertisement on October 23, 2004, to the Superintendent of the U.S. Air Force Academy for publication in the *Academy Spirit*. The advertisement was rejected on October 26, 2004, citing the anti-political ads provision of Air Force Instruction 35-101

B. Blow the Whistle on ALL Atrocities at Abu Ghraib !

(1) Plaintiff submitted the paid Advertisement on October 12, 2004, for publication in the *Eagle* newspaper, via Army Fort Belvoir public affairs officer Donald N. Carr. Mr. Carr referred Plaintiff to the newspaper's contract printer.

(2) Plaintiff submitted the paid Advertisement on October 9, 2004, to the commander of Army Fort Riley, Kans., for publication in the *Post* newspaper, via a public affairs officer. The advertisement was rejected for the reasons of interference with the command's mission.

(3) Plaintiff submitted the paid Advertisement on October 10, 2004, to the commander of Army Fort Sill, Okla., for publication in the *Cannoneer* newspaper, via a public affairs officer. The advertisement was rejected for the reasons of interference with the command's mission.

(4) Plaintiff submitted the paid Advertisement on October 9, 2004, to Navy Region Mid-Atlantic public affairs officer Lt. Cdr. Robert S. Mehal for publication in the *Flagship* newspaper. Plaintiff awaits a response.

(5) Plaintiff submitted the paid Advertisement on October 10, 2004, to United States Military Academy's public affairs officer Maj. Kent Cassella for publication in the *Pointer View* newspaper. Plaintiff awaits a response.

(6) Plaintiff submitted the paid Advertisement on October 11, 2004, to a Scott Air Force Base public affairs officer for publication in the *Command Post* newspaper. Plaintiff awaits a reply.

(7) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Army Fort Campbell, Ky., for publication in the *Courier* newspaper, via a public affairs officer. Plaintiff awaits a response.

(8) Plaintiff submitted the paid Advertisement on October 10, 2004, to the commander of the Marine Corps Base in Quantico, Va., for publication in the *Sentry*. Plaintiff awaits a response from Capt. Matory.

(9) Plaintiff submitted the paid Advertisement on October 11, 2004, to the commander of MacDill Air Force Base, Florida., for publication in the *Thunderbolt* newspaper. Plaintiff awaits a response. .

(10) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Holloman Air Force Base, N.M., for publication in the *Sunburst* newspaper. Plaintiff awaits a response.

(11) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Wright-Patterson Air Force Base, Ohio, for publication in the *Skywriter* newspaper, via a public affairs officer. The Advertisement was rejected as a “political” ad, by an e-mail response on October 25, 2004.

C. Blow the Whistle on the Army-CIA McCarthy Saga !

(1) Plaintiff submitted the paid Advertisement on October 12, 2004, to Fort Belvoir via public affairs officer Donald N. Carr for publication in the *Eagle* newspaper. Mr. Carr referred Plaintiff to the newspaper’s contract printer.

(2) Plaintiff submitted the paid Advertisement on October 10, 2004, to the commander of Army Fort Polk, La., for publication in the *Guardian* newspaper, via a public affairs officer. Plaintiff awaits a reply.

(3) Plaintiff submitted the paid Advertisement on October 10, 2004, to a Scott Air Force Base public affairs officer for publication in the *Command Post* newspaper. Plaintiff awaits a response.

(4) Plaintiff submitted the paid Advertisement on October 10, 2004, to the Army's U. S. Military Academy public affairs officer Maj. Kent Casella for publication in the *Pointer View* newspaper. Plaintiff awaits a response.

(5) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Army Fort Campbell, Ky., for publication in the *Courier* newspaper, via a public affairs person. Plaintiff awaits a response.

(6) Plaintiff submitted the paid Advertisement on October 10, 2004, to the commander of the Marine Corps Base in Quantico, Va., for publication in the *Sentry* newspaper. Plaintiff awaits a response from Capt. William Matory.

