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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 Dr. Andrew Snelling,

CIV NO.

14
15 Plaintiff,

16 v.

17 United States Department of Interior;
18 National Park Service; Ryan Zinke,
19 Secretary of the U.S. Department of
20 Interior, in his official capacity; Michael
21 T. Reynolds, Director of the National Park
22 Service, in his official capacity; Sue
23 Masica, Regional Director, Intermountain
24 Region of the U.S. National Park Service,
25 in her official capacity; Christine S.
26 Lehnertz, Superintendent, Grand Canyon
27 National Park, in her official capacity,

VERIFIED COMPLAINT

(Jury Trial Demanded)

25 Defendants.

26
27 Dr. Andrew Snelling (“Plaintiff”), through counsel alleges the following causes of
28 action against Defendants.

I.

INTRODUCTION

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2
3 1. This is a civil rights action to protect the statutory and First Amendment
4 rights of an individual to perform geological research in a public park. Defendants have
5 unlawfully restricted these rights by policies and practices, which involve content-based
6 and viewpoint discrimination, are vague, and are inappropriately enforced. These
7 constitutional defects give rise to both facial and as-applied constitutional challenges to
8 Defendants’ discriminatory policies and practices.
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11 II.

12 **JURISDICTION AND VENUE**

13 2. This action raises federal questions under the United States Constitution,
14 particularly violations of the Free Speech and Free Exercise Clauses of the First
15 Amendment, violations of equal protection and due process under the Fifth Amendment,
16 as well as federal questions under the Religious Freedom Restoration Act, 42 U.S.C. §
17 2000(bb) et. Seq. (“RFRA”); these claims are properly challenged pursuant to federal law,
18 particularly 28 U.S.C. §§ 1331; 1346; and 2201 – 2202.
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20
21 3. This Court has original jurisdiction over the federal claims by operation of
22 28 U.S.C. §§ 1331 and 1346.

23 4. This Court has authority to grant the requested injunctive and declaratory
24 relief under 28 U.S.C. §§ 2201 -2202 and attorney’s fees and costs under 28 U.S.C. § 2412
25 and the Equal Access to Justice Act.
26

27 5. Venue is proper in the U.S. District Court for the District of Arizona under
28 28 U.S.C. § 1391(e), because a Defendant resides within the District of Arizona and a

1 substantial part of the events giving rise to the action occurred within the District of
2 Arizona.

3 **III.**

4 **IDENTIFICATION OF PLAINTIFF**

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6 6. Plaintiff Andrew Snelling is and was at all times relevant to this Complaint
7 a citizen of Australia, and is a United States resident alien. His green card number is
8 USCIS# 205-371-637, Category E26. It expires 03/17/2024

9
10 7. Dr. Snelling has a Ph.D. in Geology from the University of Sydney,
11 Australia's oldest and one of its most prestigious universities, which is highly ranked in
12 the top 100 among universities throughout the world.

13
14 8. Dr. Snelling has substantial field and laboratory experience over the last 45
15 years relating to numerous aspects of theoretical and practical geological research. He
16 conducts his scientific research in accord with his profession's ethical and scientific
17 standards.

18
19 9. Dr. Snelling is a professing Christian, and is primarily focused on
20 investigating geological phenomena from the perspective of one who believes in the truth
21 of the Old and the New Testaments.

22
23 10. Dr. Snelling was associated as the Geology spokesman for the Creation
24 Science Foundation.

25
26 11. Since 2007, Dr. Snelling has been employed with Answers in Genesis, a
27 Christian apologetics organization based in Petersburg, Kentucky that engages in the
28 investigation of geological phenomena and other endeavors from a Biblical perspective.

1 12. Dr. Snelling is also the Editor-in-Chief of the *Answers' Research Journal*, a
2 professional, peer-reviewed technical journal for the publication of interdisciplinary
3 scientific and other relevant research

4 13. Dr. Snelling has published a number of professional articles in peer-reviewed
5 geology journals.

7 14. Dr. Snelling has successfully completed 3 prior research projects, without
8 complaint from any NPS official within the Grand Canyon in the past 18 years.

9 15. Since 1992, Dr. Snelling has functioned as the geologic interpreter on more
10 than 30 river trips through the Grand Canyon.

11 16. Dr. Snelling is a Christian, and writes papers and articles and lectures from a
12 Biblical perspective regarding the professional research he has conducted in various
13 locales.

