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**MONTANA FIFTH JUDICIAL DISTRICT COURT
MADISON COUNTY**

STATE OF MONTANA

Plaintiff,

vs.

JESSE MICHAEL BOYD, BETHANY
GRACE BOYD, CARTER NORMAN
PHILLIPS, ERIC ANTHONY TRENT,

Defendant(s).

Cause No(s). DC-29-2022-22

DC-29-2022-23

DC-29-2022-24

DC-29-2022-26

**DEFENDANTS' MOTION TO DISMISS
FOR SELECTIVE PROSECUTION
(OPPOSED)**

HEARING REQUESTED

(Document sequence numbers are listed as they appear in DC-29-2022-22)

Defendants Jesse M. Boyd, et al., by and through their counsel of record, move to dismiss on grounds of selective enforcement and prosecution. Counsel submits, upon investigation, that this is the most extreme case of selective prosecution motivated by religious discrimination in the history of Montana.

Madison County, Ennis and State investigators were called to a roadside scene on November 12, 2022. Within minutes of beginning investigating, officers became aware that there

had been an affray, or at least a dispute, among some 8 individuals and that there were competing claims of justified use of force and display of weapons.¹

It was also obvious that the dispute involved a group of Christian missionaries from out of state (now the defendants).² (Officers described the Christian missionaries as ‘transients’ and “crazy people”).³ Under the plain language of Montana statutes,⁴ the investigators were required to even-handedly collect all evidence; yet the officers began mocking and joking about the Christian missionaries.

1. **“It's confusing to me that you call yourselves evangelists. You're evangelists? Okay, how an evangelist can be walking across America spreading the word of God, carrying a gun, which is perfectly legal, nothing wrong with that, then get in a fight in the middle of Montana in the middle of nowhere and decide, ‘ya know what, I think I need my gun to shoot somebody.’-Dep Wyatt**
2. **“What's the deal with the crosses and stuff?”-Dep. Wyatt**
3. **Dep Wyatt: “I understand a lot of things, I don't understand how Evangelists, you're evangelists right?” Bethany replied: “Yes Sir, Bible Believing Christians.” Dep Wyatt: “In the middle of Montana, middle of nowhere, get in to a gun fight with somebody.”-“I don't understand how evangelists, you are evangelists right? Dept Wyatt to Carter.**
4. **Dep. Wyatt (laughing): “So families that walk across America together, will go to jail together.” (Sgt Winn laughs in response).**
5. **“He's just sheltered” “These are evangelists!” “Is that what they are?” Dep Jurgonski to Wyatt and Sgt Winn; Wyatt to Pohle and Winn.**
6. **Dep Wyatt (laughing): “They're spreading the word of God, Holy cow!” Sgt Winn rolls his eyes and says: “Oh, yeah.”**
7. **Dep Wyatt: “I feel for you guys for trying to spread the word of God and all, but toting guns and whacking people with crosses is not the way to do it.” (Sgt Winn laughs in the back ground)**
8. **“Those 2 guys from the hotel came down 'cause they saw him getting his ass kicked**

¹ See Dkt.No.49 at 22 – 23 (Docket citations are to footnote numbers, not page numbers).

² See Dkt.No.49 at 1

³ See Dkt. No. 49 @ 29 & 31

⁴ Mont. Code Annotated § 45-3-112:

“When an investigation is conducted by a peace officer of an incident that appears to have or is alleged to have involved justifiable use of force, the investigation **must be conducted** so as to disclose **all** evidence, including testimony concerning the alleged offense that might support the apparent or alleged justifiable use of force.” (emphasis added).

with a fucking cross and a flag, on the ground.”

9. “They are definitely ‘Transients’, ‘Crazies.’ Officer Pohle.

Immediately upon arriving, officers pointed their weapons directly at the Christian missionaries and ordered them to throw their keys out into the snow and to kneel in the snow. This was despite the fact that the Christian missionaries had themselves called 9-1-1 to report being in fear for their safety. Officers then:

- A. Patted down, searched, and handcuffed each Christian missionary at gunpoint;**
- B. Separated each of the Christian missionaries for separate interrogations;**
- C. Read each Christian missionary Miranda warnings and took statements from each individual. (Their stories were all consistent).**
- D. Searched the vehicle belonging to the Christian missionaries, seizing numerous items;**
- E. Did not separate *other* participants, pat them down, or handcuff them despite evidence that they had been the aggressors and pointed weapons at the Christian missionaries;**
- F. Did not search any of the vehicles belonging to the non-missionaries;**
- G. Listened as the non-missionaries gave conflicting accounts, and then *allowed the non-missionaries* to correct each other’s accounts as officers watched, so that the officers and “victims” could best present their case for prosecuting the Christian missionaries;**
- H. Recognized that all four Christian missionaries gave corroborating justified-use-of-force accounts,⁵ but directed officers to turn off all bodycams while officers crafted a prosecution plan against the Christian missionaries.⁶**
- I. Were caught on camera scheming to create knowingly false charges against at least some of the missionaries to justify taking every adult Christian missionary into custody⁷ Even in the absence of serious bodily injury, the officers conspired to charge the Christian missionaries each with felony assault,⁸ and to justify taking the minor child to CPS;⁹**

⁵ See Dkt.No.49 @ 38

⁶ See Dkt.No.49 @ 39, in violation of 424.6(a),(b), (c) and (d). Activation of audio/video.

