

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

FORUM FOR ACADEMIC AND		
INSTITUTIONAL RIGHTS, INC.,	x	
SOCIETY OF AMERICAN LAW	:	
TEACHERS, INC., et al.,	:	
	:	
Plaintiffs,	:	03 Civ. 4433 (JCL)
	:	
v.	:	
	:	
DONALD H. RUMSFELD, in his capacity	:	
as U.S. Secretary of Defense, et al.,	:	
	:	
Defendants.	:	

**REPLY DECLARATIONS IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

E. Joshua Rosenkranz (ER6734)
Timothy P. Wei (TW1134)
Sharon E. Frase (SF4906)
HELLER EHRMAN WHITE &
McAULIFFE LLP
120 West 45th Street
New York, NY 10036
Telephone: (212) 832-8300

Warrington S. Parker, III (WP3514)
Aaron M. Armstrong (AA1123)
HELLER EHRMAN WHITE &
McAULIFFE LLP
333 Bush Street
San Francisco, California 94104-2878
Telephone: (415) 772-6000

**List of Reply Declarations in Support of
Plaintiffs' Motion for Preliminary Injunction**

- A. Reply Declaration of Harold Kent Greenfield
- B. Reply Declaration of Paula C. Johnson

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REPLY DECLARATION OF HAROLD KENT GREENFIELD

I, Harold Kent Greenfield, declare pursuant to 28 U.S.C. § 1746, as follows:

1. I am founder and President of the Forum for Academic and Institutional Rights, Inc. ("FAIR"), a membership corporation organized under the laws of the State of New Jersey. If called as a witness, I could and would testify to the following based on personal knowledge, or if indicated, on information and belief.

2. I incorporate into this declaration and reaffirm the statements in my September 18, 2003 declaration in support of Plaintiffs' Motion for a Preliminary Injunction.

3. Some members of FAIR are law schools. Other members of FAIR are law school faculties – the very entities that collectively make law school policy – that have voted as a body to join FAIR. FAIR brings this lawsuit on behalf of its members.

4. FAIR members have adopted policies that prohibit discrimination on the basis of, among other categories, sexual orientation. The members require those employers who seek to use the law schools' career placement offices, facilities and resources to abide by these non-discrimination policies. FAIR members previously applied these nondiscrimination policies to military recruiters, barring them or limiting them from using members schools' placement office facilities and resources as an expression of disapproval of a discriminatory employer's hiring and personnel policy.

5. In 2000, the Department of Defense ("DOD") issued regulations interpreting the Solomon Amendment to put at risk the federal funding not just of FAIR members, but for some, to their parent institutions — universities and colleges that receive millions in federal funds. Soon after this, representatives from branches of the armed forces began to enforce the Solomon Amendment against FAIR members; in their communications to the law schools they made clear that they were interpreting the Solomon Amendment to include federal funds available from the Departments of Defense, Transportation, Education, Health and Human Services, Labor, and related agencies.

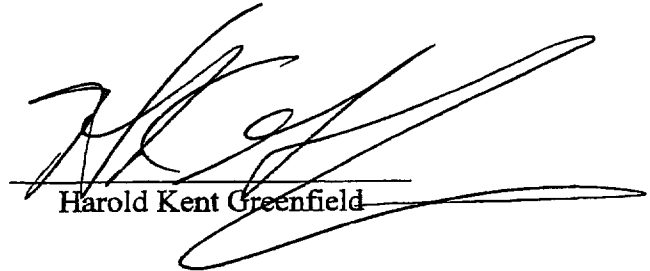
6. As a direct result of the Solomon Amendment, or the DOD's interpretation and application of the statute, all FAIR members have now suspended the application of their non-discrimination policies to military recruiters. This suspension has compromised the message of non-discrimination that FAIR members previously sent to their communities.

7. All FAIR members now make available to military recruiters the services, facilities and personnel of their career placement offices.

8. FAIR members would apply their non-discrimination policies to military recruiters if this Court were to enjoin enforcement of the Solomon Amendment.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated on September 28, 2003
in Melrose, Massachusetts



Harold Kent Greenfield

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REPLY DECLARATION OF PAULA C. JOHNSON

I, Paula C. Johnson, declare, pursuant to 28 U.S.C. § 1746 as follows:

1. I am co-president of the Society of American Law Teachers (“SALT”), plaintiff in this action. If called as a witness, I could and would testify to the following based on personal knowledge, or if indicated, on information and belief.

