

Nos. 23-10008, 23-10536, and 23-10836

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

CHARLENE CARTER,
Plaintiff-Appellee/Cross-Appellant,

v.

LOCAL 556, TRANSPORT WORKERS UNION OF AMERICA;
SOUTHWEST AIRLINES COMPANY,
Defendants-Appellants/Cross-Appellees.

CHARLENE CARTER,
Plaintiff-Appellee,

v.

SOUTHWEST AIRLINES COMPANY,
Defendant-Appellant.

On Appeal from the United States District Court for the Northern District of Texas,
Case No. 3:17-cv-02278,
Hon. Brantley Starr, United States District Judge

**BRIEF OF *AMICUS CURIAE* FREEDOM FROM RELIGION
FOUNDATION IN SUPPORT OF DEFENDANTS-APPELLANTS/CROSS-
APPELLEES**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed person and entity as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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¹ The Freedom From Religion Foundation would like to thank Attorney Sammi Lawrence—its Anne Nicol Gaylor Legal Fellow—for being the primary drafter of this brief.

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CORPORATE DISCLOSURE STATEMENT

The Freedom From Religion Foundation, Inc. (“FFRF”) is a nationally recognized 501(c)(3) educational nonprofit incorporated in 1978. FFRF has no parent corporation and issues no stock.

INTEREST OF AMICUS²

FFRF’s purposes are to educate the public about nontheism and to preserve the cherished constitutional principle of separation between religion and government. FFRF works as an umbrella for those who are free from religion (free-thinkers, atheists, agnostics, and nonbelievers). FFRF currently has over 40,000 U.S. members, including more than 1,700 members and a chapter in Texas.

FFRF’s interest in this case arises from both of its purposes: to defend the separation of state and church and to educate the public on why allowing a district court to order attorneys to attend religious liberty training by an agenda-driven Christian advocacy organization is a dangerous precedent that offends the First Amendment. FFRF and its members view the District Court’s orders requiring Southwest’s attorneys to attend religious liberty training conducted by a Christian

² All parties have consented to the filing of this brief. No party’s counsel in this case authored this brief in whole or in part. No party or party’s counsel contributed any money intended to fund preparing or submitting this brief. No person, other than Amicus, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

advocacy organization as an impermissible abuse of judicial discretion that, if allowed to stand, will open up a proverbial can of worms that permits judges to order attorneys, and potentially other parties, to attend training by organizations that espouse views and religious ideology with which a particular judge agrees. For reasons premised upon both law and policy, this cannot be permitted.

INTRODUCTION

District courts exercise considerable discretion and power in choosing if and how to sanction attorneys who they find in civil contempt.³ A court's power to sanction is not without limits, however, and for centuries the judicial system, and the American people, have placed immense trust in judges to exercise the power to sanction with discretion, always with an eye towards fairness and necessity. Here, the District Court broke from centuries of tradition and betrayed the trust that our citizens and system place in the judiciary by ordering Southwest's attorneys to attend religious liberty training conducted by a controversial and agenda-driven Christian advocacy organization. The District Court's order immediately drew national attention due to its unusual and unprecedented nature, needlessly furthering the American people's growing concern over the ethics and power of the judiciary. See David Koenig, *Legal Experts Question Judge's Order Telling Southwest Lawyers to get Religious-Liberty Training*, AP News (Aug. 11, 2023, 11:01 PM), <https://apnews.com/article/southwest-airlines-judge-religious-speech-training-b643395cf72c076ded60770d31156f91>; Devan Cole, *Federal Judge Orders Southwest Airlines Attorneys to Attend 'Religious-Liberty Training' from Conservative Group*, CNN (Aug. 6, 2023, 6:07 PM), <https://cnn.com/2023/08/08/>

³ Amicus addresses the District Court's contempt sanctions only and takes no position on the other aspects of this case.

politics/southwest-airlines-sanctions-alliance-defending-freedom/index.html. This Court now has the opportunity and duty to overturn the District Court’s order that Southwest’s attorneys attend this training, and by doing so affirm the trust that Americans place in their judges to act with dignity and fairness in accordance with law.

