

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**SCOTT RAINEY, VETERANS OF  
FOREIGN WARS DISTRICT 4,  
AMERICAN LEGION POST 586, THE  
NATIONAL MEMORIAL LADIES,  
LISA WARD, JAMES HAYCRAFT, and  
GERALDINE LAKEY,**

**Plaintiffs,**

**vs.**

**UNITED STATES DEPARTMENT OF  
VETERANS AFFAIRS, ERIC  
SHINSEKI, Secretary of Veterans Affairs,  
in his official and individual capacities,  
and ARLEEN OCASIO, Director of the  
Houston National Cemetery, in her official  
and individual capacities,**

**Defendants.**

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§ **Civil Action No. 4:11-cv-01992**  
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§ **Jury Demanded**  
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**CONSENT DECREE**

The parties, Scott Rainey, Veterans of Foreign Wars (“VFW”) District 4, the American Legion Post 586, the National Memorial Ladies (“Memorial Ladies”), Lisa Ward, James Haycraft, and Geraldine Lakey (collectively, “Plaintiffs”) and United States Department of Veterans Affairs (“VA”), Eric Shinseki, Secretary of Veterans Affairs, and Arleen Ocasio (collectively, “Defendants”) jointly announce to the Court that they have agreed to resolve all matters of dispute between them in this action and request entry of this agreed Consent Decree. By entering this Consent Decree, Defendants are not admitting any liability or fault on the part of the United States, its agents, servants, or employees. The Defendants specifically deny that they are liable to the Plaintiffs.

Defendants further assert that certain of the provisions of this Consent Decree are already the policy or practice of the Department. The parties stipulate that the Court has jurisdiction over them and the subject matter of this lawsuit and has the necessary authority to enter the Consent Decree requested herein. The Court shall retain jurisdiction over this action only for a period of fifteen (15) years. In the event the law or circumstances materially change, either party may petition the Court for a modification of this Consent Decree.

Plaintiffs hereby RELEASE, WAIVE, ACQUIT, and FOREVER DISCHARGE Defendants from, and are hereby FOREVER BARRED and PRECLUDED from prosecuting, any and all claims, causes of action, or requests for any injunctive and/or monetary relief, including, but not limited to, damages, costs, attorney's fees, expenses, and/or interest, whether presently known or unknown, that have been or could have been asserted in this case by reason of, with respect to, in connection with, or which arise out of, any matters alleged in the case that the Plaintiffs, or any of them, have against the Defendants, or any of them, save and except the obligations created by this Consent Decree.

NOW, THEREFORE, Plaintiffs and Defendants having requested the Court to enter this Consent Decree,

IT IS HEREBY ORDERED AND DECREED that, solely with regard to the Houston National Cemetery (also referred to hereinafter as the "Cemetery") and the Plaintiffs herein, unless stated otherwise, the Defendants shall:

1. At committal services, agree not to ban, regulate, or otherwise interfere with prayers, recitations, or words of religious expression absent family objection;

2. Allow veterans' families to hold committal services with any religious or secular context as they desire, subject to their compliance with VA security, safety, and law enforcement regulations;
3. Apply existing veteran preferences when hiring cemetery employees;
4. Upon final approval of this Consent Decree, immediately grant requests for decertification by all members of the VFW District 4 and the Memorial Ladies, individually, in regard to their work at the Houston National Cemetery, so that they are no longer VA "without compensation" employees who are part of VA Voluntary Services (VAVS) and, instead, are henceforth considered private citizens who may work independently with funeral homes to coordinate provision of volunteer services at committal services scheduled at the cemetery, upon request of the veterans' families; any decertified individual member may reapply for VAVS certification, however any denial of reapplication shall not be considered as a retaliatory act during the time this Consent Decree is in effect;
5. Allow members of the VFW District 4 and the Memorial Ladies, who become decertified pursuant to this Consent Decree, and members of the American Legion Post 586, who are not currently VAVS volunteers at the Cemetery, to remain certified through VAVS in regards to their volunteer work at VA hospitals, to the extent they so choose and are so certified;
6. Agree not to mandate that members of the VFW District 4 and the Memorial Ladies, who become decertified pursuant to this Consent Decree, and members of the American Legion Post 586, who are not currently VAVS

volunteers at the Cemetery, register with VAVS in order to volunteer at committal services at the request of veterans' families and at other activities as private citizens at the Houston National Cemetery;

7. Delete the second sentence of paragraph 3.k. of National Cemetery Administration (NCA) Directive 3170, and modify paragraph 1.b. of NCA Directive 3170 Appendix C by replacing language that requires special ceremonies and events at VA national ceremonies and speech at such ceremonies and events, including invocations and benedictions, to be "inclusive" and "nonderogatory" with language that will enable NCA to preserve the dignity and solemnity of VA national cemeteries as national shrines and to enforce VA regulations governing security, safety, and law enforcement, and delete paragraph 1.b.(6)(c) of NCA Directive 3170, Appendix D;
8. Agree not to edit, control, or exercise prior restraints on the content of private religious speech and expression by speakers at VA-sponsored or non-VA-sponsored special ceremonies or events at the Cemetery or by Plaintiffs at private committal services at the Cemetery, if requested by the veterans' families to participate in such services, and that Defendants will not condition participation in any such event on the content of religious speech, including prayer;
9. Agree not to condition a speaker's participation in a VA-sponsored or non-VA-sponsored special ceremony or event at the Cemetery on abstaining from religious speech or expression, such as prayer;

10. Rescind paragraph 4.a. of the Houston National Cemetery Honor Guard Guidelines;
11. Agree that when a family requests that non-VAVS volunteer honor guards from the VFW District 4 or the American Legion Post 586 perform military honors at a committal service held at the Houston National Cemetery, this is a private decision by a veteran's family arranged through the private funeral home and that the Defendants will not interfere with the process, decision, content, or presentation of the military honors;
12. Not question the decision of the family of the deceased veteran to have a volunteer honor guard perform military honors at the committal service;
13. Recognize that adaptations or modifications of private military honors provided by non-VAVS volunteer honor guards from the VFW District 4 or the American Legion Post 586 can only be made at the discretion of the non-VAVS volunteer honor guards in consultation with a veteran's family and the arranging funeral home, and not by or at the request of the Defendants;
14. Rescind paragraph 7 of the Houston National Cemetery Honor Guard Guidelines;
15. Agree not to prohibit non-VAVS volunteer honor guards from the VFW District 4 or the American Legion Post 586 who are requested by the family to participate in a committal service from including religious speech or expression in their military honors if a member of the clergy provides religious speech or expression, including but not limited to prayer and reciting scripture, at a committal service;

16. Agree not to restrict the religious content of committal services requested by veterans' families, subject to their compliance with VA security, safety, and law enforcement regulations;
17. Rescind paragraphs 8.a., 8.b., and 8.c. of the Houston National Cemetery Honor Guard Guidelines;
18. Amend paragraphs 1, 2, and 3 of the November 1, 2007, NCA memorandum issued by Under Secretary William F. Tuerk regarding NCA's national policy on the Meaning of Folds of an Honor Guard Funeral Flag, to read as follows:  
"1. NCA will allow the reading of "Thirteen Fold" Flag Recitations by VA employees, including volunteer honor guards registered with the VA Voluntary Services ("VAVS volunteer honor guards"), at committal services, unless the deceased veteran's family request otherwise. 2. VAVS volunteer honor guards may, when acting as private citizens, provide their own texts of recitations to the funeral homes for the funeral homes to offer those options to the deceased veteran's survivor(s) for consideration. 3. VA employees, including VAVS volunteer honor guards, will not be selective in determining which recitations on the meaning of the thirteen folds will be read. Subject to paragraph 4, VA employees, including VAVS volunteer honor guards, will accept for reading at committal services on an equal basis recitations requested by the deceased veteran's survivor(s), including those that reflect a particular religious tradition, all religious traditions, or no religious tradition."  
Once decertified pursuant to this Consent Decree, members of the VFW District 4, like members of the American Legion Post 586, would not be

subject to the provisions of the November 1, 2007, NCA policy memorandum, as amended pursuant to this Consent Decree, but instead may work independently with funeral homes to coordinate provision of volunteer services at the committal services scheduled at the cemetery, upon request of the veterans' families;

19. Agree that non-VAVS volunteer honor guards from the VFW District 4 or the American Legion Post 586 who are requested by veterans' families to participate at committal services, may communicate freely with the funeral homes, including providing texts of recitations for the funeral homes to provide the veterans' families for consideration, and agree not to interfere with the veterans' families' selection of texts to be read at committal services by such non-VAVS volunteer honor guards because it is a private decision between the veterans' families, the funeral homes as the representatives of veterans' families, and the volunteer honor guards;
20. Allow veterans' families and private funeral homes to plan committal services scheduled at the Cemetery, including but not limited to requesting the participation of non-VAVS volunteer honor guards from the VFW District 4 or the American Legion Post 586, without Defendants interfering, such as requiring that certain speech or requests for certain speech be submitted to Defendants. The scheduling of committal services by veterans or veterans' families and funeral homes will remain subject to VA regulations and NCA's administrative and operational policies;

21. Agree not to ban religious speech or words, such as “God” and “Jesus,” in condolence cards or similar documents given by non-VAVS volunteer Memorial Ladies to veterans’ families at committal services;
22. Agree not to ban religious words, such as “God” and “Jesus,” in the oral communication of Plaintiffs to veterans’ families at committal services;
23. Agree not to ban, regulate, or otherwise interfere with the giving of gifts, including gifts that contain a religious message or viewpoint, by non-VAVS members of VFW District 4, the American Legion Post 586, and the Memorial Ladies to veterans’ families at committal services;
24. Agree that the Memorial Ladies may attend all direct burials of deceased veterans without survivors;
25. Not require permission from Defendants before the non-VAVS volunteer members of the Memorial Ladies may attend committal services except as provided below;
26. Not request that the non-VAVS volunteer members of the Memorial Ladies leave a committal service, unless requested by the family of the deceased except as provided below;
27. Agree that the non-VAVS volunteer Memorial Ladies shall use reasonable efforts to coordinate with funeral homes to obtain information about the veterans’ families, promote their services, and confirm attendance;
28. Permit artificial flowers to be placed on graves until such time that NCA employees must remove the display as necessary for purposes of grounds maintenance and as a safety precaution, in accordance with NCA policy;



29. Agree not to limit the number of members of the Memorial Ladies attending a committal service, unless the family indicates a desire for such a limitation;
30. To the extent VAVS and non-VAVS honor guards are providing military honors for deceased veterans who are given direct burials at the Cemetery, provide such honors to which the veteran is lawfully entitled;
31. Agree that the non-VAVS volunteer Memorial Ladies may use a climate controlled “honor guard room” at the Cemetery in connection with preparation for scheduled committal services;
32. Agree that the non-VAVS volunteer honor guards from the VFW District 4 and the American Legion Post 586 may use a climate controlled “honor guard room” at the Cemetery in connection with preparation for scheduled committal services;
33. Allow members of the VFW District 4, the American Legion Post 586, and the Memorial Ladies to park on cemetery grounds close to cemetery buildings and committal service sites, to the extent spaces are available after first accommodating grieving families;
34. Provide scheduling information for deceased veterans, including name of deceased veteran, name of funeral home, time of committal service, and location of committal shelter, to the President of the Memorial Ladies or her designee the day before the committal services at the Cemetery;
35. Make available each morning to the Memorial Ladies scheduling information detailed above for the day’s committal services of veterans, so that the

Memorial Ladies may coordinate with funeral homes to obtain information about the veterans' families;

36. Inform the Memorial Ladies of cancellations or changes in time of any committal service for deceased veterans when such changes are received by the Cemetery within a reasonable period of time;
37. Require only volunteer honor guards and other cemetery volunteers who desire to be registered with VAVS to participate in training that is relevant to the Houston National Cemetery and its operations;
38. Agree that NCA employees will not instruct families or individuals that they are prohibited from donating their personal funds to non-VAVS volunteer honor guards, veterans organizations, or any other individual or group provided that any such donation is lawful and not solicited or exchanged on the grounds of the Houston National Cemetery;
39. Agree not to prevent Plaintiffs and any funeral homes who might engage in the arrangement of committal services at the Cemetery, from informing veterans' families that religious speech and expression and other recitations may be included in committal services;
40. Agree that the Houston National Cemetery chapel (the "Chapel") shall remain open and unlocked during normal operating hours for the use of families and other Houston National Cemetery visitors, to the extent it is available;
41. Allow the use of the Chapel for private committal services for those being interred at the Houston National Cemetery, for prayer, or for reflection, to the extent it is available and subject to regulations governing use of VA facilities;

42. In an attempt to restore the prior status quo, place the legacy Bible, the white cross, and the Star of David that were previously displayed in this Chapel on an open shelf within, but to the side of, the Chapel where they would be accessible and available for use by families;
43. Allow the legacy Bible, the white cross, and the Star of David (to which reference was made in paragraph 42 of this Consent Decree) to be temporarily removed or covered during a private committal service if requested by the deceased's family or the group organizing the private service;
44. Toll the carillon on the regular schedule, to the extent practicable and feasible to do so, and as long as it remains part of the Cemetery's operations; the carillon playlist shall remain within the discretion of NCA employees;
45. Agree not to use the public area of the Chapel for long-term or permanent storage;
46. Generally refer to the Chapel as a "chapel" as opposed to a generic "meeting facility";
47. Agree that a NCA official will issue a letter expressing appreciation for the service of the volunteers at the Houston National Cemetery and expressing NCA's continued commitment to coordinating with the community to serve the burial needs of veterans and their families;
48. Agree not to retaliate or take any adverse action against Plaintiffs for engaging in religious speech and expression, such as prayer, at a special ceremony or event or at a committal service to which a veteran's family requested their

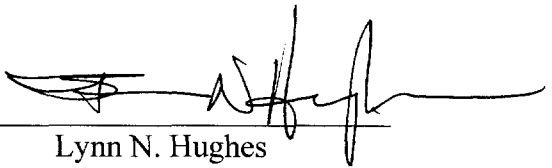
participation, and subject to Plaintiffs' compliance with VA security, safety, and law enforcement regulations;

49. Agree that VA will not retaliate or take any adverse action against Plaintiffs for filing and prosecuting this lawsuit; and

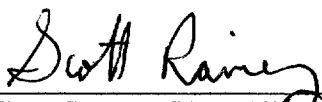
50. Pay Plaintiffs within thirty (30) days of the entry of this Consent Decree their reasonable and necessary attorneys' fees and expenses in the amount of \$215,000.00.

This Consent Decree is final, nonappealable and completely disposes of all issues between the parties.

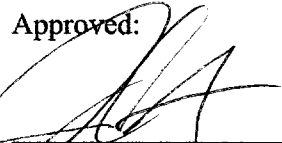
Entered this 19<sup>th</sup> day of October, 2011.