(7) Plaintiff submitted the paid Advertisement on October 11, 2004, to the commander of MacDill Air Force Base, Fla., for publication in the *Thunderbolt* newspaper. Plaintiff awaits a response.

(8) Plaintiff submitted the paid Advertisement on October 11, 2004, to the commander of Holloman

Air Force Base, N.M., for publication in the *Sunburst* newspaper, via a public affairs officer. Plaintiff awaits a response from an administrative affairs officer.

(9) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Wright-Patterson Air Force Base, Ohio, for publication in the *Skywriter* newspaper, via a public affairs officer. The ad was rejected via e-mail on October 25, 2004 as a “political” ad. .

D. Join the Revolt Against the "Feres Doctrine" !

(1) Plaintiff submitted the paid advertisement on October 12, 2004, to the Army's Fort Belvoir public affairs officer Donald N. Carr for publication in the *Eagle* newspaper. Mr. Carr referred Plaintiff to the newspaper's contract printer.

(2) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Army Fort Campbell, Ky., for publication in the *Courier* newspaper, via a public affairs officer. Plaintiff awaits a response.

(3) Plaintiff submitted the paid Advertisement on October 15, 2004, to the Army Fort Riley *Post* newspaper editor, Mike Heronemus. Plaintiff awaits a response.

(4) Plaintiff submitted the paid Advertisement on October 15, 2004, to Army Fort Sill public affairs officer N. Elliott for publication in the *Cannoneer* newspaper. Plaintiff awaits a reply. .

(5) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Holloman Air Force Base, NM, for publication in the *Sunburst* newspaper, via a public affairs officer. Plaintiff awaits a response.

(6) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Wright-Patterson Air Force Base, Ohio, for publication in the *Skywrighter* newspaper, via a public affairs office. The ad was rejected as a “political” ad on October 25, 2004 by e-mail.

E. Blow the Whistle on the Military's Psychiatric Retaliation Against Whistleblowers !

(1) Plaintiff submitted the paid advertisement on October 12, 2004, to Army Fort Belvoir public affairs officer Donald N. Carr for publication in the *Eagle* newspaper. Mr. Carr referred Plaintiff to the newspaper's contract printer. .

(2) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Army Fort Campbell, Ky., for publication in the *Courier* newspaper, via a public affairs officer. Plaintiff awaits a response.

(3) Plaintiff submitted the paid Advertisement on October 12, 2004, to Holloman Air Force Base, N.M., for publication in the *Sunburst* newspaper (via public affairs officer). Plaintiff awaits a response.

(4) Plaintiff submitted the paid Advertisement on October 12, 2004, to the commander of Wright-Patterson Air Force Base, Ohio, via a public affairs officer, for publication in the *Skywrighter*

newspaper. The ad was rejected as a “political” ad via e-mail on October 25, 2004.

F. Resist the Government's Drafty Spin !

(1) Plaintiff submitted the paid Advertisement on October 21 2004, to the superintendent of the U. S. Air Force Academy, Colorado, for publication in the *Academy Spirit*, via a public affairs officer. The ad was rejected on October 23, 2004, citing to the Academy's "current publishing contract under AFI35-101."

(2) Plaintiff submitted the paid Advertisement on October 21, 2004, to the commander of Vandenberg Air Force Base, Calif., for publication in the *Space & Missile Times*, via a public affairs officer. Plaintiff awaits a response.

19. The Defendants have no legal or Constitutional authority to reject Plaintiff's Advertisements, whether by a response in the form of an affirmative rejection or by dragging their feet with silence in response to Plaintiff's paid advertising submissions. Although Defense Department requirements reserve CEN editorial content control to the military, those same requirements give CEN's private owners and publishers the final decision to accept or reject all paid advertisements, including Plaintiff's Advertisements. *See* United States Department of Defense Instruction Number 5120.4 ("DDI No. 5120.4"), Enclosure 4 at §§ E4.1.7.1 and E4.1.7.1 (<http://www.dtic.mil/whs/directives/corres/text/i51204p.txt> - last checked on January 6, 2005).