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15

16 **IV.**

17 **IDENTIFICATION OF DEFENDANTS**

18 17. United States Department of Interior is an executive department of the U.S.
19 government. It is headed by a Secretary and has the responsibility, among others, to
20 manage public parks and public lands. It oversees multiple governmental bureaus, one of
21 which is the National Park Service.

22

23 18. Defendant Ryan Zinke is the Secretary of the Interior for the U.S. Department
24 of the Interior. The Secretary is charged with the responsibility, among others, of
25 overseeing the governmental administration of national monuments, national memorials,
26 and national parks, including the Grand Canyon National Park in Arizona.
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1 19. The National Park Service is a bureau within the United States Department
2 of the Interior. It works to preserve the natural and cultural resources and values of the
3 national park system, which includes the Grand Canyon National Park. (“Grand Canyon”).
4 It is headed by a director, and the organization consists of a headquarters office, as well as
5 regional offices, including the Intermountain Region.
6

7 20. Defendant Michael T. Reynolds is the Director of the National Park Service.
8 Among other things, he is charged with the responsibility of administering governmental
9 policies concerning national parks, including the Grand Canyon National Park.
10

11 21. Defendant Sue Masica is the Regional Director of the Intermountain Region
12 of the U.S. National Park Service. Among other things, she is charged with the
13 responsibility of administering governmental policies concerning the Grand Canyon
14 National Park.
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16 22. Defendant Christine S. Lehnertz is the Superintendent of the Grand Canyon
17 National Park for the National Park Service. She is charged with oversight of the Grand
18 Canyon National Park.
19

20 23. Each individual Defendant is sued in his or her official capacity.
21

22 V.

23 **STATEMENT OF FACTS**

24 24. In November of 2013, Plaintiff requested permission to study the folding of
25 Paleozoic sedimentary structures at four locations within the Grand Canyon, specified to
26 the nearest one-tenth of a river mile, seeking to collect a maximum of sixty (60) one-half
27 (1/2) pound samples of rock from these unique folds. Access was to be via commercial
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1 river trips launching April 25, and July 9, 2014, which had already been permitted. See
2 Ex. A.

3 25. As a general matter, scientific research within the Canyon does not create
4 management issues or adverse impacts on the environment. Researchers are largely self-
5 regulating and willingly comply with permit requirements and relevant state and federal
6 laws protecting cultural resources, endangered species, riparian areas, and so on.
7

8 26. More specifically, between January, 2011 and April, 2016, the NPS recorded
9 only a single complaint regarding a scientific research permit holder did not comply with
10 the permit terms.
11

12 27. After Dr. Snelling submitted his application, the Research Permitting
13 Coordinator, Ronda Newton, asked Dr. Snelling to finalize his report for a previously
14 permitted sample collection research trip before she reviewed the November application.
15 Dr. Snelling did so, and transmitted the report to Ms. Newton on December 2, 2013.
16

17 28. After Dr. Snelling transmitted the report, Park officials asked yet more
18 questions, including more detailed locations for the sampling, a more detailed description
19 for a sample site proximate to a helipad, and to specify which of the permitted river
20 outfitters he would be utilizing. Dr. Snelling appropriately responded to these questions.
21

22 29. On February 5, 2014, Ms. Newton requested that Dr. Snelling obtain and
23 submit two peer reviews evaluating his research proposal.

24 30. Such reviews had not been requested in the course of Dr. Snelling's prior
25 permit applications.
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1 31. In response to Ms. Newton’s request, Dr. Snelling supplied not two, but three
2 peer reviews of this project, each of which rated the project highly and commended it for
3 approval. See Ex. B.

4 32. After having received the three peer reviews, Ms. Newton then sent Dr.
5 Snelling’s application materials to Dr. Karl Karlstrom, of the University of New Mexico
6 requesting his review on behalf of the NPS.

8 33. Dr. Karlstrom has been controversial in the ongoing debate over the age of
9 the Grand Canyon by proposing a significantly younger age for the Canyon—only 5 to 6
10 million years--versus the more commonly proposed age in the range of 70 million years.

11 34. Dr. Karlstrom’s responses briefly addressed a few scientific issues while
12 demonstrating antipathy for Dr. Snelling’s religious faith and the religious views of the
13 scientists who provided peer reviews on behalf of Dr. Snelling. See Ex. C.