  
Lynn N. Hughes  
United States District Judge

AGREED:

  
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Scott Rainey, Plaintiff

9/21/11  
\_\_\_\_\_  
Date

Approved:  
  
\_\_\_\_\_  
Jeffrey C. Mateer  
Attorney for Plaintiffs

9/21/11  
\_\_\_\_\_  
Date




**The Veterans of Foreign Wars ("VFW") District 4**


By Ingeborg A. Conley  
Print Names Ingeborg A. Conley  
Veterans of Foreign Wars  
Title: Department of Texas  
District 4  
Commander

9/21/2011  
Date

Approved:

  
\_\_\_\_\_  
Jeffrey C. Mateer  
Attorney for Plaintiffs

9/21/11  
Date




**American Legion Post 586**

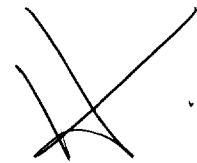
By Willie L Beck  
Print Name: WILLIE L. BECK  
Title: past commander

9-21-11  
Date


Approved:

  
\_\_\_\_\_  
Jeffrey C. Mateer  
Attorney for Plaintiffs


9/21/11  
Date



**The National Memorial Ladies ("Memorial Ladies")**

By   
Print Name: Cheryl Whitefield  
Title: President

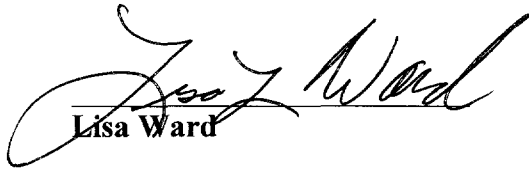
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Approved:  
  
Jeffrey C. Mateer  
Attorney for Plaintiffs

9/21/11  
Date

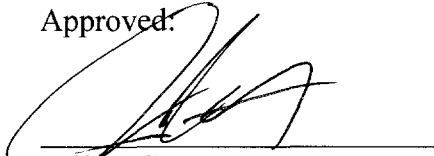




  
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Lisa Ward

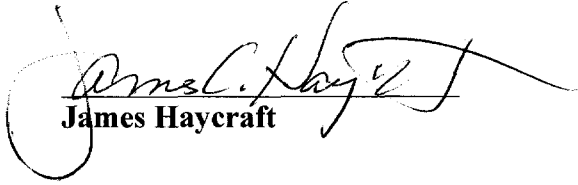
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Approved:

  
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Jeffrey C. Mateer  
Attorney for Plaintiffs

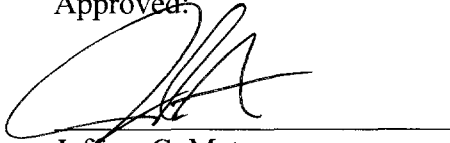
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James Haycraft

9/21/11  
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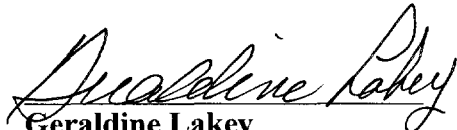
Approved:



Jeffrey C. Mateer  
Attorney for Plaintiffs

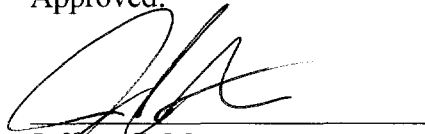
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Geraldine Lakey

9/21/11  
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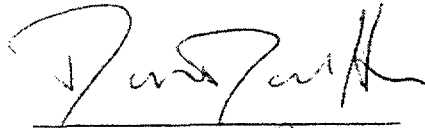
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Jeffrey C. Mateer  
Attorney for Plaintiffs

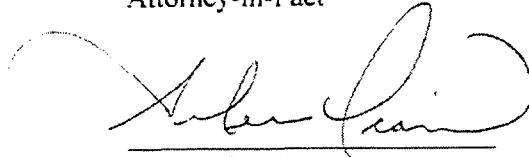
9/21/11  
Date



**United States Department of Veterans Affairs ("VA"), and Eric Shinseki,  
Secretary of Veterans Affairs**

By   
Fred T. Hinrichs *DAVID D. HU*  
Attorney-in-Fact

9-22-2011  
Date

  
Arleen Ocasio

9-22-2011  
Date

