

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

AIR FORCE OFFICER,

Plaintiff,

v.

LLOYD AUSTIN, in his official capacity
as Secretary of Defense, *et al.*

Defendants.

No. 5:22-cv-00009-TES

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants respectfully notify the Court of the attached decisions in *Colonel, et al. v. Austin, et al*, No. 8:22-cv-1277-SDM-TGW (M.D. Fla.), *National Guardsman v. Austin et al.*, No. 8:22-cv-1279-SDM-TGW (M.D. Fla.), and *Pilot, et al. v. Austin, et al.*, 8:22-cv-1278-SDM-TGW (M.D. Fla.). In those cases, plaintiffs sought to prevent the military from enforcing the COVID-19 vaccination requirement and brought claims under the Religious Freedom Restoration Act (“RFRA”) and the Free Exercise Clause of the First Amendment. The court dismissed plaintiffs’ cases for lack of venue because the parties did not reside in the Middle District of Florida and the complaint presented no other basis for venue. Defendants provide this update in support of their motion to dismiss the individuals with no connection to this forum. *See* ECF No. 92.

Dated: July 8, 2022

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and that that document is now available for viewing and downloading from the CM/ECF system. I further certify that the foregoing document is being served this day on all counsel of record, via Notices of Electronic Filing generated by CM/ECF.

/s/ Zachary A. Avallone
Trial Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COLONEL, et al.,

Plaintiff,

v.

CASE NO. 8:22-cv-1277-SDM-TGW

LLOYD J, AUSTIN, III, et al.,

Defendants.

_____ /

ORDER

In the original action, *Navy Seal 1 v. Austin*, No. 8:21-cv-2429, service members in each branch of the military pursued, among other claims, injunctive relief under the Religious Freedom Restoration Act. A June 2, 2022 order (Doc.194) severs the original action by branch and stays this action (the Army Action) in the absence of a plaintiff for whom venue is proper in the Middle District of Florida.

In an exhibit (Doc. 191-1), the plaintiffs concede that no plaintiff in this action resides in the Middle District of Florida, and no allegation in the complaint presents another basis for venue. Although more than thirty days have elapsed after the severance of the original action, neither a motion to amend the complaint to cure the

improper venue nor a motion to transfer the action to a proper venue appears. Accordingly, the action is **DISMISSED WITHOUT PREJUDICE** for improper venue.

The clerk must close the case.

ORDERED in Tampa, Florida, on July 5, 2022.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NATIONAL GUARDSMAN,

Plaintiff,

v.

CASE NO. 8:22-cv-1279-SDM-TGW

LLOYD J. AUSTIN, III,

Defendant.

_____ /

ORDER

In the original action, *Navy Seal 1 v. Austin*, No. 8:21-cv-2429, service members in each branch of the military pursued, among other claims, injunctive relief under the Religious Freed Restoration Act. A June 2, 2022 order (Doc.194) severs the original action by branch and stays this action (the Virginia Army National Guard Action). The order (Doc. 194 at 11) states that “[b]ecause no venue likely exists in the Middle District of Florida for a member of the Virginia Army National Guard . . . [n]ot later than June 30, 2022, the plaintiff must either identify a district for transfer or explain why an order should not dismiss the action for improper venue.” The order warns that “absent a timely response, an order will dismiss without prejudice [this action].”

Instead of identifying a district for transfer or explaining why an order should not dismiss the action, the plaintiff moves (Doc. 195) to extend by thirty days the time within which to amend the complaint to “join[] properly venued class

plaintiffs.” The motion to amend the complaint declines even to adumbrate how a member of the Virginia Army National Guard, who submits a request for a religious accommodation to the Virginia Army National Guard (under the command of Governor Youngkin in the absence of federal mobilization), could be properly joined with a member of the Florida Army National Guard, who submits a request for a religious accommodation to the Florida Army National Guard (under the command of Governor DeSantis in the absence of federal mobilization).

The June 2, 2022 order directs the plaintiff to either identify a district for transfer or explain why an order should not dismiss the action for improper venue. The plaintiff accomplishes neither. The motion to amend (Doc. 195) is **DENIED**, and this action is **DISMISSED WITHOUT PREJUDICE** for improper venue. The clerk must close the case.

ORDERED in Tampa, Florida, on July 5, 2022.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

PILOT, et al.,

Plaintiffs,

v.

CASE NO. 8:22-cv-1278-SDM-TGW

LLOYD J, AUSTIN, III, et al.,

Defendants.

_____ /

ORDER

In the original action, *Navy Seal 1 v. Austin*, No. 8:21-cv-2429, service members in each branch of the military pursued, among other claims, injunctive relief under the Religious Freedom Restoration Act. A June 2, 2022 order (Doc.194) severs the original action by branch and stays this action (the Coast Guard Action) in the absence of a plaintiff for whom venue is proper in the Middle District of Florida.

In an exhibit (Doc. 191-1), the plaintiffs concede that no plaintiff in this action resides in the Middle District of Florida, and no allegation in the complaint presents another basis for venue. Although more than thirty days have elapsed after the severance of this action, neither a motion to amend the complaint to cure the improper

venue nor a motion to transfer the action to a proper venue appears. Accordingly, the action is **DISMISSED WITHOUT PREJUDICE** for improper venue. The clerk must close the case.

ORDERED in Tampa, Florida, on July 5, 2022.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE