

Appendix X) What laws, ethics, and regulations did Navy religious discriminators violate by disciplining a Chaplain for his sermons, prayers, and church attendance?

(Just 13 laws, without interpretation...)

- a) The United States Constitution, Amendment I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."
- b) US Code, Title 10, Section 6031, Chaplains: "An officer in the Chaplain Corps may conduct public worship according to the manner and forms of the church of which he is a member."
- c) 1990 US Navy Regulations, Chapter 8, The Commanding Officer, Section 1, Article 0817: "Chaplains shall be permitted to conduct public worship according to the manner and forms of the church of which they are members."
- d) SECNAV Instruction 1730.7B, para 4a.: "Chaplains shall not be assigned collateral duties which violate the religious practices of the chaplain's faith group."
- e) Applicable equal opportunity laws that prohibit employment discrimination on the basis of religion.
- f) Applicable religious harassment laws that protect me from senior ranking officials who pressure me to convert to their faith.

In this case, equal opportunity/religious harassment laws especially include:

(e/f.1) Navy Regulations Article 1164 Equal Opportunity and Treatment, reads "Equal Opportunity shall be affordable to all on the basis of individual efforts, performance, conduct, diligence, potential, capabilities and talents without discrimination as to race, color, religion, creed, sex or national origin. Naval personnel shall demonstrate a strong commitment to stand on these principles and carry them out."

(e/f.2) Title VII of the 1964 Civil Rights Relief Act, so far as it applies to military: It is unlawful for an employer "to fail to or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's . . . religion[.]" 42 U.S.C. sec. 2000e-2(a)(1). Religion includes "all aspects of religious observance and practice, as well as belief." 42 U.S.C. sec. 2000e(j). A plaintiff alleging religious discrimination under Title VII must first establish a prima facie case, after which the burden is on the employer to show that a reasonable accommodation of the religious practice was made or that any accommodation would result in undue hardship. Baz v. Walters, 782 F.2d 701, 706 (7th Cir. 1986)

(e/f.3) The Religious Freedom Restoration Act: 42 U.S.C. § 2000bb-1.
Free exercise of religion protected.

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person –

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(e/f.4) 1997 case of (Chaplain) Ridgon vs. (SECNAV) Perry, which affirmed Navy chaplain's right to preach autonomous sermons without government censorship or punishment by Commanding Officers, (SECNAV didn't appeal), reviewed here:

Ridgon v. Perry, 962 F. Supp. 150 (D.D.C. 1997)

The Becket Fund successfully sued the Pentagon over its gag order that barred military chaplains from preaching about legislation during sermons. Two military chaplains—a Catholic priest and an Orthodox Jewish rabbi—who desired to join the effort supporting H.R. 1122 (the Partial-Birth Abortion Ban Act of 1997) argued that the gag order violated their First Amendment rights under the Free Exercise Clause, the Free Speech Clause, and the Religious Freedom Restoration Act, 42 U.S.C. 2000bb, et. seq.

The court agreed with The Becket Fund and held that the gag order was unconstitutional:

“What we have here is the government's attempt to override the Constitution and the laws of the land by a directive that clearly interferes with military chaplains' free exercise and free speech rights, as well as those of their congregants. 962 F. Supp. at 165.”

In particular, the court rejected all of the arguments advanced by the government to support their censorship of speech from the pulpit. For example, the government argued that it was not an important part of the plaintiffs' religion to urge their congregations to contact

Congress about particular moral or political issues. The court soundly rejected that argument, holding that it was not the role of the government "to determine whether encouraging parishioners to contact Congress [about a particular issue like] the Partial Birth Abortion Ban Act is an 'important component' of the [plaintiffs'] faiths." Id. at 161.

Moreover, the court held that "[e]ncouraging parishioners to contact Congress" about legislation addressing moral issues related to religious faith "appears to be no less important to the [plaintiffs' faith] than other religiously-motivated activity courts have held to be important enough to a religion such that its prohibition amounts to a substantial burden." Id.

The government then argued that the chaplains' contemplated speech was "not religious" but merely "political." The court rejected this argument also, holding that "it is not the role of this Court to draw fine distinctions between degrees of religious speech and to hold that religious speech is protected but religious speech with so-called political overtones is not." Id. at 164.

Finally, the court held that any interests advanced by the government for their censorship policy were "outweighed by the . . . chaplains' right to autonomy in determining the religious content of their sermons." Id. at 162.

It is imperative to note that these same interests would likely be asserted by the government in the private freedom-to-preach context as well, and similar reasoning to reject such would apply. To summarize the holding: The State cannot interfere with the right of religious leaders to preach from the pulpit on political issues, even if those ministers are in the military.

The Court further wrote: "What we have here is the government's attempt to override the Constitution and the laws of the land by a directive that clearly interferes with military chaplains' free exercise and free speech rights, as well as those of their congregants. On its face, this is a drastic act and can be sanctioned only by compelling circumstances. The government clearly has not met its burden. The "speech" that the plaintiffs intend to employ to inform their congregants of their religious obligations has nothing to do with their role in the military. They are neither being disrespectful to the Armed Forces nor in any way urging their congregants to defy military orders. The chaplains in this case seek to preach only what they would tell their non-military congregants. There is no need for heavy-handed censorship, and any attempt to impinge on the plaintiffs' constitutional and legal rights is not acceptable."

g) NCMAF Chaplain Code of Ethics: “I will, if in a supervisory position, respect the practices and beliefs of each chaplain I supervise and exercise care not to require of them any service or practice that would be in violation of the faith practices of their particular religious body.”

h) NCMAF Chaplain Code of Ethics: “I will work collegially with chaplains of religious bodies other than my own as together we seek to provide as full a ministry as possible to our people.”

i) The 1991 Supreme Court decision Lee vs. Weisman (held government can’t sanitize or even provide guidance enforcing “non-sectarian” prayers, nor forbid “sectarian” prayers), as reviewed here:

US Supreme Court Majority Decision, Lee vs. Weisman, 1991:

"The government may not establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds."

"The State's role did not end with the decision to include a prayer and with the choice of clergyman. Principal Lee provided Rabbi Gutterman with a copy of the "Guidelines for Civic Occasions" and advised him that his prayers should be nonsectarian. Through these means, the principal directed and controlled the content of the prayers. Even if the only sanction for ignoring the instructions were that the rabbi would not be invited back, we think no religious representative who valued his or her continued reputation and effectiveness in the community would incur the State's displeasure in this regard. It is a cornerstone principle of our Establishment Clause jurisprudence that it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government, Engel v. Vitale, (1962), and that is what the school officials attempted to do."