⁷ See Dkt.No.49 @ 41

⁸ See Dkt.No.49 @ 55

⁹ See Dkt.No.49 @54

J. Placed the minor son of one Christian missionary into a police vehicle and kept him alone for approximately 30 or more minutes, in violation of Madison County published policy;¹⁰

K. Repeatedly (3 times, actually) invited “victim” Brad Terrell to take an ambulance ride to a hospital in order to maximize the false case against the Christian missionaries. (Terrell, with merely a bloody nose, refused three times; but the officers finally called an ambulance anyway.)¹¹

The biased and selective prosecution.

The Christian missionaries appeared for arraignment on felony aggravated assault charges days later. All four defendants were compelled to face arraignment on felony charges in Justice Court without any opportunity to visit with counsel. Extremely punitive conditions of release were imposed, including \$50,000 bonds for each defendant (totaling \$200,000), and ankle monitors at a cost of \$11 each per day, or over \$300 per week for all four Christian defendants. In order to get such restrictive bail and restrictions imposed, the Madison County attorney argued that the very nature of defendants’ traveling Christian missionary work made them dangerous transients.

Normally, most noncapital felonies are prosecuted regionally, by Montana’s respective county attorneys. But to prosecute a foursome of Christian missionaries for assault with weapons allegations, prosecutors took the extremely unusual step on Jan. 3, 2023 of having the Montana Department of Justice assist the prosecution. And despite the plain language of Montana law stating that people may threaten deadly force when they reasonably fear impending bodily harm, the State Justice Department has let out every stop in its prosecution of the Christian missionaries.¹²

¹⁰ See Dkt.No.49 @ 60, violating Policy 302.3 Restraint of juveniles.

¹¹ See Dkt.No.49 @ 56

¹² Under Montana Code Annotated §45-3-111(2), “if a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon.”

The extremely unusual prosecution against the Christian missionaries.

In this case the State Attorney General's Office revels in the zealotry of its prosecution of the Christian missionaries.¹³ The State *files* notices of nonexistent noncompliance by the defense that have no justification and warns of repercussions for, e.g., not perfectly filling out a form or signing it (even as the State itself hasn't signed it). Many of the State's arguments seem to rely on fabricated technicalities (e.g., the argument that the Montana Code contains no authority for the defense to move for dismissal, or that justification for drawing a gun does not authorize the "pointing" of a gun, etc).¹⁴

When the Christian missionaries submitted a brief stating that the prosecution's conduct was "fueling" third-party harassment of the Defendants and defense witnesses (*Defendants' Response to State's Motion to Compel*, p. 4), the State responded by demanding the Court order the Defendants to immediately produce evidence that the AG's office "has harassed or intimidated any witnesses during the pendency of this proceeding." *State's Reply to Defendants' Response to State's First Motion to Compel*, p. 5. The Defendants had not accused the AG's office of directly harassing any witnesses, yet the State further submitted a proposed order to set a show cause hearing "if necessary" to determine why counsel should not be held in contempt, or why defense counsel should not be removed from the case.

Upon information and belief, this case constitutes the first prosecution in Montana in which the State has:

1. Argued that no one can ever claim justified use of force unless they take the witness stand in their own defense;
2. Argued that a defendant can only claim justified use of force after they first confess to the crime, under oath, on the witness stand;

¹³ Here, after the Assistant AG asked via email when they could expect the defense to give them the addresses of our witnesses, the State moved to compel after waiting only four days (including an intervening weekend). Now the State has moved for sanctions including a fine of \$500/day against defense counsel until we give them the addresses for the last five. Some of the missing addresses belong to law enforcement officers whose addresses are concealed from us—but likely known by the prosecution.

¹⁴ The lawbooks are filled with Montana court decisions weighing in on the substance of motions to dismiss. Cases where Montana courts have suggested no one has a right to file a motion to dismiss seem to be quite rare or nonexistent. And it seems to go without saying that a statute authorizing a person to 'threaten deadly force' including to 'draw a weapon' would authorize someone to point a weapon.

3. Intimidated Defendants by filing serial motions to prohibit a defendant from asserting an affirmative defense, within hours of learning that a defendant contemplates asserting such a defense.
4. Filed five sets of motions in limine, seeking to foreclose virtually every argument the Christian missionaries indicate they will make, in the most extreme terms.
5. Filed felony charges to prosecute an altercation resulting in a bloody nose with treatment declined, in a case where defendants plainly sought to break up a battery while holding items in their hands by happenstance (in this case a cross and a flag).