14 35. Dr. Karlstrom proceeded to ask Ms. Newton advice on which letterhead –
15 the University of New Mexico or Northern Arizona University – he should submit his
16 adverse commentary regarding Dr. Snelling’s proposal.

17 36. By letter dated February 10, 2014, Dr. Karlstrom dissected Dr. Snelling’s
18 faith in the Bible and his association with his ministry, and indicated that “alternate sites”
19 were available to do Dr. Snelling’s research, without suggesting a single actual location.

20 37. Thereafter, Ms. Newton sought a second peer review on behalf of the NPS
21 from Dr. Peter Huntoon, University of Wyoming.

22 38. The research Dr. Snelling sought to conduct would investigate some of the
23 same geologic folds that Dr. Huntoon had investigated and previously published papers on.
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1 39. Dr. Huntoon and Dr. Karlstrom have collaborated on various research
2 projects through their careers, including geologic research within the Grand Canyon and
3 on topics related to Dr. Snelling's proposed research.

4 40. Dr. Huntoon condemned Dr. Snelling' proposal by stating it "is not a
5 question of fairness to all points of view, but rather adherence to your narrowly defined
6 institution mandate predicated in part on the fact that *ours is a secular society as per our*
7 *constitution.*" See Ex. D. Dr. Huntoon closed his report by urging the Park Service to
8 include "internal screening processes [that] should include an examination of the
9 credentials of the submitters so that those who represent inappropriate interests should be
10 screened out." *Id.*

11 41. In a subsequent email conversation on or about February 12, 2014 at 1:05
12 P.M., Dr. Huntoon advised Ms. Newton that "[r]eviewing is fine, just not processing the
13 dead end creationist material." See Ex. E.

14 42. Ms. Newton also solicited another review from Dr. Ron Blakely of the
15 Northern Arizona University, who summarily stated that "it is difficult to review such an
16 outlandish proposal." No actual analysis was provided. See Ex. R.

17 43. On March 4, 2014, Martha Hahn, Chief, Science and Resource Management
18 Research Office, denied Plaintiff's permit stating that "it has been determined that
19 equivalent examples of soft-sediment folds can be found outside of Grand Canyon National
20 Park." See Ex. F.

21 44. Dr. Snelling repeatedly asked Ms. Hahn and Ms. Newton for the locations
22 and details of these alternate folds Ms. Hahn had indicated were elsewhere in Arizona and
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1 the Colorado Plateau within easy driving distance, but his legitimate requests were met
2 with silence.

3 45. This was in direct contradiction to Dr. Snelling's position that his due
4 diligence research had not disclosed any adequate alternate locations; that the folds that he
5 sought to examine were unique to the Canyon location; and that a primary purpose of his
6 proposed study was to evaluate these particular folds to determine when the folding
7 occurred. Defendants' alleged rationale also ignored that Plaintiff's research in the Grand
8 Canyon was designed to expand on his prior published research done on these particular
9 folds based upon the visual inspection of them.
10
11

12 46. On April 17, 2014, Martha Hahn noted that Dr. Snelling would be subject to
13 being "banned from research in the national park system" if he were to collect the few fist-
14 sized samples without a permit. See Ex. G.
15

16 47. Also on April 12, 2014, Ronda Newton suggested to Martha Hahn that she
17 give a "heads up" to two individuals who were "willing to look out for folks like this on
18 the river." In context, "folks like this" referred to Dr. Snelling. See Ex. H.
19

20 48. Defendants' asserted reason for denying the permit application—that
21 appropriate geologic folds outside the Park would serve the objectives of the research—
22 was pretextual.

23 49. The actual reason behind the rejection was because of Dr. Snelling's
24 Christian faith and scientific viewpoints informed by his Christian faith.
25

26 50. On February 8, 2016, Dr. Snelling submitted an amended research proposal
27 which systematically responded to the alleged scientific "concerns" raised in the prior
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1 reviews, including Dr. Karlstrom's February 10, 2014 letter, and provided extensive
2 citations to relevant scientific literature to support his request. See Ex. I.

3 51. The amended proposal reduced the number of samples requested to a
4 maximum of 40.

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6 52. Dr. Snelling also supplied three peer reviews in compliance with the
7 previously stated GCNP Research Office procedures. See Ex. J.

8 53. The delays began again, now with a demand for more detailed sampling site
9 locations.

