

EXHIBIT 5

**THE ASSOCIATED GOSPEL CHURCHES’
PERSPECTIVE ON RELIGIOUS LIBERTY, INCLUDING MILITARY PRAYER AND
RELIGIOUS SPEECH PROBLEMS**

This testimony showing the longevity of military religious liberty problems should give perspective to the House Armed Service Committee’s Personnel Subcommittee Hearing on chaplains’ religious liberty.

Religious liberty problems exist in all Services and are not a recent development that suddenly appeared, although their most severe manifestations have occurred since 2005. These issues cannot be divorced from the entire DOD culture that shapes the religious liberty context.

This perspective comes from the Associated Gospel Churches (AGC) role and experience as an evangelical endorsing agency since 1943, a role obtained only after AGC’s patriarch, Dr. William Garman successfully battled those who wished to keep conservative, evangelical voices out of the chaplaincy. It also comes from seeing its chaplains persecuted because of their religious beliefs, a reason AGC became a plaintiff in litigation against the U.S. Navy’s policies which foster and promote denominational discrimination including overt denominational prejudice in promotions and accessions. These allegations arise from the Navy’s apparent failure to understand the constitutional parameters defining chaplains, their roles and duties, and lack of a serious commitment to religious liberty.

The Navy Chaplain litigation shows Chaplains, including AGC chaplains, who built Chapel communities or were good “preachers” were guaranteed poor performance reports, the reason many Navy chapels are empty today. Numerous sworn statements now part of the public record show command chaplains in Naples, Italy, in 1997-2003 (and later), drove people out of the chapel, penalized chaplains for praying in Jesus name and ruined evangelical chaplains’ careers.

The Army also has its problems. CH Jonathan Stertzbach, an AGC endorsed evangelical Army chaplain, served in Iraq with the 10th Mountain Division in 2005-06. He was removed from praying at a memorial service by the division chaplain because CH Stertzbach intended to “pray in Jesus name.” He was allowed to pray using a command approved script after his endorser and Congressman Walter Jones became involved. His story was reported in two February 2006 Washington Times articles, which highlighted and increased the retaliation against him for being faithful to AGC and his beliefs.

The IG investigating officer (IO) did not interview CH Stertzbach’s witnesses, including other chaplains and chaplains’ assistants in the Division at that time, who would have testified the division chaplain told his chaplains not to pray in Jesus’ name. Having manipulated the evidence, the IO concluded there was a “misunderstanding”, a conclusion he announced to CH Stertzbach before the IO even began his investigation or talked to any witness.

In July-August 2007, a 4th Infantry Division brigade chaplain “suppressed” (as in shut down and not allowed to meet) an evangelical, independent Baptist service started by another AGC Army chaplain (name withheld to protect the chaplain). The service was reinstated after AGC wrote letters to the Chief of Chaplains, the Battalion Commander, and members of Congress. Over 30 soldier attendees of the chaplain’s service signed a petition asking it be reinstated.

The resulting IG investigation is a poster child for a whitewash, filled with lies and misrepresentations which the Army and the DODIG refused to address. For example, the IG concluded that the chaplain’s duties upon his return from his mid-tour leave was the reason he was not available to conduct worship service the Sunday following his return, rather than admit the service was suppressed. This is direct conflict with the chaplain’s testimony which said he had to stand at the Chapel entrance and tell his soldiers that the service had been shut down and

then met with others in a private room to pray for relief from the command chaplain's oppression. When the obvious contradiction and falsity of its conclusion were pointed out, the IG did nothing. The suppression followed a long history of hostility and oppression by the brigade chaplain. Nonetheless, the oppressor chaplain was promoted to Lieutenant Colonel, largely on the strength of his Iraq fitness report.

In about 2010, the Army Chaplain School taught its Basic Course students not to pray in Jesus name and criticized/counseled/warned chaplain students for doing so during the course. The problem originated with certain high-ranking Chaplain faculty-staff members and the lack of an official stated policy on prayer. The Chaplain School Commandant fixed the problem temporarily, once alerted to the issue. However, without a formal policy addressing prayer at command or official functions, the problem will recur. AGC and the International Conference of Evangelical chaplain Endorsers (ICECE) to which AGC belongs have tried to get the Army and its Chaplain School to develop a coherent, constitutional policy on prayer at command functions have consistently been rebuffed.