Defendants submit that the State's zeal to arrest and prosecute the Christian missionaries is selectively driven by religious discrimination, bias, and persecution. Indeed, State prosecutors are knowingly seeking to evade the law of self-defense in Montana in order to wrongly convict the Christian missionaries for crimes they did not commit.

Defendants move for an order:

- Dismissing the State's action with prejudice because prosecutors committed Equal Protection violations through selective prosecution based on religion;
- Dismissing the State's action with prejudice because law enforcement personnel committed Equal Protection violations through selective enforcement based on religion; and
- Conducting an inquiry into the extent of religious intolerance among Madison County, State Fish, Wildlife & Parks, Ennis City police investigators and the State Department of Justice; and
- Any other relief the Court deems appropriate.

BRIEF IN SUPPORT

I. INTRODUCTION

The State's investigation into this matter has been tinged with religious intolerance and discrimination from its first moments. Officers and investigators at the scene visibly mocked and joked about defendants' religious views and missionary work. And the State Attorney General—in its second motion in limine—sought to suppress these acts of intolerance and discrimination from the trial in this case.

The State's prosecution in this matter has been uniquely overzealous. In some instances, a single email by the defense to the prosecution mentioning a possible future defense has triggered the filing of a motion in limine to prohibit the defense within 24 hours. And a defense

filing expressing an intent to file a future motion regarding religious discrimination (*this* motion, actually) triggered a motion by the State for sanctions and a finding of contempt of court within three days.

Although the State previously sought sanctions against defense counsel based on claims of leaking criminal justice information, the State itself has publicly filed the defense witness list, leading to torment and harassment of at least one individual on the list, by a pro-government, anti-Christian extremist supporting the prosecution. Additionally, all four defendants have been stalked and harassed online, and even the defense lawyers and staff have received threats—including at least one death threat. (See screenshots and text messages below.)

The Department of Justice should be protecting witnesses, defense lawyers, and defense staff from stalking and harassment. But the State's ferocious zealousness against the Christian missionaries occurs amidst a climate of intimidation, threats, doxing and harassment aimed at Christian fundamentalists and their lawyers.

II. LEGAL STANDARD

a. Selective Prosecution

The Fourteenth Amendment of the United States Constitution and Art. II, § 4 of the 1972 Montana Constitution guarantee equal protection of the laws to all persons. *Matter of C.H.* (1984), 210 Mont. 184, 197, 683 P.2d 931, 938. The principal purpose of these equal protection clauses is to ensure that persons are not made the subject of arbitrary and discriminatory state action. *Godfrey v. Montana State Fish & Game Com'n* (1981), 193 Mont. 304, 306, 631 P.2d 1265, 1267. When a selective-prosecution claim is brought forward by a party, the threshold issue is “whether [the] challenged action actually resulted in unfair or discriminatory treatment[.]” *State v. Koehn*, 291 Mont. 87 (Mont., 1998).

A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an “independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution.” *U.S. v. Armstrong*, 517 U.S. 456, 463 (1996). While a prosecutor has great discretion, such discretion is “subject to constitutional constraints.” *United States v. Batchelder*, 442 U.S. 114, 125 (1979). One of these constraints, imposed by the equal protection component of the Due Process Clause of the Fifth Amendment (See, *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954)), is that the decision whether to prosecute may not be based on “an unjustifiable standard

such as race, religion, or other arbitrary classification,” *Oyler v. Boles*, 368 U.S. 448, 456 (1962). Under this unjustifiable standard, a defendant may demonstrate that the administration of a criminal law is “directed so exclusively against a particular class of persons... with a mind so unequal and oppressive” that the system of prosecution amounts to “a practical denial” of equal protection of the law. *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886).

A claim of selective prosecution is an objection based on defects in the institution of the prosecution, which must be raised prior to trial. *U.S. v. O'Bryan*, 4 Fed.Appx. 724 (10th Cir. 2001). When reviewing a defense of selective-prosecution, the Montana Supreme Court has noted:

“‘[T]he conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation’ absent an allegation and showing that ‘the selection was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification’ such as sex, or the exercise of the First Amendment right to free speech.”

State v. Stanko, 974 P.2d 1139, 1147, 1998 MT 323, ¶ 51 (Mont.,1998) (internal citations omitted) (abrogated on other grounds).

Thus, a person asserting that his or her constitutional rights have been violated by selective prosecution must allege and prove that the selection was deliberately based on an unjustifiable standard such as race or religion. *State v. Harris*, 983 P.2d 881, 886, 1999 MT 115, ¶ 23 (Mont.,1999) (citing, *Stanko*, ¶ 51; *State v. Pease*, 227 Mont. at 428, 740 P.2d at 661; *State v. Lemmon*, 214 Mont. at 126, 692 P.2d at 458; *Maldonado*, 176 Mont. at 329, 578 P.2d at 300. To support this finding, a selective-prosecution claim has two elements.

