

EXHIBIT 6

and Religious Speech Problems” and Exhibit 6, “The Associated Gospel Churches’ Supplement to its Perspective on Religious Liberty, Including Military Prayer and Religious Speech Problems.”

4. I have personal knowledge of both the exhibits and the events that they describe. I was and still am AGC’s General Counsel. I was intimately involved in providing counsel to the AGC and its chaplains involved in the incidents described; I drafted both documents and the copies in the Complaint came from my files.

5. At that time I was also and still am the General Counsel for the International Conference of Evangelical Chaplain Endorsers (“ICECE”), which as its title states, is a conference of Evangelical chaplain endorsers. ICECE had been working with members of Congress to address serious challenges and threats to chaplains because of the theological conflict between evangelicals and other chaplains and service personnel because of the repeal of the military’s ban on homosexual activities.

6. AGC is a member of ICECE. Prior to the FY 2013 NDAA, both had been attempting to get Congress to address the long-standing conflicts over what chaplains could clearly say and do. For example, in 2005, the Air Force published a regulation forbidding sectarian prayers at “command” functions, ceremonies or formations such as change of commands or award ceremonies. In 2006, the Navy issued a similar regulation. ICECE worked with members

of Congress to have the regulations withdrawn through the FY 2007 NDAA.

7. ICECE continued working with members of Congress trying to eliminate the confusion in a chaplain's dual role as a commissioned denominational or faith group representative to the military and a commissioned officer. Chaplains are not and cannot be a "government religious official" as many military personnel and leaders saw them.

8. There were many disputes best described as theological issues, conservative versus liberal, evangelical versus liturgical. These included:

A. An attempted censorship of a chaplain before a memorial service and a dispute after the service.

B. Suppression of an Evangelical (Baptist) service in Iraq in 2007. The root of this event began back when the unit returned from a rotation in Iraq in 2006 with serious drug and morale problems. A new AGC chaplain was assigned as the battalion chaplain. The unit was in the process of discharging numerous drug addicted soldiers; one came and visited Chaplain X. After discussing the issues with the chaplain, the soldier made a commitment to Christ and left the office literally a new person. The next day there was a long line of soldiers in front of the chaplain's door. These were the soldier's drug addict friends who said, "I finally found somebody who could tell me how to have peace with God." Rather than rejoice that soldiers had found a cure to their addiction and a way to improve their lives, the Brigade

chaplain Y told chaplain X to send drug addicts to the mental health people. Chaplain Y became a consistent critic and opponent of Chaplain X. Chaplain X started Baptist service in Iraq with more than 30 people on a regular basis. When chaplain X returned from his R&R, Brigade Chaplain Y suppressed the service, *i.e.*, he would not let it meet, which caused a significant unit problem. AGC and I became involved in trying to resolve the problem complicated by the distance and ongoing operations. Although AGC pointed out numerous false statements and errors in the IG report, the DoD IG refused to correct the record.

9. These are not the only reports of religious discrimination.
10. These types of disputes were greatly aggravated by Congress' repeal of the statutory ban on homosexual activity in the military. Although the "official" position was that sexual orientation did not and should not affect the services or be a disruption, the reality was far different. One could talk for homosexuality, but not against it. For example, two airmen were discussing the issue at a Post-Exchange restaurant at Andrews Air Force Base. When one expressed his opinion about lifestyle issues, a bystander herded and filed an EO complaint which started an investigation.
11. A number of public disputes in 2011 and 2012 involved chaplains accused of "offending" some other military personnel by what they said in chapel services, activities or counseling addressing "sin" in regard to sexual

conduct or activities.

12. I was involved in a meeting in the House of Representatives in 2011 was convened to address the issue of religious liberty and free speech and how to resolve it protecting both liberty and faith in a constitutional neutral manner.

13. Because I was involved in the 2006 resolution of the sectarian prayer ban and in litigation against the Navy over religious prejudice I recommended a statute be drafted that defined a chaplain as a faith group representative who answered only to his endorser for the chaplains military ministry, especially in a ministry situation, and recognize his allegiance to a “higher authority. That would reinforce by making sure no negative actions could be taken against him when he operated according to his conscience in a manner consistent with his endorsing agency’s statement of beliefs and traditions.

14. Title 10’s statutes addressing chaplains were scattered over the statues that address the Army, Navy, and Air Force reflecting the service’s history before DoD was created. I argued a statute would bring certainty, clarity and unity because of the military’s traditional respect for law and civilian authority.

15. I worked with other groups such as the Chaplains Alliance for Religious Liberty in developing language and making sure respective House and Senate

versions of the FY 2013 NDAA addressing chaplain definitions, duties, and protections also addressed the issues concerning different views of sexual practices designed to eliminate conflicts and misunderstandings.

16. Reply Exhibit 5 is the house version, House Report 4310, section 536, pages 208-210; Reply Exhibit 6, is the Senate version, S. 3526 of the 112th Congress, 2nd Session. Attached hereto as exhibit a is a letter I wrote supporting the original House and Senate language to emphasize the point the issues the legislation sought to address was not limited to sexual orientation.

17. Although both the House and the Senate appeared to agree, Senators Cruz and Lee offered an amendment that became § 533. They removed the sexual orientation language making sure the issues addressed were broader in scope and focused on conscience protection, officially establishing and protecting the right of chaplains to make decisions on the basis of their faith and conscience. I remember meeting with Senators Cruz and Lee with other ICECE members on this issue but was not aware of their amendment until after it became law.