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11 54. Dr. Snelling responded on February 28, 2016, by supplying projected
12 locations within plus or minus 100 feet of the proposed sampling site obtained from a close
13 examination of online cartographic data. See Ex. K.

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15 55. Dr. Snelling's estimates are significantly more precise estimates of potential
16 sampling sites than those provided in other permit applications which were granted, in
17 which sampling sites would be described simply as being within a range of miles on the
18 Colorado River.

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20 56. When no permit was forthcoming through the balance of 2016 despite
21 ongoing contacts between Dr. Snelling and Park personnel, Dr. Snelling through counsel
22 notified Ms. Lehnertz on December 22, 2016 of the legal concerns arising from the
23 stonewalling and again requested that the permit be issued. See Ex. L (omitting
24 attachments).

25
26 57. Ms. Lehnertz did not acknowledge or respond to counsel's letter of
27 December 22, 2016.

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1 58. On January 23, 2017, Dr. Snelling, again through counsel, sent a second copy
2 of the December 22, 2016 letter to Ms. Lehnertz via overnight mail.

3 59. Ms. Lehnertz did not acknowledge or respond to counsel’s letter of January
4 23, 2017 and the accompanying copy of the December 22, 2016 letter.

5 60. On March 31, 2017, Congressman Trent Franks contacted Ms. Lehnertz via
6 facsimile, calling her attention to Dr. Snelling’s pending application and requesting that
7 the permit be issued. See Ex. M.

8 61. As of the date of filing this Complaint, Ms. Lehnertz has not acknowledged
9 or responded to Congressman Franks’ March 31, 2017 communication.

10 62. On April 25, 2016, Park Service officials issued a permit dated July 15, 2016
11 to Dr. Snelling, not to conduct his research, but rather to have him traverse the Colorado
12 River through the Grand Canyon and obtain on-site GPS data and photographs for each of
13 his proposed sampling sites which would obligate him to duplicate the same river raft trans-
14 Canyon trip that the research itself would require.

15 63. The July 15, 2016 permit was issued without any contest as to the validity of
16 Dr. Snelling’s research or informing him that there were other substantially identical
17 “folds” outside of the Park’s boundaries that he could examine.

18 64. Based upon comprehensive records of all scientific research permits issued
19 during 2014 through 2016, no other researcher was obligated to conduct a preliminary
20 reconnaissance trip to obtain and supply on-site GPS data to locate potential sampling sites.

21 65. To the contrary, the NPS issued several permits for more extensive and
22 invasive geologic sampling than that proposed by Dr. Snelling—including a permit to Dr.
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1 Karlstrom—based on applications which identified potential sampling sites as being within
2 a range of miles along the Colorado River. See Ex. N.

3 66. Specifically, the July 15, 2016 permit imposed this unprecedented
4 requirement on Doctor Snelling:

5
6 No samples are authorized for collection. PI [principal investigator] will take
7 photographs and GPS coordinates of the exact sites where collections are requested.
8 Upon conclusion of the July 2016 river trip, PI will submit the photopoints, GPS
9 coordinates, and a narrative explaining the methodology of how the samples will be
10 extracted so that the collection sites will not be visible to the public after the samples
11 have been taken. GPS coordinates are to be submitted to GRCA Research
12 Coordinator in an ESRI shapefile.

13 See Permit # GRCA-2016-SCI-0013, Ex. O.

14 67. This requirement directly contradicts the Park's own guidelines for
15 applications, which state as follows:

16 Description of study area

17 Clearly describe the study area in terms of park name(s), geographic location(s), and
18 place names. Provide UTM coordinate information (if known prior to the
19 conducting the study) in NAD83HARN, as appropriate.

20 See Guidelines for Study Proposals, USDI NPS GNCP,
21 [https://www.nps.gov/grca/learn/nature/upload/GUIDELINES-FOR-STUDY-](https://www.nps.gov/grca/learn/nature/upload/GUIDELINES-FOR-STUDY-PROPOSALS.pdf)
22 [PROPOSALS.pdf](https://www.nps.gov/grca/learn/nature/upload/GUIDELINES-FOR-STUDY-PROPOSALS.pdf).