First, a defendant must establish that the prosecution “had a discriminatory effect.” *Armstrong*, 517 U.S. at 465. To show that effect, a defendant must show that the Government afforded “different treatment” to persons “similarly situated” to him. *Id.* at 470. When a person's circumstances “present no distinguishable legitimate prosecutorial factors that might justify” different prosecutorial decisions between him and the defendant, that person is similarly situated to the defendant. *Branch Ministries v. Rossotti*, 40 F. Supp. 2d 15, 21 (D.D.C. 1999), *aff'd* 211 F.3d 145 (D.C. Cir. 2000).

Second, a defendant must show that the prosecutorial policy had “a discriminatory purpose,” *Armstrong*, 517 U.S. at 465, meaning that the Government prosecuted that defendant

“because of” his membership in an identifiable group, *Wayte v. United States*, 470 U.S. 598, 610 (1985). Direct evidence of that purpose is rarely available, so courts permit defendants to use statistical disparities and other indirect evidence to show intent. See, *United States v. Khanu*, 664 F. Supp. 2d 28, 33 (D.D.C. 2009).

b. Selective Enforcement

A selective enforcement claim is directed at the “actions of law enforcement and those affiliated with law-enforcement personnel,” *United States v. Washington*, 869 F.3d 193, 214 (3d Cir. 2017), cert. denied, — U.S. —, 138 S. Ct. 713 (2018). Substantive claims of selective enforcement are evaluated under the same two-part test as selective prosecution claims, which requires a defendant to present clear evidence of both a discriminatory purpose and a discriminatory effect. *United States v. Mills*, 389 F.Supp.3d 520 (E.D.Mich., 2019). Where a court finds evidence of selective enforcement, dismissal of criminal proceedings is a proper remedy. *United States v. Mumphrey*, 193 F.Supp.3d 1040 (N.D.Cal. 2016).

III. DISCUSSION

a. The District Court should dismiss the State’s action with prejudice because the prosecution has engaged in selective prosecution through religious discrimination.

The State may not eradicate all references to religion from Montanans’ daily lives. Montanans have a First Amendment right to reference religion, and to proselytize and express their religious beliefs. *Griffith v. Butte School Dist. No. 1*, 358 Mont. 193 244 P.3d 321 (2010).

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma.

Zorach v. Clauson, 343 U.S. 306, 314 (1952).

As such, prosecuting individuals for engaging in protected First Amendment activities constitutes an invidious prosecutorial purpose. And in the case of Christian missionaries Boyd, Boyd, Trent, and Phillips, the prosecution has both (1) “a discriminatory effect”, and (2) “a discriminatory purpose[.]” *Armstrong*, 517 U.S. at 465.

b. The State’s prosecutorial policies have “had a discriminatory effect” on the Defendants.

To demonstrate a “discriminatory effect,” a defendant must show that “similarly situated individuals” were not prosecuted. *Id.* “When a person's circumstances present no distinguishable legitimate prosecutorial factors that might justify different prosecutorial decisions between him and the defendant, that person is similarly situated to the defendant.” *United States v. Judd*, 579 F. Supp. 3d 1, 4 (D.D.C. 2021) (Internal quotation marks omitted).

i. The Defendants are similarly situated with Bradley Terrell.

There is substantial evidence in this case that the State’s purported victim Terrell initiated the incident by stopping to yell abusive language at the missionaries and then “exit” his vehicle to advance violently against the missionaries.¹⁵ Both the Defendants and Terrell called 911 claiming to be an injured party.¹⁶ Each waited for law enforcement, and each complied with law enforcement instructions. But only the Christian missionaries made statements to law enforcement that at the time of the incident they were in fear for their safety.¹⁷ Each made statements to law enforcement that they used or threatened to use a weapon in self-defense.¹⁸ Each made admissions to law enforcement that he or she used physical force on another person.¹⁹ Each sustained physical injuries from the incident.²⁰

The evidence also shows that Terrell got out of his truck and initiated the fight when he was “pissed off,” because of ‘something’ (he didn’t know at the time) that Boyd had said.²¹ Terrell made further statements to law enforcement that he couldn’t remember what Boyd said, “because once the adrenalin started, I don’t know” and then he got out of his vehicle.²² Terrell further admitted to having an injured wrist from “jacking [the Defendants] a few times”²³ and “beating the shit out of” Boyd,²⁴ which caused injuries to Boyd’s lower left leg and bruising on

¹⁵ See Dkt.No.49 at 8

¹⁶ See Dkt.No.49 at 22 - 23

¹⁷ See Dkt.No.49 at 10

¹⁸ See Dkt.No.49 at 11 - 13

¹⁹ See Dkt.No.49 at 18

²⁰ See Dkt.No.49 at 22 & 46

²¹ See Dkt.No.49 at 9

²² See Dkt.No.49 at 9

²³ See Dkt.No.49 at 43

²⁴ See Dkt.No.49 at 18

his back.²⁵ Law enforcement was also provided information that Terrell caused injury to property; breaking Boyds' glasses.

In this case there is evidence that Mr. Terrell appeared to reach for a weapon prior to aggressively exiting his vehicle and charging toward defendants. Thus, Terrell himself could have been charged with assault with a weapon upon the same standards applied against the Christian missionaries.

ii. The Defendants are similarly situated with Dennis Crabtree and Thomas Ferguson.

The evidence in this case also shows that Terrell, Crabtree, Ferguson and the Defendants all made statements to law enforcement that they used or threatened to use force with a deadly weapon.²⁶ They were all equally armed with weapons.²⁷ Law enforcement was provided information that Crabtree and Ferguson were "pointing rifles" at the defendants and threatened to use their vehicle with the intent to kill.²⁸ Boyd stated they "warned us that if we didn't leave immediately, they would run over my vehicle with their trucks and then said, "get the hell outta here, or we will kill you!" One of them also said, "Get your Jesus s#%t out of here!" Further, Crabtree, Ferguson and Defendants each made statements to law enforcement corroborating the narrative that Terrell initiated the conflict when he got out of his truck and moved toward the Defendants.²⁹

iii. The State has not attempted to prosecute Bradley Terrell or Dennis Crabtree and Thomas Ferguson.

However, unlike the Defendants, Terrell was never asked by the prosecutors or law enforcement if he had weapons. Unlike the Defendants, Terrell was never searched for weapons and, unlike the Defendants, Terrell's vehicle was never searched for weapons. Unlike the Defendants, Terrell's photographs of his injured knuckles, were never used as evidence of his assault on the Defendants. In fact, upon information and belief, law enforcement decided to bolster a narrative of Terrell as a victim by knowingly stopping recording conversations with

²⁵ See Dkt.No.49 at 46

²⁶ See Dkt.No.49 at 13, 20 & 23

²⁷ See Dkt.No.49 at 13, 20, & 23

²⁸ See Dkt.No.49 at 13

²⁹ See Dkt.No.49 at 53

Terrell so as not to generate exculpatory evidence.³⁰

Prosecutors did not apply the law equally. Prosecutors did not apply the criminal code to Terrell whose conduct at the time of the incident provided sufficient cause to charge: (1) disorderly conduct, § 45-8-101, MCA, (2) malicious intimidation or harassment relating to civil or human rights § 45-5-221, MCA, and (3) assault with a weapon, § 45-5-213, MCA.

Further, there is evidence that Crabtree and Ferguson both had “rifles trained” at the Defendants, prompting the Defendants to leave the scene of the incident out of “fear for their lives.”³¹ However, Crabtree and Ferguson were never asked by law enforcement if they had weapons. Crabtree and Ferguson were not searched for weapons.³² Nor has the prosecution identified or otherwise recorded the vehicles that Crabtree and Ferguson threatened to use to [run over the missionaries].³³ Prosecutors have not applied equal protection of the law upon Crabtree and Ferguson, whose conduct at the time of the incident provided sufficient cause for prosecutors to charge felony assault with a weapon pursuant to § 45-5-213, MCA, malicious intimidation or harassment relating to civil or human rights pursuant to § 45-5-221, MCA (because of another person’s creed or religion).

c. The State’s prosecution has a discriminatory purpose because it is based on the Defendants’ membership in an identifiable group.

The evidence overwhelmingly supports a finding that the prosecution in this matter had a discriminatory purpose because it was based on intolerance of Christian missionaries.

i. The difficult subject of the Assistant State Attorney General.

Until recently (perhaps the pendency of this very case) the State Assistant Attorney General has publicly identified himself by his religious identity (which is apparently different from that of defendants). The Assistant AG has also publicly linked his prosecution orientation and conduct to his religious identity on social media.³⁴

³⁰ See Dkt.No.49 at 38 & 39

³¹ See Dkt.No.49 at 20

³² See Dkt.No.49 at 35

³³ See Dkt.No.49 at 20 & 23

³⁴ Thorin Geist has publicly identified himself by his Instagram and Twitter handles as “the Jewish Cynic.” Not only does Geist make religion a part of his public identity, but he links his religious identity to his identity as a public prosecutor.

Of course, the Assistant AG has a First Amendment right to identify himself by his religious identity. There are cases where public officials have sued and won back their public jobs after being fired for wearing small cross pendants on the job, for example.³⁵ Defendants and counsel strongly support the First Amendment right of public officials like Mr. Geist to express their religious identity.