ARGUMENT

I. The District Court abused its discretion by ordering Southwest’s attorneys to attend training by a Christian advocacy organization.

A. The Alliance Defending Freedom is an ideological advocacy organization.

The Alliance Defending Freedom (“ADF”) is a controversial, agenda-driven Christian legal advocacy organization that espouses specific ideological views regarding Christianity and God. Alliance Defending Freedom, <https://adflegal.org> (last visited Oct. 17, 2023). ADF “advances the God-given right to live and speak the Truth. [They] contend for the Truth in law, policy, and the public square, and equip the alliance to do the same.” *About ADF*, Alliance Defending Freedom, <https://adflegal.org/about> (last visited Oct. 17, 2023). ADF has been involved in numerous Supreme Court cases over the last thirty years in an ongoing effort to shape federal law to fit ADF’s religious worldview. *ADF at the Supreme Court*,

Alliance Defending Freedom, <https://adflegal.org/us-supreme-court-wins> (last visited Oct. 17, 2023).

The education programs that ADF typically offers promote a specific, ideological Christian view of law and advocacy. *Legal Academy*, Alliance Defending Freedom, <https://adflegal.org/training/legal-academy> (last visited Oct. 17, 2023). Unlike more traditional CLE courses, such as those offered by State Bar associations, ADF's CLE courses combine legal training with "an unwavering commitment to Christian principles." *Legal Academy*, Alliance Defending Freedom, <https://adflegal.org/training/legal-academy> (last visited Oct. 17, 2023). ADF's CLE's do not provide attorneys with neutral and balanced training. Rather, ADF's CLE's appear to specifically teach attorneys to adopt ADF's agenda-driven views on legal topics, in order to advance its Christian-focused mission.

B. Ordering training from an ideological Christian advocacy organization is unprecedented.

The District Court's order requiring Southwest's attorneys to attend religious liberty training from ADF is unprecedented. It is rare, but not unheard of, for a court to order attorneys to attend educational training as part of sanctions. It is especially rare to see this type of sanction outside of the Rule 11 context, as in the present case. To the best of Amicus's knowledge, however, it is entirely unprecedented for a district court to order, *sua sponte*, attorneys to attend training

by a specific ideological advocacy organization, let alone one that bakes religious teachings into its training. The following cases are examples of court-ordered trainings, mostly in the context of Rule 11 sanctions, that were neutral, without requiring the training be conducted by an ideological advocacy organization:

- *In re Adams*, No. 3:20-MC-008-M, 2020 WL 4922330, at *1 (N.D. Tex. Aug. 20, 2020) (ordering attorney to complete 15 hours of CLE courses accredited by the State Bar of Texas and that qualify for credit in legal ethics, without specifying by which organization the CLE must be conducted);
- *In re Santos*, 616 B.R. 332, 357 (Bankr. N.D. Tex. 2020) (ordering attorney to complete 15 hours of ethics CLE courses, in addition to the standard requirements imposed by the State of Texas, without specifying by which organization the CLE must be conducted);
- *Jabary v. McCullough*, 325 F.R.D. 175, 200 (E.D. Tex. 2018) (ordering attorney to attend two Texas Bar CLE courses on ethical courtroom behavior);
- *Bullard v. Chrysler Corp.*, 925 F. Supp. 1180, 1191 (E.D. Tex. 1996) (ordering attorney to attend ten hours of ethics CLE courses, without specifying by which organization the CLE must be conducted);

