



April 17, 2018

Via E-mail

Colonel William J. Rice
Commander, Special Warfare Education Group (Airborne)
United States Army John F. Kennedy Special Warfare Center and School
3004 Ardennes Street, Stop A
Fort Bragg, NC 28310-9610

Subj: Additional Material on Behalf of Chaplain, Major Jerry Scott Squires, USA

Dear Colonel Rice:

First Liberty Institute represents Chaplain (CH), Major Scott Squires, in this matter. Please direct all correspondence relating to this matter to me at the contact information provided below. On behalf of CH Squires, we submit this additional matter for your consideration in response to Major (MAJ) [REDACTED] Army Regulation (AR) 15-6 findings and recommendations stemming from a February 6, 2018, Equal Opportunity (EO) complaint against CH Squires. This document only addresses the allegations against CH Squires, and does not address the allegations against Staff Sergeant [REDACTED].

We respectfully request you consider the additional material provided herein prior to taking action against such an accomplished Soldier. CH Squires has devoted a quarter of a century to serving this nation, first as an enlisted Soldier, then as a chaplain. CH Squires' service record, which includes multiple combat deployments, as well as awards such as the Bronze Star and Meritorious Service Medal (with 4 Oak Leaf Clusters), demonstrates a career dedicated to excellence and service to his fellow Soldiers.

MAJ [REDACTED] decision fails to consider several important facts and legal authorities. Accordingly, his findings, legal analysis, conclusions, and recommendations are severely deficient. As the approval authority, you have the opportunity to correct these deficiencies by disapproving the legal conclusions and recommendations, and unsubstantiating the Equal Opportunity complaint. Moreover, failure to take these corrective action would not only result in violations of federal law, Department of Defense (DOD), and Army regulations, but it would impair CH Squires' ability to carry out his mission, robbing the Soldiers under his care of the vital spiritual support he provides.

Factual Discrepancies in the AR 15-6 Findings and Recommendations

MAJ [REDACTED] factual findings encompass one paragraph comprising a single sentence. Notably, the following facts are missing from MAJ [REDACTED] factual findings:

- 1) CH Squires made clear to SGT [REDACTED] that Strong Bonds events are open to *all* Soldiers. In other words, CH Squires did not state that SGT [REDACTED] could not attend a Strong Bonds event;
- 2) Second, CH Squires explained that the only restriction regarding Strong Bonds events applied to certain chaplains, not Soldiers who wish to attend;
- 3) The registration deadline for the February 9, 2018, Strong Bonds event was January 26, 2018, fifteen days prior to the event. Thus, when CH Squires spoke with SGT [REDACTED] on February 1, the registration deadline had already passed;

- 4) The February 9 Strong Bonds event was actually postponed in order to specifically accommodate SGT [REDACTED] attendance. The postponement, however, meant that some Soldiers who had timely registered for the February 9 event were unable to attend due to schedule conflicts. In other words, accommodating SGT [REDACTED] came at the expense of other Soldiers' attendance.

These facts are necessary for a complete understanding of what occurred, and in order to conduct a sufficient legal analysis. Because MAJ [REDACTED] either disregarded or failed to consider these facts, his Findings and Recommendations contain several fatal legal defects.

Legal Discrepancies and Deficiencies in the AR 15-6 Findings and Recommendations

The AR 15-6 Findings and Recommendations are defective for numerous reasons. They are unsupported by law, and they should be unsubstantiated. Any resulting adverse information should be removed from CH Squires' official record.

Chaplain Squires' actions are protected by law

According to MAJ [REDACTED] factual findings, an Army Strong Bonds event was scheduled to begin on February 9, 2018, for which CH Squires was to be the facilitator. Sergeant (SGT) [REDACTED], the Soldier who filed the EO complaint, wished to attend the February 9 event.

MAJ [REDACTED] concluded that CH Squires discriminated against SGT [REDACTED] when he explained to her that he was unable to conduct a Strong Bonds event, which includes religious services, for her due to restrictions his ecclesiastical endorser, the North American Mission Board (NAMB), places on its chaplains. MAJ [REDACTED] conclusion is legally incorrect. CH Squires' actions are protected by law.

According to the NAMB, "endorsed chaplains will not conduct or attend a wedding ceremony for any same sex couple, bless such a union or perform counseling in support of such a union . . . nor offer any kind of relationship training or retreat, on or off a military installation . . ." Thus, according to NAMB policy, CH Squires cannot conduct Strong Bonds events for same sex couples. Under federal law, DOD, and Army regulations, CH Squires' status as a restricted chaplain for purposes of same sex relationships may not be used as a basis for any adverse action.

Section 533(b) of the Fiscal Year (FY) 2013 National Defense Authorization Act (NDAA), Pub. L. No. 112-239, is entitled "Protection of Chaplain Decisions Relating to Conscience, Moral Principles, or Religious Beliefs." It states "No member of the Armed Forces may:

- (1) Require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain; or
- (2) Discriminate or take any adverse personnel action against a chaplain, including denial of promotion, schooling, training, or assignment, on the basis of the refusal by the chaplain to comply with a requirement prohibited by paragraph (1)."

Department of Defense Instruction (DODI) 1300.17, Paragraph 4d, also states that “a Service member’s expression of sincerely held beliefs may not be used as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.” DODI 130.17 incorporates the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb, *et seq.* as the applicable legal standard. RFRA prohibits the government from substantially burdening a person’s religious exercise absent a compelling government interest that is furthered by the least restrictive means. And AR 165-1, paras. 1-6(b), 3-1(c), 3-2(b)(4), and 3-2(b)(5), each make clear that chaplains are required to adhere to the religious tenets of their ecclesiastical endorser. Thus, both federal law and DOD regulations make clear that CH Squires’ actions were permissible and protected.

Remarkably, although MAJ [REDACTED] recognized that CH Squires is restricted by NAMB in this way, he nevertheless concluded that SGT [REDACTED] right to attend the Strong Bonds event of her choosing supersedes CH Squires’ sincerely held religious beliefs, denominational tenets, and legal requirements. To the contrary, the restrictions placed on CH Squires do, in fact, supersede SGT [REDACTED] right to attend the Strong Bonds event of her choosing.

MAJ [REDACTED] also incorrectly concluded that CH Squires discriminated against SGT [REDACTED] by informing her, mistakenly, that no spaces remained for the February 9 Strong Bonds event. MAJ [REDACTED] contradicts his own conclusion in his Findings and Recommendation when he later stated that CH Squires “explained that the slots were **mostly full** for this event” and that he would work to ensure she could attend the next-scheduled Strong Bonds event. But regardless of whether the event was full or mostly full, the law clearly protects CH Squires’ right to decline to facilitate a Strong Bonds event for same sex couples. Moreover, CH Squires accomplished the mission by working to ensure SGT [REDACTED] could attend a future event.

Major [REDACTED] finding of discrimination is legally incorrect

MAJ [REDACTED] conclusion that CH Squires discriminated against SGT [REDACTED] in violation of Army EO policy appears to have two separate bases: 1) CH Squires treated SGT [REDACTED] differently than other Soldiers because of SGT [REDACTED] sexual orientation; and 2) CH Squires discriminated by explaining NAMB’s restrictions on him. Neither of these are adequate grounds for a discrimination claim.

MAJ [REDACTED] first basis is incorrect because, although it is true that CH Squires treated SGT [REDACTED] differently because he was unable to facilitate a Strong Bonds event with her, disparate treatment alone is insufficient to substantiate a discrimination claim.

As legal authority, MAJ [REDACTED] cited AR 600-20 for the proposition that “no service will be denied to any member of the Armed Services regardless of race, color, national origin, gender, religious affiliation, or sexual orientation.” But this language appears nowhere in AR 600-20. AR 600-20, Para 6-2 provides the actual Army EO policy: “The U.S. Army will provide EO and fair treatment for military personnel and Family members without regard to race, color, gender, religion, national origin, and provide an environment free of unlawful discrimination and offensive behavior.”

AR 600-20 Para 6-2’s language is consistent with the DOD EO policy as provided in DOD Directive 1020.02E, which establishes DOD-wide EO policy. Under DOD Directive

1020.02E, “unlawful discrimination” is defined as disparate treatment “based on a prohibited factor contrary to federal law or regulation.”

It is important to note that there is no allegation or evidence that CH Squires acted impolitely or unprofessionally at any time when he communicated his inability to facilitate a Strong Bonds event for SGT [REDACTED]. CH Squires’ treatment of SGT [REDACTED] was the direct result of his restricted status, pursuant to NAMB’s tenets and chaplain policy. And, as discussed above, such treatment, even if disparate, is not “contrary to federal law or regulation.” Quite the opposite, disparate treatment under these circumstances is *protected* by federal law and regulation.

MAJ [REDACTED] second basis for finding that CH Squires discriminated is also incorrect. In essence, MAJ [REDACTED] equated CH Squires’ explaining the requirements of his faith with unlawful discrimination. It is inconceivable that a military chaplain who merely explains that his/her ecclesiastical endorser places certain restrictions on what religious rites, ceremonies, and practices he/she may perform violates military EO policy. If unchallenged, MAJ [REDACTED] conclusion would inevitably lead to a rule whereby chaplains are not permitted to discuss certain aspects of their religious beliefs or practices. Such a rule would literally strip thousands of chaplains of the ability to act and speak in accordance with their sincerely held religious beliefs.

Adverse action is unwarranted and inappropriate

Despite the fact that MAJ [REDACTED] recognized there are substantial mitigating factors, and his conclusion that CH Squires’ discrimination was unintentional, MAJ [REDACTED] nonetheless recommended that CH Squires be reprimanded “for his failure to include SGT [REDACTED] in the initial Strong Bonds Retreat, scheduled for 9-11 February 2018.” MAJ [REDACTED] went on to explain that CH Squires’ efforts to reach out to SGT [REDACTED] and explain his limitations were unnecessary and violated Army EO policy. MAJ [REDACTED] did not explain how CH Squires’ efforts in this regard—efforts to treat SGT [REDACTED] with professional respect and dignity—violate Army policy.

Any adverse action under these circumstances is unwarranted and unlawful. As explained above, taking adverse action against a chaplain as a result of a refusal to do something contrary to his/her sincerely held religious beliefs violates federal law.

Adverse action is also inappropriate. MAJ [REDACTED] recognized that CH Squires had no intent to discriminate. He also recognized that the Army failed to provide clear guidance on how to handle these matters. This is reflected in his recommendation that the Army Special Warfare Center and School develop a specific policy to address this situation. Even assuming the law did not protect CH Squires’ actions, which it does, it would be a profound miscarriage of justice to reprimand or otherwise punish a Soldier who nevertheless accomplished the mission.

A reprimand would also tarnish the career and reputation of a stellar officer and Soldier. As you are well aware, a reprimand would likely foreclose any opportunity for CH Squires to promote or compete for sought-after assignments.

Apparent conflict between Army Equal Opportunity policy and chaplain guidance

MAJ [REDACTED] is correct that the Army provides little guidance to commanders and Soldiers who are confronted with competing rights and interests in a diverse, pluralistic 21st Century Army. But the Army provides explicit guidance to chaplains when it comes to strict adherence to the tenets of their ecclesiastical endorsers. AR 165-1 makes clear that chaplains are required to adhere to the religious tenets of their ecclesiastical endorser or they risk losing their endorsement.

Army EO policy rightly protects the right of Soldiers to be free from unlawful discrimination. At the same time, the Army likewise seeks to protect the religious liberties of its chaplains. But when an Army EO policy is in apparent conflict with rights that are enshrined in our Constitution, federal law, and DOD policy, the Army EO policy must yield to those superior legal authorities.

Further, any conflict in this case is merely apparent, not actual. Federal law and Army policy both make clear that chaplains must remain faithful to the tenets of their faith. The failure of a chaplain to do so exposes the chaplain to risk of losing their ecclesiastical endorsement, or worse, violates the aforementioned federal law and policy. And, as discussed above, DOD EO policy only prohibits disparate treatment that is contrary to federal law or regulation. Indeed, CH Squires' actions here are fully protected by federal law and regulation.

Conclusion

For the foregoing reasons, we respectfully request you take the following actions:

- 1) Disapprove MAJ [REDACTED] finding of unlawful discrimination against CH Squires;
- 2) Unsubstantiate the EO complaint; and
- 3) Ensure that any adverse or unfavorable information relating to the EO complaint is not included in CH Squires' service record.

Our desire is to resolve this amicably, and I am willing to discuss this matter in person, if necessary. Should you deny this request, however, we are prepared to take the necessary legal action to vindicate CH Squires' legal rights. I may be reached via e-mail at [REDACTED].

Sincerely,



Michael Berry

Deputy General Counsel & Director of Military Affairs

Enclosure:

Southern Baptist Endorsed Chaplains/Counselors in Ministry Guidelines in Response to the June 26, 2013, Supreme Court Ruling on the Defense of Marriage Act (DOMA), dated August 29, 2013



NORTH AMERICAN
MISSION BOARD

4200 North Point Parkway
Alpharetta, GA 30022
namb.net

August 29, 2013

RE: Southern Baptist Endorsed Chaplains/Counselors in Ministry Guidelines in Response to the June 26, 2013, Supreme Court Ruling on the Defense of Marriage Act (DOMA)

To Whom It May Concern:

In light of the June 26, 2013, Supreme Court of the United States ruling that Section 3 of the Defense of Marriage Act (DOMA), which states "the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife" is unconstitutional, and the resultant Department of Defense policy changes to extend benefits to same-sex domestic partners as spouses, the following guidelines clarify the ministry expectations for all military and VA chaplains endorsed by the Southern Baptist Convention:

Doctrine

All religious ministry and pastoral care conducted by military chaplains endorsed by the North American Mission Board (NAMB) of the Southern Baptist Convention will fully reflect the doctrine and practices of Southern Baptists as set forth in Holy Scripture, the Baptist Faith and Message (BFM) 2000 and *The Southern Baptist Endorsement Manual for Chaplains and Counselors in Ministry*. All ministries regarding human sexuality will reflect the historic, natural and biblical view of marriage as God's lifelong gift of "the uniting of one man and one woman in covenant commitment for a lifetime." (Article XVIII, BFM)

Pastoral Care

Southern Baptists believe that "all forms of sexual immorality, including adultery, homosexuality, and pornography" (Article XV, BFM) are condemned by Holy Scripture as sin. Such practices violate God's biblical standards for sexual purity and are equally destructive to healthy marital relations and Christian social order. Responsible pastoral care will seek to offer repentance and forgiveness, help and healing, and restoration through the mercy and grace of Jesus Christ's sacrificial gift of love on the cross.

Restrictions

In harmony with Holy Scripture, NAMB endorsed chaplains will not conduct or attend a wedding ceremony for any same sex couple, bless such a union or perform counseling in support of such a union, assist or support paid contractors or volunteers leading same-sex relational events, nor offer any kind of relationship training or retreat, on or off of a military installation, that would give the appearance of accepting the homosexual lifestyle or sexual wrongdoing. This biblical prohibition remains in effect irrespective of any civil law authorizing same sex marriage or benefits to the contrary. Chaplains in violation of these restrictions will be subject to removal of their endorsement in accordance with *The Southern Baptist Endorsement Manual for Chaplains and Counselors in Ministry*, Chapter 4, Endorsement Policies and Guidelines.

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Southern Baptist chaplains are free to lead or participate in a worship service conducted on any military installation or location designated for worship. This excludes conducting a service jointly with a chaplain, contractor or volunteer who personally practices or affirms a homosexual lifestyle or such conduct.

Pluralism

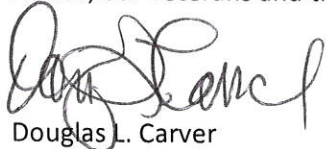
All military chaplains without exception are endorsed to ensure the free exercise of religion for all service members according to DOD 1304.28, par. 6.1.2 while serving in the pluralistic environment of the military. Every chaplain remains protected under DOD policy and applicable federal law to preach, teach and counsel in accordance with the tenets of their denominational faith group and their own religious conscience.

Therefore, endorsed Southern Baptist military chaplains will:

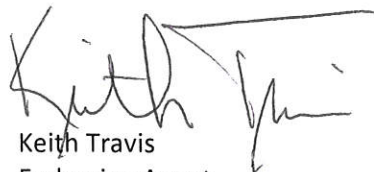
- a) Provide sound, biblical pastoral care for all service members and their families.
- b) Conduct religious support and pastoral care in accordance with the BFM 2000, the SBC/NAMB Chaplain Endorsement Manual and the guidelines contained in this document.
- c) Treat all service members regardless of rank or behavior, with Christ-centered dignity, honor and respect while assisting the institutional leadership in its religious mission requirements and responsibilities as guaranteed by the First Amendment to the United States Constitution.

If you need to discuss these guidelines and expectations further, or if you experience undue prejudice or irreparable harm as a result of following these expectations, please contact us immediately at the North American Mission Board, phone number 770-410-6367.

God bless you for all you do to minister the love of Jesus Christ to the members of the Armed Forces, our veterans and their families.



Douglas L. Carver
Executive Director of Chaplaincy Services
North American Mission Board
Southern Baptist Convention



Keith Travis
Endorsing Agent
North American Mission Board
Southern Baptist Convention