But where a public official publicly *links his work* to religious identity, and conducts his official duties (for example by publicly expressing hatred for a defendant based on hatred for a defendant's attorney while expressing religious identity), such conduct can cross an important line. See, e.g., *Goldman v. Weinberger*, 475 U.S. 503 (1986) (upholding against First Amendment challenge military uniform regulation barring wearing of yarmulke); *Daniels v. City of Arlington, Texas*, 246 F.3d 500 (5th Cir.2001) (upholding prohibition on police officer's act of wearing a small gold cross pin on his uniform due to risk that the city may appear to endorse Daniels's religious message). "Visibly wearing a cross pin—religious speech that receives great protection in civilian life—takes on an entirely different cast when viewed in the context of a police uniform." *Id.* "The city's interest in conveying neutral authority through that uniform far



³⁵ See e.g., *Draper v. Logan County Pub. Library* (2003) 403 F.Supp.2d 608 (W.D.Ky 2003); *Nichol v. ARIN Intermediate Unit 28* (2003) 268 F.Supp.2d 536

outweighs an officer's interest in wearing any non-department related symbol on it.” *Id.* at 504.

Where a prosecutor’s display of his religious identity on social media is visibly linked to the prosecutor’s identity in retaliating and zealously punishing defendants, and where unusual zeal in prosecuting members of a different religious identity, such conduct implicates a criminal defendant's right to a fair trial. And where a religious-identifying prosecutor uses his position to trample the rights of members of different faiths, such conduct infringes on the most fundamental rights that Americans have.

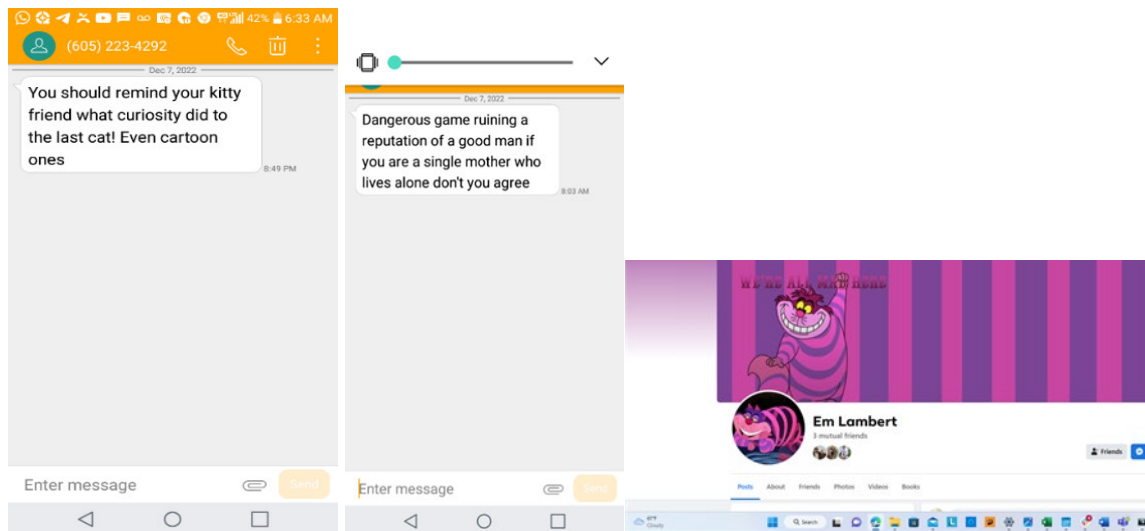
Governments must commit themselves to “a position of neutrality” whenever “the relationship between man and religion” is affected. *Abington School Dist. v. Schempp* (1963) 374 U.S. 203, 226 (1963); *Fox v. City of Los Angeles*, 22 Cal.3d 792, 587 P.2d 663 (Cal. 1978) (city enjoined from “(d)isplaying a lighted cross on the Los Angeles City Hall by any means whatsoever”).

The Constitution preserves the religious neutrality of the courtroom and it may be necessary to restrict some exercise of the First Amendment to avoid violating the establishment clause. The prosecutor is, in the eyes of the public, the personification of the state. A prosecutor must avoid even the appearance of religious motivation in his prosecutorial decisions. Cf., *Commonwealth v. Chambers*, 528 Pa. 558, 586, 599 A.2d 630, 644 (1991), cert. denied, 504 U.S. 946 (1992) (“In the past we have narrowly tolerated references to the Bible [but we] now admonish all prosecutors that reliance in any manner upon the Bible or any other religious writing in support of the imposition of a penalty of death is reversible error *per se* and may subject violators to disciplinary action.”).

Prosecutors have chosen to bring charges against a group of Christian missionaries, while failing to apply equal protection of the laws to the alleged ‘victim’ and at least two (2) witnesses (Crabtree and Ferguson) who are (at least) equally culpable under Montana law. The prosecution has further failed to pursue *any* ethics violations against the law enforcement personnel or launch an investigation into their misconduct, and are instead prosecuting the actual victims of a hate crime.