The 2005 Air Force religious "Guidelines" essentially forbade chaplains from praying "sectarian" prayers at command functions. The "Guidelines" illustrate the Air Force's and the other services' willful ignorance of the role of a chaplain as a representative of the chaplain's faith group and the constitutional dimensions involved. The guidelines restricted chaplains' speech and religious expression, violating the Establishment, Free Exercise, and Free Speech Clauses.

Objections from ICECE, a few other endorsers, members of Congress, and public service organizations forced the Air Force to modify its regulations in early 2006, changes many considered window dressing.

In February 2006, the Navy followed the Air Force lead and published Secretary of Navy Instruction 1730.7C forbidding Navy chaplains to pray sectarian prayers at official functions. This codified an unofficial Navy policy directed specifically at evangelicals that sought to prevent chaplains from praying at public events according to their faith tradition. Navy Chaplain School lesson plans told chaplains not to provide sectarian prayers at command functions.

The House of Representatives responded with NDAA proposed legislation addressing the issue. DOD officials, every military Chaplain Corps' Chief or Deputy and many endorsers opposed the House language which the Senate did not adopt. As a compromise, Congress directed the Navy and Air Force to rescind the regulations and reinstitute the prior regulations.

RECENT INCIDENTS:

A. Sermon censorship at Joint Base Elmendorf/Richardson (JBER), Alaska.

AGC Army CH (Capt) James Duran is a member of JBER Air Force Chapel 1's morning service community. He was asked to preach at the morning and evening services in mid-January 2014. His morning sermon addressed II Tim. 3:1-17, summarized as "Godlessness in the last days" by some commentators. After the evening service started but before he preached, a senior AF chaplain requested CH Duran not preach his morning sermon and gave no reason.

CAPT Steve Brown (CHC, USN, retired), AGC's endorser, tried to resolve the issue through the Base Commander, Col. Duffy, before bringing it to the attention of the respective Chiefs and Congress. Those efforts ended when CH Duran was directed to provide 3 copies of his sermon at 0600, 1/24/14, for three senior chaplains to review it at a later conference. AGC told CH Duran not to provide his sermon because the Constitution denies government the authority to review or evaluate a chaplain's sermon.

This is the same JBER which previously received publicity because the Commander censored the command chaplain's innocuous article in the base newspaper after an atheist

complained. Chaplains at the joint base reported the CO forbade chaplains to use scriptural references in any chaplain articles submitted to the post paper, which is content and viewpoint discrimination.

While this incident was still being resolved, the Air Force Chief and the Army Deputy testified before the House Armed Services Committee. When asked if they were aware of any incidents of censorship, both denied any existed. The Army Deputy could technically say there were none in the Army, because CH Duran was an Army chaplain but the incident took place in an Air Force chapel. The Air Force Chief probably knew someone had told the Base CO and AF command chaplain to settle the issue (which happened shortly thereafter), and concluded a settled problem was one that never existed.

There are three issues here: what cultural components (1) gave a senior AF chaplain the idea he could censor a sermon; (2) gave senior chaplains the authority to evaluate a chaplain's sermon; and (3) encouraged a Chief to ignore a publicized censorship of a chaplain's innocuous article in a Joint Base newspaper and later censorship of a chaplain's sermon at the same base?

B. Investigation of a chaplain's response to a chaplain mandatory training scenario.

In early June 2014, an Army Brigade in Afghanistan conducted mandatory Post DOMA TSP Tier I training. Afterwards, a chaplains' assistant filed an EO complaint against an AGC chaplain, misstating the chaplain's response based on his religious convictions, to a training scenario. The command launched an AR 15-6 investigation despite the 2014 NDAA's protection, the Chief of Chaplain's promise to all endorsers of non-attribution, and the fact the speech involved was a religious ministry discussion among chaplains, which by its very nature must bring from the chaplains' faith perspectives.

The IO concluded there was no wrong. Nonetheless, AGC was told the major command's JAG had recommended giving the chaplain a punitive letter until the Chief's Office emphasized the political firestorm that would follow if NDAA's clear protections were ignored.

The military religious liberty problem has three parts explained by the formula for corruption: Monopoly plus Discretion minus Accountability equals Corruption (M+D-A=C). The military is a monopoly with a great deal of discretion and little if any accountability in the area of religious liberties. All services Chaplain Corps leadership also have a monopoly, a great deal of discretion with little supervision and no accountability.

The first problem, lack of accountability, arises because there are no standards against which policies, actions or non-actions can be measured. The military culture views accountability as supporting shifting agency policy. Discretion is unbounded without standards. This is illustrated by DOD's and the Armed Services' refusal to define a chaplain officially as a faith group representative. To do so would conflict with DOD's view of a chaplain as a government religious representative who can be ordered to repeat or support the administration's message.

DOD's view is illustrated in *Rigdon v. Perry*, rejecting President Clinton's gag order on chaplains which prevented them from urging their congregations to contact Congress concerning pending partial birth abortion legislation. DOD argued it could control chaplains' speech. *Rigdon* said, "No!", chaplains in their pulpits spoke as religious representatives, not government officials despite their rank and status as officers. However, the Air Force and 2006 Navy regulations restricting prayers shows those services still rejected *Rigdon's* holding.

The Services have steadfastly resisted repeated efforts to define a chaplain in a way that provides a compelling, neutral, secular purpose for religious speech at command functions, e.g.,

as a demonstration and reminder to those assembled of the First Amendment values, and end the prayer controversy.

The second problem is organic to the nature of a military bureaucracy, lack of vision and understanding of the Constitution's purposes and the interdependence of all the First Amendment's components for meaningful religious liberty. The Chaplain Corps leadership is essentially a collection of bureaucrats who have been rewarded for being good bureaucrats. One does not usually become a Chief by challenging superiors or policies, or preaching holiness. The Chiefs have not articulated a viable concept of religious liberty in the basic area of public prayer, even after the *Town of Greece* should have ended the discussion, nor in any other religious area.

There is no overall DOD concept or understanding of what religious liberty or ministry means in the historical military context. Religious liberty is often defined and determined by military attorneys who may or may not have a good understanding of the concept and a struggle application, and who may be anti-religious. Efforts to get Chiefs to address religious liberty has been ignored.

A recent article by Army Chaplain (Col.) Sheerer attacking evangelicals and fundamentalists in an Army War College paper is another example of official ignorance. It is filled with inaccurate and improper stereotypes and displays bias against and misunderstanding of evangelicals. She was the Deputy Commandant of the Army Chaplain School when she wrote it and since was reassigned to West Point.

The third problem is the lack of a unifying or defined concept for religious liberty that addresses all of its First Amendment factors in the military context: non-Establishment, Free Exercise, Free Speech and Free Press, a right to Assembly and the right to Petition. Instead, the Chaplain Corps have officially and unofficially and officially emphasized "inclusion", sensitivity and nonsectarian prayers.

“Non-sectarian prayer” is an oxymoron. The term is often used in the context of “you must be inclusive” and therefore “non-sectarian”; but the reality is “inclusiveness” is an absurdity because no one term for or concept of God satisfies all religions: God in the singular offends polytheists, God in the masculine offends those who believe in a female goddess, reference to a personal God offends those who believe there is no such thing or god is a force, and prayer of any kind offends the atheist or secular humanists, etc.

Inclusiveness results in deciding whom you will exclude, usually evangelical Christians. Telling chaplains to be “inclusive” so no one is offended is the same as the “heckler’s veto”, which the Constitution forbids. Chaplains represent their endorsing religious organizations; it is unconstitutional to try to make them something they are not. This violates the basic concept of religious diversity.

These points emphasize the facts that: (1) there appears to be an institutional bias against evangelical faith groups; (2) there is a need to define chaplains as faith group representatives; and (3) allowing chaplains to be such provides the clearest demonstration of the Free Exercise and Free Speech Clauses at work in the context of non-establishment, *i.e.*, a chaplain praying according to his faith tradition. This should be highlighted as an example of religious liberty and a celebration of the religious diversity of the nation.

**CHAPLAIN CORPS DENIAL OF PROBLEMS:
WILLFUL OR BLISSFUL BLINDNESS?**

Chaplain Corps leaders routinely deny there is a problem when responding to Congress’ and reporters’ questions about religious liberty such as praying in Jesus name, despite evidence otherwise. The Air Force’s denial there were any cases of sermon censorship while the JBER sermon suppression case was still being addressed illustrates the issue. A DOD high-ranking official claimed an investigation of the JBER incident showed it was merely a misunderstanding

arising from a peer-to-peer suggestion. That is patently false as no one has contacted the chaplain involved in the peer who asked AGC's chaplain not to repeat his morning sermon admitted he was told to make the request by his superiors who were displeased with the sermon. That January censorship followed the earlier censorship of the JBER command chaplain's base newspaper article.

Several factors cause this blindness in leaders' perceptions. First, the Chief may not be informed of the actual problem, either by design or by inadvertence. The Chief's staff may simply not inform him/her.

Second, an imperative of a bureaucracy is to deny it has made a mistake. For a Chief to admit a chaplain was denied the ability to represent his faith group would be an admission there is a serious problem that undermines the very purpose of the Chaplain Corps. A Chief could believe such a problem could never happen under his tolerant and wonderful leadership.

Third, Chaplain Corps often have a corrupt definition of "a problem", which warps into a "I don't want to hear any bad news" syndrome. Endorsers usually attempt to resolve problems concerning their chaplains at the lowest level, escalating it only when efforts at a lower level fail. Sometimes it takes a Chief or his office getting involved to resolve the situation. But once resolved, in the minds of some Chaplain Corps bureaucrats, the problem never existed.

Fourth, most chaplains and endorsers fear official retaliation for confronting chaplain abuses and abusers.

A situation arose during the June 6, 2006, meeting called by Senator Lindsey Graham to discuss the House FY 2007 NDAA language and whether similar language should appear in the Senate version. It is a classic case of leadership denial regardless of the facts, and retaliation.

RADM Black, a former Navy chief, was one of the witnesses defending DOD's position language protecting chaplains' prayers was not needed. He stated to the group that during his

tour as Chief, he didn't know a single incident that involved a chaplain not being allowed to pray or being punished for praying in Jesus name.

Congressman Jones had invited LCDR Gary Stewart, then on active duty, to testify in support of the House Language because he had been punished for praying in Jesus name. LCDR Stewart respectfully replied to RADM Black: "Sir, that's not true" and words to the effect RADM Black had replied to LCDR Stewart's endorser's letter complaining of retaliation by RADM Burt (then the Deputy who was at the meeting) against LCDR Stewart for praying a sectarian prayer when both were previously assigned to Great Lakes Naval Base. RADM Black responded to the effect that he didn't sign a letter and LCDR Stewart responded RADM Black's signature was, in fact, on the letter and he would be glad to provide the Admiral a copy.

Subsequently, the Navy retaliated against LCDR Stewart for telling RADM Black his statement was incorrect. When his Marine Corps Command's investigation found no wrong, the Chief of Naval Personnel ordered LCDR Stewart's immediate transfer to Millington, Tennessee, the Personnel Command's headquarters, for mentoring and training.

Cong. Jones's intervention prevented the planned long-distance punitive move, but LCDR Stewart was transferred to Bethesda Medical Center, where he soon became the temporary deputy command chaplain. He never received any mentoring or training, but did experience some continued attempts to destroy his career before he retired.

Many endorsers and chaplains are afraid to identify a chaplain having a problem with their command chaplain or command because there are no defenses against retaliation, as shown by LCDR Stewart's and Jonathan Stertzbach's experiences.

The repeal of the ban on homosexual behavior and recognition of same sex marriage have elevated the issue of religious liberty because of the clear theological divide on these issues. DOD has failed to address the basic issue of religious liberty entwined in the repeal and

ensure the Constitution's commands are followed. Defining a chaplain as a commissioned faith group representative whose purpose is to (1) meet free exercise needs and (2) serve as a symbol of the Constitution at work would be a major step to ensure religious liberty for military personnel and reinforce the application of the Supreme Court's *Town of Greece* decision in the military context, ending the sectarian prayer issue.