- *DR Distrib., LLC v. 21 Century Smoking, Inc.*, 513 F. Supp. 3d 839, 864 (N.D. Ill. 2021) (ordering attorney to complete at least eight hours of ethics CLE courses without specifying by which organization the CLE must be conducted);
- *Hardy v. Asture*, No. 1:11CV299, 2013 WL 566020, at *8 (W.D.N.C. Feb. 13, 2013) (ordering attorney to attend eight hours of CLE courses on the practice of social security litigation in federal court; the CLE had to be approved by the North Carolina Bar and be in a live-classroom format, the court did not specify by which organization the CLE must be conducted);
- *Petrish v. JP Morgan Chase*, 789 F. Supp. 2d 437, 456 (S.D.N.Y. 2011) (ordering attorney to complete four hours of CLE courses on federal practice and procedure approved by the State CLE board and conducted in a live-classroom format; the court did not specify by which organization the CLE must be conducted);
- *In re Burghoff*, 374 B.R. 681, 686–87 (Bankr. N.D. Iowa 2007) (ordering attorney to attend a law school course on professional responsibility);
- *Balthazar v. Atl. City Med. Ctr.*, 137 F. App'x 482, 490 (3d Cir. 2005) (affirming district court's order that attorney complete two CLE courses, one entitled Federal Practice & Procedure, and one entitled Attorney Professionalism and Rules of Professional Conduct).

- *Moser v. Bret Harte Union High Sch. Dist.*, 366 F. Supp. 2d 944, 988 (E.D. Cal. 2005) (ordering attorney to complete 20 hours of CLE ethics training without specifying by which organization the training must be conducted);
- *Clement v. Pub. Serv. Elec. & Gas Co.*, 198 F.R.D. 634, 635 (D.N.J. 2001) (ordering attorney to complete courses in Federal Practice & Procedure and Civil Rights Law offered by a reputable CLE provider, or a law school accredited by the ABA).

As cases from across the federal judiciary demonstrate, when district courts order attorneys to attend training as part of sanctions, the courts, wisely, exercise their discretion temperately and refrain from ordering attorneys to attend training conducted by specified advocacy organizations. Until now.

II. The sanctions order was an abuse of discretion and not the least restrictive sanction necessary to deter the conduct at issue.

The District Court’s order was an abuse of discretion and not the least restrictive sanction necessary to deter the conduct at issue. District courts “enjoy broad discretion to determine who may practice before them and to regulate the conduct of those who do.” *In re Ramos*, 679 F. App’x 353, 356 (5th Cir. 2017) (citing *United States v. Nolen*, 472 F.3d 362, 371 (5th Cir. 2006)). However, a district court’s power to sanction attorneys is not limitless. Rather, a district court’s inherent authority to sanction “is not a broad reservoir of power, ready at an

imperial hand, but a limited source; an implied power squeezed from the need to make the court function.” *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1406–07 (5th Cir. 1993) (citing *NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 894 F.2d 696, 702 (5th Cir.1990)). “In short, the inherent power springs from the well of necessity, and sparingly so.” *Nat. Gas Pipeline Co. of Am.*, at 1407. Further, novel sanctions, such as the “religious liberty training” at issue in this case, “are subject to close examination on review simply because their reasonableness has not been demonstrated.” *Nat. Gas Pipeline Co. of Am.*, 2 F.3d at 1411.

The District Court’s order is novel for several reasons, justifying close examination upon review. Those reasons include: the *sua sponte* nature of the order, the fact that the District Court specified that a particular ideological advocacy organization conduct the training, that the specified ideological organization advances one particular religious worldview, and that “religious liberty training” is not directly related to the alleged inappropriate conduct by the attorneys. Our adversarial legal system allows attorneys to disagree with a judge’s personal views regarding religious liberty, thus it is inappropriate for a judge to castigate the losing side of a case by requiring attorneys to attend training with the apparently punitive intention of re-educating or shaming the attorneys for holding viewpoints that do not align with the judge’s.