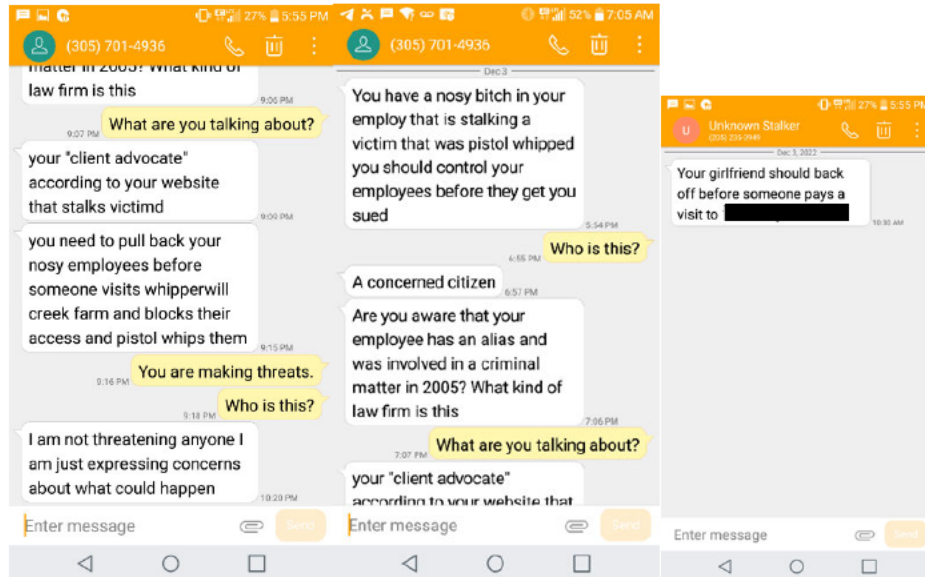
ii. The one-sidedness, intensity and aggressiveness of the State’s investigation and prosecution of these Christian missionaries has engendered harassment and intimidation of defendants and defense attorneys and staff.

The State’s prosecution has engendered Christian-hating cheerleaders; who are publicly supporting the prosecution with more religious intolerance. Faith-hating stalkers are now sending the legal defense team threats. At least one is a death threat against JPL client advocate EL (“Lambert”), (based on the well-known aphorism that curiosity killed the cat). Note that EL uses a cartoon kitten image as her Facebook and Twitter profile pictures. Note that this death threat was sent during a period when EL was doing basic background research on Terrell and anti-Christian stalker Robert Baty, including research into their public profiles, business reviews, property tax records and other public source of information.



Note that Lambert, the client advocate for JPL, is a single mom who lives in a southern state. The above text messages were sent to attorney Roger Roots’ cell phone in December 2022 to communicate that the sender was stalking and threatening Lambert in retaliation for her research into “good man,” Terrell.

The State’s religious persecution has left defendants and defense counsel with few options for protecting their personal safety.



The above texts were sent to JPL attorney Roger Roots in December 2022. The reference to “blocking their access and pistol whipping” law firm staff is an obvious reference to the Montana missionary case and Brad Terrell.³⁶ EL lives in a southern state and is identified by the address in the text. The sender threatens to “pay a visit” to her address if she doesn’t “back off” her research in the missionary case.

One of the most intrusive government cheerleaders is Robert Baty of 4560 Larkbunting Dr Apt 7d, Fort Collins, Colorado. Baty is a notorious internet hate blogger who torments and harasses people of faith nationwide. Mr. Baty has previously tormented loved ones of funeral attendees by planting false narratives online suggestive that the funeral attendees were responsible for the decedent’s death.³⁷ A retired career IRS agent, Baty has spent years seeking to change IRS policy relating to tax free housing allowances for religious clergy.³⁸

³⁶ Roger Roots, a partner with John Pierce, is the brother of attorney Alex Roots. He has nothing to do with this case, with the exception of having done some legal research and participated in communications.

³⁷ “Robert Baty: Using the Death of David Fulton as Weapon,” Youtube.com, streamed live on Jan 5, 2021. “Robert Baty is an internet sociopath who is currently trying to use the death of our friend David Fulton, . . . as a weapon. He has made web page making wildly insane and inaccurate accusations about David committing suicide. . . . one of the all time most vile and morbidly disgusting thing I think I have ever seen someone do in my life. . . . It is unconscionable and the actions of a very sick and disturbed mind.” <https://www.youtube.com/watch?v=UFOnvLXp92g> (accessed 3/5/2023).

³⁸ <https://www.forbes.com/sites/peterjreilly/2018/05/18/a-christian-not-an-atheist-sparked-lawsuit-on-clergy-tax-free-housing-allowances/?sh=3060ae774710> (accessed 3/5/2023).