20. The Defendants violated the Defense Department's own requirement not to control advertising content of CEN's by requiring that numerous of Plaintiff's Advertisements not be published.

21. Assuming, *arguendo*, that the Defense Department's own guidelines did not prohibit Defendants from accepting or rejecting advertising in CEN's, then the guidelines granting such authority are unconstitutional and in violation of the First Amendment, and/or the Defendants misapplied said guidelines and in so doing violated the Constitution and the First Amendment.

22. Plaintiff's Advertisements were submitted by Plaintiff as paid advertisements in the respective CEN's. Never did Defendants claim that the Advertisement violated any rules or regulations governing the CEN's private owners and publishers. Plaintiff's Advertisements are

expression protected by the First Amendment to the United States Constitution.

23. Plaintiff believes that his Advertisements are a beneficial communication that serves both the CEN's readers and society in general.

24. Plaintiff continues to want to place the Advertisements in the CEN's, and will do so once the Defendants' bar to the Advertisements is removed.

25. Defendants' rejection of Plaintiff's Advertisements is a continuation of Plaintiff's experience with the Defendants' previous violations of Plaintiff's First Amendment rights, as follows: In 1994, Plaintiff won a partial summary judgment in this Court that enjoined the United States Army from "applying viewpoint-based restrictions in selecting commentary for publication in its Civilian Enterprise Newspapers." Larry W. Bryant v. Secretary of the Army, Civ. No. 93-1289 (Richey, J.) (D.D.C., Order dated Sept. 22, 1994); *see* accompanying opinion at *Bryant v. Sec'y. of the Army*, 862 F.Supp. 574 (D.D.C. 1994). Defendants' rejection of Plaintiff's Advertisement violates the foregoing partial summary judgment Order.

In 1987, Plaintiff obtained a Consent Judgment for the military to publish advertisements that had been rejected for publication in Civilian Enterprise Newspapers. Larry W. Bryant v. Sec'y of Defense, Sec'y of Army & Sec'y of Air Force, Civ. No. 86-1323-A (E.D. Va. Apr. 15, 1987).

26. DDI No. 5120.4 places unbridled and unconstitutional discretion in Defendants to seek the omission of submitted paid advertisements in Civilian Enterprise Newspapers ("CEN's"), and to prohibit distribution of CEN's if unable to exclude the advertisement. For instance, DDI No. 5120.4, § E4.1.7.3 provides that:

Before each issue of a CE publication is printed, the public affairs staff shall review advertisements to identify any that are contrary to law or to DoD or Military Service regulations, including this Instruction, or that may pose a danger or detriment to DoD personnel or their family members, or that interfere with the command or installation missions. It is in the command's best interest to carefully apply DoD and Service regulations and request exclusion of only those advertisements that are clearly in violation of this Instruction. If any such advertisements are identified, the public affairs office shall obtain a legal coordination of the proposed exclusion. After

coordination, the public affairs office shall request, in writing if necessary, that the commercial publisher delete any such advertisements.

If the publisher prints the issue containing the objectionable advertisement(s), the commander may prohibit distribution in accordance with DoD Directive 1325.6 (reference (u)).

§ E4.1.7.3 (emphasis added).

27. Plaintiff has a clear legal right to have his Advertisements published in the *CEN's* addressed in this Complaint. In refusing Plaintiff's Advertisements by direct refusals or by foot dragging, Defendants violated Plaintiff's First Amendment right to free speech and Fifth Amendment right to due process of law.

28. Plaintiff's position in this Complaint is legally sound and supported by fact and law. The Defendants' actions, however, have created a *bona fide* controversy between the parties, and Plaintiff is in doubt as to his rights, privileges and immunities with respect to the Defendants' actions challenged herein. Plaintiff requires, therefore, a declaratory judgment declaring his rights, privileges and immunities. There is a clear, present, actual, substantial and *bona fide* justiciable controversy among the parties.

29. Plaintiff has no adequate remedy at law. No amount of money damages could adequately compensate Plaintiff for the irreparable harm described herein, specifically the deprivation of Constitutionally protected rights.

30. Plaintiff will suffer irreparable injury if injunctive relief is not granted, and Defendants are permitted to continue rejecting his Advertisements. The loss of rights guaranteed by the First Amendment is so serious that, as a matter of law, irreparable injury is presumed and in such an instance involving the loss of First Amendment rights, damages are both inadequate and unascertainable.

31. The public interest would best be served by the granting of injunctive relief, and, indeed, the public interest is disserved by permitting the continued rejection of the Advertisements, which rejection violates Plaintiff's and the public's rights under the First Amendment to the United States

Constitution.

32. All conditions precedent to the institution and maintenance of this cause of action have occurred or have been performed.

33. As a direct and proximate result of the acts, practices, and customs of Defendants, Plaintiff is suffering actual, consequential, and other damages, in addition to the irreparable harm described herein.

COUNT I

THE REJECTION OF PLAINTIFF'S ADVERTISEMENTS VIOLATES THE 1994 PARTIAL SUMMARY JUDGMENT ORDER

34. Plaintiff realleges and incorporate herein paragraphs 1 through 33 as if fully restated herein.

35. In 1994, Plaintiff won a partial summary judgment in this Court, that enjoined the Army from "applying viewpoint-based restrictions in selecting commentary for publication in its Civilian Enterprise Newspapers." Larry W. Bryant v. Secretary of the Army, Civ. No. 93-1289 (Richey, J.) (D.D.C. Sept. 22, 1994). Defendants' rejection of Plaintiff's Advertisements violates said 1994 Order.

COUNT II

THE REJECTION OF PLAINTIFF'S ADVERTISEMENT VIOLATES PLAINTIFF'S FIRST AMENDMENT AND DUE PROCESS RIGHTS

36. Plaintiff realleges and incorporate herein paragraphs 1 through 35 as if fully restated herein.

37. Defendants' rejection of Plaintiff's Advertisements, and the Defendants' regulations applying to such rejection, violate the First Amendment and other rights guaranteed Plaintiff by the United States Constitution, on its face and as applied, denying equal protection of the law in that the rejection and regulations are arbitrary, oppressive and capricious.

REQUEST FOR ATTORNEY'S FEES AND PRAYER FOR RELIEF

38. The actions of Defendants complained of herein were actions designed to deprive Plaintiff of his rights and privileges guaranteed by the United States Constitution.

39. In his legitimate desire to pursue the rights and privileges guaranteed by the Constitution and laws of the United States, Plaintiff has employed the undersigned attorneys to prosecute this action and has agreed to pay them a reasonable fee for same.

40. Accordingly, Plaintiff is entitled to an award of attorney's fees as provided for by 42 U.S.C. § 1988, and by all other applicable provisions of law.

WHEREFORE, Plaintiff respectfully requests that this Court GRANT the following relief:

- a) A declaration that the rejection of Plaintiff's Advertisements is violative of the aforementioned federal Constitutional provisions, and a declaration that the anti-political-ads provisions of all applicable instructions, directives, and regulations of the Defendants are invalid on their face. ;
- b) An immediate hearing, to temporarily and permanently enjoin Defendants from continuing to reject the Advertisements;
- c) An award of any and all attorney's fees and costs as authorized by law;
- d) An award of all appropriate damages established by Plaintiff; and
- e) Such other and further relief as this Court deems fit, just, and equitable.

Dated: January 7, 2005

Respectfully submitted,

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DEMAND FOR JURY TRIAL

The Plaintiff respectfully demands a jury trial on all issues so triable.

Jonathan L. Katz