23 68. The Park has routinely authorized applications proposing far more aggressive
24 sampling without the demand that the researchers first conduct an independent trip to locate
25 each sampling site with specific GPS data. For example:

- 26 a. Investigator Dr. Brian Clark was authorized to collect “50 basketball-sized
27 rock samples” with the locations specified as “[a]long the mainstream
28

1 Colorado through the Grand Canyon National Park.” Permit # GRCA-2014-
2 SCI-0016, Ex. P.

3 b. Investigator Mr. Donald Bills (a non-Ph.D. qualified researcher) was
4 authorized to collect “water samples, soil, sediment and rock samples...as
5 needed” from “RM25 to RM 60; Havasu Creek.... North Rim from the Rim
6 to the River ...; Horseshoe Mesa in and around the Grapevine Mine; Horn
7 Creek Drainage; Salt Creek Drainage; 150 Mile Canyon; Tuckup Canyon.”
8 Permit # GRCA-2014-SCI-0019, Ex. Q.

9
10 c. Investigator Dr. Karl Karlstrom was authorized to collect “250 fist-sized rock
11 samples, 12 basketball-sized rock samples, 20 (gallon-sized Ziploc bags)
12 samples of sand or sandstone chunks....” at a location specified as “[a]long
13 the mainstream Colorado River through Grand Canyon National Park.”
14 Permit # GRCA-2014-SCI-0015, Ex. N.

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16
17 69. There is a very limited capacity for river trips through the Colorado River at
18 the Grand Canyon, with extended lead time necessary to secure reservations.

19 70. By demanding precise GPS locations and photos for each sampling spot via
20 a preliminary scouting trip, the Defendants are at least doubling the cost of the research,
21 and potentially delaying it for a year.

22
23 71. There is no assurance that the demanded GPS data can be obtained in a single
24 trip. Weather and river conditions, and the potential that landing spots may be occupied
25 by other tours could prevent landing at one or more sample sites, which would necessitate
26 additional trips just to obtain the scouting data demanded by the NPS.
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28

1 72. Nor is there any assurance that if Dr. Snelling complies with this
2 unprecedented demand for site-specific GPS data for every location where a fist-sized rock
3 might be removed, that a research permit will actually issue.

4 73. These onerous burdens are simply a pretext to prevent Dr. Snelling's research
5 from occurring.

6 74. After Dr. Snelling did not accept the draconian proposal offered, Ronda
7 Newton emailed Dr. Snelling on July 5, 2016 to notify him that his permit had been
8 cancelled. See Ex. S.

9 75. The Defendants' actions as outlined demonstrate animus towards the
10 religious viewpoints of Dr. Snelling, and violate Dr. Snelling's free exercise rights by
11 imposing inappropriate and unnecessary religious tests to his access to the Park.

12 76. In committing the above-referenced acts, the Defendants have enforced
13 vague standards and have indulged in viewpoint discrimination, denying Plaintiff equal
14 protection of the laws by stonewalling the 2013 application and attempting to block the
15 2016 application by erecting prohibitively expensive and time delaying requirements.

16 77. On May 4, 2017, President Donald Trump issued an Executive Order
17 Promoting Free Speech and Religious Freedom to the agencies under his authority to
18 establish the following policy:

19 Section 1. Policy. It shall be the policy of the executive branch to vigorously
20 enforce Federal law's robust protections for religious freedom. The Founders
21 envisioned a Nation in which religious voices and views were integral to a
22 vibrant public square, and in which religious people and institutions were
23 free to practice their faith without fear of discrimination or retaliation by the
24 Federal Government. For that reason, the United States Constitution
25 enshrines and protects the fundamental right to religious liberty as
26 Americans' first freedom. Federal law protects the freedom of Americans
27 and their organizations to exercise religion and participate fully in civic life
28

1 without undue interference by the Federal Government. The executive
2 branch will honor and enforce those protections.

3 78. Defendants' policies and practices that resulted in denying Dr. Snelling the
4 research permit he requested are inconsistent with the May 4, 2017 Executive Order
5 Promoting Free Speech and Religious Liberty, specifically that portion stating "All
6 executive departments and agencies (agencies) shall, to the greatest extent practicable
7 and to the extent permitted by law, respect and protect the freedom of persons and
8 organizations to engage in religious and political speech."
9

10 **VI.**

11 **STATEMENT OF LAW**

12
13 79. At all times relevant to this Complaint, each and all of the acts alleged herein
14 were attributed to the Defendants who acted under color of a statute, regulation, custom,
15 or usage of the United States of America.
16

17 80. As a lawful resident alien of the United States, Plaintiff enjoys the protections
18 of the Religious Freedom Restoration Act and the constitutional protections of the Bill of
19 Rights, excepting only those that are expressly reserved to citizens of the United States.
20

21 81. Plaintiff challenges Defendants' policies and denial of the requested permits
22 on their face and as applied.

