

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HARRISON DIVISION

TONY NENNINGER

PLAINTIFF

v.

Civil No. 07-3028

UNITED STATES FOREST  
SERVICE, ET AL.

DEFENDANTS

O R D E R

Currently before the Court is Plaintiff's **Motion to Amend Judgment** (document #50) and Defendants' response in opposition thereto (document #53). Plaintiff moves the Court, pursuant to Federal Rule of Civil Procedure 59(e), to reconsider its July 3, 2008 order (the "Order") granting Defendants' motion to dismiss and dismissing this action with prejudice. A motion to alter or amend judgment pursuant to Rule 59(e) is appropriate under limited circumstances, such as where the court is presented with newly-discovered evidence, where the court committed clear error, or the initial decision was manifestly unjust. See U.S. v. Metropolitan St. Louis Sewer Dist., 440 F.3d 930, 931 (8th Cir. 2006). Such circumstance are not present in the instant case and, for the reasons stated below, Plaintiff's motion is DENIED.

Plaintiff raises several arguments in support of his motion to amend judgment, many of which are reiterations of arguments previously made and some of which go to claims that simply were not raised in his complaint. The Court finds it unnecessary to re-hash

its analysis of Plaintiff's various claims. However, the Court will discuss Plaintiff's "hybrid rights" argument as this issue has not been previously addressed.

Plaintiff says that the Court's Order failed to address the merits of applying strict scrutiny to the hybrid rights Free Exercise claim raised in conjunction with the other constitutional claims set forth in his complaint.

In short, Plaintiff argues that the National Forest Service permit and agent requirements violate his First Amendment right to free exercise of religion by infringing on his "hybrid rights" to free speech and religion. This "hybrid rights" claim stems from Employment Div., Dep't of Human Services v. Smith, 494 U.S. 872, 110 S.Ct. 1595 (1990), where the Supreme Court observed that "[t]he only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and of the press ..." Smith, 110 S.Ct. at 1601. From this Plaintiff argues that in cases, such as this, where the Free Exercise Clause is implicated in conjunction with other constitutional protections, such as freedom of speech and freedom of association, the First Amendment subjects the application of a neutral, generally applicable law to religiously motivated action to a heightened

level of scrutiny.

The Court finds that the level of scrutiny proposed by Plaintiff is not appropriate here, as his companion constitutional claims are without merit. That is, Plaintiff's hybrid rights claim, under which heightened scrutiny applies, is not valid in the present case as Plaintiff's other constitutional claims fail. Accordingly, the Court sees no merit to Plaintiff's argument that the Court failed to apply the appropriate level of scrutiny to his Free Exercise claim.

Based on the foregoing, the Court finds that Plaintiff's **Motion to Amend Judgment** (document #50) is without merit and it is, therefore, **DENIED**.

**IT IS SO ORDERED** this the 20th day of August 2008.

/s/ Jimm Larry Hendren  
**JIMM LARRY HENDREN**  
**UNITED STATES DISTRICT JUDGE**