2. I incorporate into this declaration and reaffirm the statements in my September 18, 2003 declaration in support of Plaintiffs’ Motion for a Preliminary Injunction.

3. Members of SALT are on the faculties of law schools across the nation. These law schools, where SALT members teach, have implemented non-discrimination policies that prohibit discrimination on the basis of, among other categories, sexual orientation, disability and age. The law schools apply these policies to employers who seek to use their career placement office facilities, resources and personnel. In the past SALT members’ law schools applied their non-discrimination policies to the branches of

the U.S. military that sought to recruit at the law schools. SALT brings the claims in this lawsuit on behalf of its members.

4. SALT members' law schools no longer apply their non-discrimination policies to military recruiters because of the threat that they and their parent institutions (if they have them) will lose federal funds under the Solomon Amendment. SALT members' law schools would return to applying their non-discrimination policies to military recruiters if the Solomon Amendment were enjoined.

5. Our members teach and pursue scholarship at institutions that commit to provide to the members of their communities a particular kind of pedagogical environment. In fact, SALT's members are often key creators and implementers of the pedagogical environment at their home law schools. The specific contours of these environments vary at each law school, but the vast majority of them have non-discrimination values at their core.

6. The non-discrimination policies at our institutions are more than statements of principle. Fully and robustly applied, they allow us to pursue our scholarly goals and prepare our students for the practice of law in an atmosphere that encourages debate, celebrates diversity and promotes the ideals of respect and tolerance within our communities. The non-discrimination policies forcefully send a vital message of the values embraced by SALT members and SALT members' law schools to students, faculty, staff, and visitors.

7. Therefore, we are, along with our students, the direct beneficiaries of these non-discrimination policies. In some instances we are also creators and implementers of the non-discrimination policies. The fulfillment of our educational mission and the

meaningful exercise of our own rights of academic freedom are contingent on the law schools' promise to us that they will provide, now and in the future, the above-described environment.

8. At some SALT members' law schools, the law school or university administration developed and implemented the non-discrimination policies. Thus, those SALT members were both beneficiaries and receivers of the messages of non-discrimination sent by the policies. Those SALT members are harmed by their respective law schools' suspension of their non-discrimination policies as they applied to the military because they cannot hear their law schools' message of non-discrimination free from the static caused by the Solomon Amendment. They also no longer benefit from the pedagogical environment created by the non-discrimination policy. These harms are ongoing and will continue until the Solomon Amendment is enjoined and SALT members' law schools can again apply their non-discrimination policies to military recruiters.

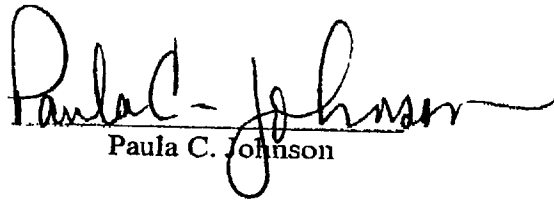
9. At other SALT members' law schools, the law faculties themselves, including SALT members, developed, approved, and implemented the schools' non-discrimination policies. Thus, those SALT members were beneficiaries, senders, and receivers of the messages of non-discrimination sent by the policies. Those SALT members are harmed by their respective law schools' suspension of their non-discrimination policies as they applied to the military because they cannot send or receive their law schools' messages of non-discrimination free from interference caused by the Solomon Amendment. They too no longer enjoy the pedagogical environment fostered by the non-discrimination policy. These harms are ongoing and will continue until the

Solomon Amendment is enjoined and SALT members' law schools can again apply their non-discrimination policies to military recruiters.

10. The Solomon Amendment, by forcing law schools at which SALT's members teach and work to abandon their non-discrimination policies, interferes directly with the law schools' ability to create an atmosphere that encourages debate, celebrates diversity and promotes the ideals of respect and tolerance, and consequently, with our ability to benefit from the pedagogical environment that exists because of it.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated on September 29, 2003
in Syr., New York


Paula C. Johnson