23 82. Defendants knew or should have known that denying Plaintiff a permit is a
24 violation of his constitutional rights.

25 83. The denial of an individual constitutional right is presumptively irreparable
26 harm which cannot be fully compensated by an award of money damages.
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VII.

FIRST CAUSE OF ACTION

VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

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5 84. Plaintiff realleges all allegations set forth above and incorporates them
6 herein.

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8 85. Defendants' research permit policies and practices violate the free speech
9 protections of the First Amendment to the United States Constitution facially and as applied
10 because they permit Park officials to engage in content-based and viewpoint
11 discrimination, are vague, are overbroad, are prior restraints, and grant government
12 officials unfettered discretion in the restriction of scientific research based on the religious
13 views of the research applicant.

14
15 86. Scientific investigation is an activity protected by the First Amendment to
16 the United States Constitution.

17
18 87. The Grand Canyon National Park is a designated public forum that
19 Defendants have opened it up for scientific investigational purposes.

20
21 88. Regardless of the type of forum, government may not discriminate based on
22 the religious viewpoints of the actor.

23
24 89. Defendants' policies and practices as applied to Plaintiff constitute
25 impermissible content- and viewpoint-based restrictions on constitutionally protected
26 activities.

27
28 90. Defendants' policies and practices as applied to Plaintiff infringe his right to
associate to express ideas and exercise his faith.

1 91. Defendants' policies and practices do not serve compelling government
2 interests, are not narrowly tailored, and do not leave open ample alternative channels of
3 activity.

4 92. Defendants' policies and practices are impermissible prior restraints on Dr.
5 Snelling's expression in violation of his rights to freedom of speech.
6

7 93. Defendants' policies and practices are not content-neutral time, place, and
8 manner restrictions.

9 94. Defendants' policies and practices vest unfettered discretion in the
10 Defendants to restrict to constitutionally-protected activities.
11

12 WHEREFORE, Plaintiff respectfully requests that the Court grant the relief set forth
13 hereinafter.

14 **VIII.**

15 **SECOND CAUSE OF ACTION**

16 **VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION UNDER**
17 **THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

18 95. Plaintiff realleges all allegations set forth above and incorporates them
19 herein.
20

21 96. Dr. Snelling's intent to perform scientific research in the Grand Canyon
22 National Park is motivated by his sincerely held religious beliefs.

23 97. Defendants have effectively prohibited Dr. Snelling from performing
24 scientific research in the Grand Canyon National Park.
25

26 98. Defendants' policies and actions expressly discriminated against Dr.
27 Snelling because of his religious faith.
28

1 99. Defendants' activities are motivated by hostility towards Dr. Snelling's
2 viewpoints and sincerely held religious beliefs.

3 100. Defendants' policies and practices have burdened Dr. Snelling's free
4 exercise of his religion absent any compelling state interest.

5 101. Defendants' policies and practices have substantially burdened the exercise
6 of Dr. Snelling's free exercise of religion absent any rational government basis.

7 102. Defendants failed to use the least restrictive means to achieve any compelling
8 government interest that may exist.

9
10 WHEREFORE, Plaintiff respectfully requests that the Court grant the relief set forth
11 hereinafter.

12
13 **IX.**

14 **THIRD CAUSE OF ACTION**

15 **VIOLATION OF THE RIGHT TO DUE PROCESS UNDER THE FIFTH**
16 **AMENDMENT TO THE UNITED STATES CONSTITUTION**

17 103. Plaintiff realleges all allegations set forth above and incorporates them
18 herein.

19 104. Defendants' policies and practices constitute violations of the right of due
20 process of law under the Fifth Amendment to the U.S. Constitution.

21 105. Defendants' research permitting policies and practices are vague, lack
22 defining terms, and allow for unbridled governmental discretion.

23
24 WHEREFORE, Plaintiff respectfully requests that the Court grant the relief set forth
25 hereinafter.

X.