Religious liberty training ordered *sua sponte* and conducted by a controversial Christian advocacy organization is not the least restrictive means of deterring the conduct at issue in this case. There is no indication that the actions of Southwest's attorneys that warranted sanctions in the eyes of the District Court stemmed from a failure to understand religious liberty or Title VII, or that religious liberty training would be the best avenue to secure compliance with Title VII. Moreover, ADF does not specialize in Title VII training or have any particularized experience on Title VII of the Civil Rights Act that would make it a logical choice to conduct the ordered training. ADF does not advertise itself as an expert on Title VII or list Title VII as one of its focus areas. *See Focus, Alliance Defending Freedom*, <https://adflegal.org/> (last visited Oct. 17, 2023) (listing the ADF's focus areas as religious freedom, freedom of speech, sanctity of life, marriage & family, and parental rights).

Requiring Southwest's attorneys to complete a specified amount of professional training conducted by a state or federal bar association, for example, would be a less restrictive and more appropriate sanction. A state or federal bar association lacks the pro-Christian agenda of ADF, and would thus be more objective in its course content, rather than promoting a specific religious viewpoint. Here, the District Court's order that Southwest's attorneys attend religious liberty training specifically conducted by ADF, an organization that

promotes specific religious ideology and that does not even specialize in Title VII training programs, is a novel sanction that does not prove reasonable or necessary when scrutinized under even the weakest microscope.

III. Allowing the District Court to order attorneys to attend training by a specific ideological advocacy organization would set a dangerous precedent that would be ripe for abuse.

Allowing the District Court to order attorneys to attend training conducted by a specific agenda-driven advocacy organization—let alone one that promotes the advancement of a specific religious viewpoint—would set a dangerous precedent that would be ripe for abuse. District Courts must not be allowed to abuse their inherent powers to sanction by ordering attorneys to attend trainings conducted by organizations like ADF, which espouse specific, controversial religious viewpoints that are intertwined with the organization’s trainings. If a court may order attorneys to attend training conducted by ADF, there is no principled distinction that would prevent courts from similarly ordering attorneys to attend training conducted by any other ideological advocacy organization, such as Lambda Legal, the American Civil Liberties Union, Giffords Law Center, the National Women’s Law Center, and Amicus Freedom From Religion Foundation.

Any attempt to argue that a district court may order attorneys to attend training by ADF but not other advocacy organizations such as those listed above would run afoul of the First Amendment. Put simply, if judges may order attorneys

to attend training by one advocacy organization, they must be allowed to order attorneys to attend training by other advocacy organizations. The First Amendment would not permit a judicial system in which courts may only order attorneys to attend training conducted by ADF or an advocacy organization with a similar religious ideology.

It is not difficult to imagine that allowing district courts to order training by advocacy organizations could lead some judges to require attorneys to attend training conducted by organizations that espouse that particular judge's preferred viewpoint. For instance, a judge that staunchly supports LGBTQ+ rights could order attorneys in a Title VII sex discrimination case to attend training conducted by Lambda Legal as part of contempt sanctions, even if, as in the present case, the sanctionable conduct has virtually nothing to do with the expertise of the organization selected to conduct the training. But rather than creating an avenue for judges to insert their personal viewpoint into sanctions orders by allowing for the selection of specific advocacy organizations to conduct training, this Court has the opportunity to keep Pandora's box firmly shut. The Court should seize this opportunity.

CONCLUSION

For the above reasons, this Court must reverse the order by the United States District Court for the Northern District of Texas, and rule that the District Court

abused its discretion by ordering Southwest's attorneys to attend religious liberty training conducted by a specific ideological advocacy organization.

Date: October 19, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This amicus brief complies with the page limitation of Fed. R. App. P. 29(a)(5) and Circuit R. 29 because it consists of 2,514 words and does not exceed 6,500 words.

This amicus brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman font.

/s/ Samuel T. Grover
Samuel T. Grover

Counsel for Amicus Curiae

Dated: October 19, 2023

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2023, the foregoing amicus brief was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit through the Court's CM/ECF system. I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Samuel T. Grover
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