Mr. Baty has publicly posted photos of defendants' residences, defendants' home addresses, the warranty deeds to defendants' homes, photos of defendants' mailboxes, photos of defendants' driveway, property tax records of defendants, maps directing people to defendants' residences, and satellite images of defendants' homes.³⁹ In fact, Baty has publicized images of Jesse Boyd's parents, and their property tax information, on his hate blog.⁴⁰ This behavior is well known by law enforcement to be associated with predatory stalking and criminal harassment.⁴¹ It is a recognized tactic of stalkers seeking to generate violence against their targets.

Baty's hate site contains entire pages dedicated to doxing and harassing defendants' witnesses and legal counsel.⁴² Baty's site mocks and makes fun of Jesse Boyd's 12-y-old child.⁴³ Baty brags regarding his communication to prosecutors Thorin Geist and Mr. Buchler.⁴⁴

Upon information and belief, in support of the State's prosecution in this case, Mr. Baty has created false social media accounts and fabricated social media postings to make it appear that defendant Jesse Boyd posted threats on Brad Terrell's social media. This is 'Swatting'-type behavior designed to falsely trigger law enforcement into targeting the victim of one's stalking and harassment. It is illegal behavior and constitutes violations of numerous state and federal criminal laws including wire fraud, stalking, and cyberstalking statutes.⁴⁵

Upon information and belief, on January 8, 2023, Baty's falsifications misled prosecutors and this Court to pursue Baty's fabrications as possible false "witness intimidation" charges against defendant Jesse Boyd. Upon information and belief, the prosecution is now aware of its unfounded subpoenas on January 8, 2023.

Yet rather than prosecuting Baty for his crimes—the State Attorney General appears to *be complicit or acting in concert with Baty* in wrongly persecuting the defendants. (The State's

³⁹ <http://kehvrlb.com/jesse-boyd-v-montana> (accessed 3/5/2023).

⁴⁰ Id.

⁴¹ <https://privacyrights.org/consumer-guides/online-harassment-cyberstalking> (accessed 3/5/2023).

⁴² <http://kehvrlb.com/em-lambert-robert-baty-on-the-boyd-case> (note threatening image of a gun immediately after discussion of JPL staff). <http://kehvrlb.com/boyd-v-montana-the-gary-marbut-exchange> (entire page dedicated to possible expert witness Marbut); <http://kehvrlb.com/jesse-boyd-dave-laclair> (entire page dedicated to trashing defense witness Dave LeClair).

⁴³ <http://kehvrlb.com/josiah-boyd-states-star-witness> (mocking the child as the "star witness").

⁴⁴ <http://kehvrlb.com/jesse-boyd-dave-laclair> ("David Buchler, Thorin Geist, are you listening?????").

⁴⁵ See U.S. Department of Justice, Cyber Misbehavior, <https://www.justice.gov/usao/file/851856/download> (accessed 3/5/2023).

discovery disclosures now regularly contain Baty's social media reports on the case.)

Counsel submits that this entire case is generated in large part by religious intolerance and discrimination. We request an evidentiary hearing so that Baty may be subpoenaed and brought before the Court and examined under oath.

Baty's hate blog is literally filled with hate content directed at the Christian missionaries.⁴⁶ Baty posts memes calling for the State to "hang" the defendants.⁴⁷ For weeks, undersigned counsel has been receiving Baty's social media hate posts in discovery in this case, along with social media posts by Jesse Boyd and codefendants apparently sent by Baty to the prosecution. The District Court should dismiss the State's action with prejudice after holding an evidentiary hearing into this matter.

IV. CONCLUSION

Upon information and belief, never before in the history of Montana's courts has there been a criminal case where multiple parties to a roadside affray could be identified as being participants, yet where the agents of the State so visibly chose one group for prosecution based on their religious proselytization, while identifying others similarly situated as heroes and even "victims." Never before in the history of Montana's courts has there been such a criminal case where a public prosecutor, while publicly identifying himself as a member of another religious faith, targeted and prosecuted missionaries who were well within their right to self-defense.

ACCORDINGLY, Defendants respectfully request this Court to issue an Order:

1. Dismissing the State's action with prejudice because prosecutors committed Equal Protection violations through selective prosecution based on religion;
2. Dismissing the State's action with prejudice because law enforcement personnel committed Equal Protection violations through selective enforcement based on religion; and
3. Conducting an inquiry into the extent of religious intolerance among Madison County, State Fish, Wildlife & Parks, Ennis City police investigators and the State Department of Justice; and
4. Any other relief the Court deems appropriate.

RESPECTFULLY SUBMITTED, this 31th day of March, 2023.

⁴⁶ <http://kehvrlb.com/jesse-boyd-v-montana> (accessed 3/5/2023).

⁴⁷ <https://weirdwilbur.wordpress.com/2023/03/03/jesse-boyd-v-montana-the-murdaugh-analogies-2/> (accessed 3/5/2023).

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EXHIBITS

3:07



Jesse Boyd & The Montana 4

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Robert Baty · 30m ·



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