FOURTH CAUSE OF ACTION

**VIOLATION OF EQUAL PROTECTION UNDER THE FIFTH AMENDMENT
TO THE UNITED STATES CONSTITUTION**

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5 106. Plaintiff realleges all matters set forth in the preceding paragraphs and
6 incorporates them herein.

7 107. Freedom of speech under the First Amendment is a fundamental right.

8
9 108. The Fifth Amendment requires that the government treat all similarly
10 situated individuals equally.

11 109. Upon information and belief, Defendants allow similarly situated persons
12 access to the Grand Canyon National Park for the purposes of scientific research.

13
14 110. Defendants' practice of not responding to Dr. Snelling's request for a permit
15 and/or refusing to grant him a permit, while routinely and consistently issuing permits to
16 other geologic researchers, treats Dr. Snelling differently from other similarly situated
17 individuals and groups on the basis of the content and viewpoint of speech and sincerely
18 held religious beliefs.

19
20 111. Defendants do not have a compelling or legitimate governmental interest for
21 such disparate treatment.

22 112. Defendants' policies and practices comprise an unconstitutional and
23 continuing interference and infringement upon the rights of Dr. Snelling to equal protection
24 of the laws as guaranteed by the Fifth Amendment to the United States Constitution.

25
26 WHEREFORE, Plaintiff respectfully requests that the Court grant the relief set forth
27 hereinafter.
28

XI.

FIFTH CAUSE OF ACTION

VIOLATION OF THE RELIGIOUS FREEDOM RESTORATION ACT,
42 U.S.C. § 2000(bb) et. seq.

113. Plaintiff realleges all matters set forth in the preceding paragraphs and incorporates them herein.

114. Federal laws are subject to the Religious Freedom Restoration Act, and federal laws which substantially burden one’s exercise of religion, even if neutral and generally applicable, must be in furtherance of a compelling governmental interest and be the least restrictive means of furthering that interest.

115. Defendants’ policies and practices as set forth above substantially burdened Dr. Snelling’s exercise of religion.

116. Defendants cannot produce a compelling governmental interest justifying their activities as set forth above.

117. Defendants failed to use the least restrictive means to achieve any compelling government interest that may exist.

WHEREFORE, Plaintiff respectfully requests that the Court grant the relief set forth hereinafter.

XII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- A. Assume jurisdiction over this action;

1 B. Declare that the policies and practices as described in this Complaint,
2 including but not limited to the USDI NPS GCNP Guidelines for Study Proposals (see ¶
3 67, *infra*) are facially unconstitutional and violate the RFRA because they violate the right
4 to freedom of speech, equal protection, the right to due process, and the right to free
5 exercise of religion, which are guaranteed to Plaintiff under the Constitution of the United
6 States and by operation of federal law;

8 C. Declare that the Defendants' policies and practices as described in the
9 Complaint are unconstitutional and violate the RFRA as applied to Plaintiff because they
10 violate his right to freedom of speech, the right to equal protection, the right to due process,
11 and the right to free exercise of religion, which are guaranteed to Plaintiff under the
12 Constitution of the United States and by operation of federal law;

14 D. Issue a mandatory injunction directing Defendants to issue a research
15 permit to Dr. Snelling to authorize the research described in his revised application of
16 February 8, 2016.

18 E. Issue a mandatory injunction directing the Defendants to provide a
19 research launch for Dr. Snelling to conduct the requested research to compensate for the
20 time lost to Defendants' actions.

22 F. Issue a preliminary and permanent injunction against the Defendants,
23 their agents, officials, servants, employees, and any other persons acting in their behalf,
24 from enforcing said policies and practices against Plaintiff and others for their participation
25 in the activities described in this Complaint;

1 G. Grant to Plaintiff an award of attorneys' fees in an amount to be
2 deemed appropriate by this Court in accordance with 28 U.S.C. § 2412 and the Equal
3 Access to Justice Act;

4 H. Grant to Plaintiff an award of his costs of litigation in accordance with
5 the 28 U.S.C. § 2412 and the Equal Access to Justice Act;

6 I. Grant to Plaintiff an award of nominal damages in an amount deemed
7 appropriate by this Court; and

8 J. Grant such other and further relief as this Court deems just and proper.

9
10 **JURY DEMAND**

11 Plaintiff hereby demands a trial by jury of all issues so triable.

12 RESPECTFULLY submitted this 9th day of May 2017.

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14
15 /s/ Michael L. Kitchen

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