18. Despite the (a) language protecting religious liberty and freedom of conscience for chaplains and military personnel in § 533 of the 2013 NDAA, and instructions in 533 ¶ c to publish regulations implementing 533's protections and provisions, issues continued to arise, some of which made

national news. This led to above cited hearings in 2014 on the issue of chaplains' religious liberty.

19. AGC's Perspectives was submitted to the House Armed Services Committee through Congressman Walter Jones from North Carolina with whom AGC and ICECE had been working to defend religious liberty. I was assured by his office AGC's perspectives were submitted to the subcommittee.

20. As AGC's Supplement states, immediately after AGC's perspectives was submitted, there were several incidents involving AGC's chaplains which highlighted the difference between those with conservative theologies versus those with liberal ones, *e.g.* censorship by senior chaplain. The Supplement was to call attention to the continuing conflict where evangelical chaplains were being attacked for speaking what their faith and conscience required as denominational representatives and to refute the position by the Chiefs of Chaplains at the hearing that there were no issues.

21. While many chaplain "speech" disputes were resolved at local levels, it was hard to believe the Chiefs were not aware of the issues that were arising on a regular basis.

22. Congress made its view of the importance of chaplains known in the 2016 NDAA.

23. From ICECE's perspective, one source of the continuing problems was that Section 533 was not publicized and there was no instruction on its

provisions by the people to whom it applied most, chaplains, JAGs, and commanders. The FY 2018 NDAA had specific language directing the DoD and its Armed Services “to develop and implement” teaching on religious liberty including the Religious Freedom Restoration Act and section 533. Congress included this language to remind the DOD, its Armed Services and military personnel of the importance of chaplains and that the military needed to provide training and teaching, rather than its official indifference to the issue except when incidents occurred.

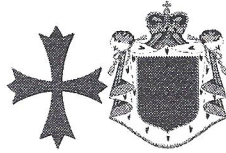
24. It was and still is ICECE’s opinion based on the above and other experiences that the hostility of some senior, critical DoD bureaucrats and indifference on the part of the Armed Services’ leadership is the source for the continued failure of DoD and its components to obey the will of Congress.

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

July 18, 2022

Respectfully submitted,

/S/ Arthur A. Schulcz, Sr.
ARTHUR A. SCHULCZ, SR.
Chaplains Counsel, PLLC
21043 Honeycreeper Place
Leesburg, VA 20175
DC Bar No. 453402
703-645-4010
art@chaplainscounsel.com



**“Jesus Christ - King of Kings - LORD OF LORDS” Rev. 19:6
INTERNATIONAL CONFERENCE OF
EVANGELICAL CHAPLAIN ENDORSERS (ICECE)
209 Pine Knoll Drive, Suite B, Greenville, SC 29609 -- Phone 864-268-8707
Email: ICECEORG@aol.com website: <http://icece.org>**

TO: Members, House and Senate Armed Service Committee Conference

FROM: Arthur A. Schulcz, Sr.
Counsel for the International Conference of Evangelical Chaplain Endorsers
(ICECE)

RE: House NDAA Language Defining Chaplains

DATE: December 11, 2012

I write as a retired Army veteran who has been involved in defending the Religious Liberty of military chaplains and their endorsers since 1999, and on behalf of the International Conference of Evangelical Chaplain Endorsers (ICECE) to support the language currently in § 536, subparagraph b of the House National Defense Authorization Act (“NDAA”) and explain its necessity. That section defines a chaplain as a **faith group representative** who remains responsible to his/her faith group. I urged HASC Personnel Subcommittee and its members to place such language in Title 10 based on my years of experience in chaplain litigation and working with Congress defending chaplains’ right to authentically represent their faith to the military, especially in their speech. ICECE has been in that struggle since it was founded in 2004.

Currently, only military regulations define a chaplain’s role as a faith group representative. Regulations or their interpretation can change at the whim of a DOD official as shown by the Air Force and Navy 2006 regulations restricting prayer that Congress ordered withdrawn. The philosophy that produced the regulations flows from individuals in authority who see “ministry” as a secular activity and a chaplain as merely a government religious official who serves as a useful tool of the government to provide “religious jargon or activity” as a token religious symbolism for military personnel for whom faith is important. That philosophy does not recognize (1) the balance between the liberty and limitations of the Free Exercise, Free Speech and Establishment Clauses, and (2) ignores the Second Circuit’s holding that the Constitution requires the Armed Services to provide chaplains so military personnel may exercise their freely chosen faith in the unique setting of military service.

Rigdon v. Perry, 962 F.Supp. 150 (D.D.C. 1997), rejected the concept chaplains were government religious officials in 1977 when DOD tried to censor chaplains’ preaching and to punish those who urged their congregants to contact Congress when it was considering the Partial Birth Abortion Act. The Executive Director of the Armed Forces Chaplains Board’s declaration on DOD’s behalf explained chaplains were **representatives of their faith group** “on loan” from their endorsing communities to represent their religious communities to

the military and remained accountable to their faith groups for their ministry. Despite this declaration, DOD argued since chaplains were officers, they spoke with “official authority” and their speech could be regulated when conducting worship services. *Rigdon* rejected that absurd argument, but it is only a district court decision and carries little precedent.

ICECE’s experience shows some DOD officials still adhere to the secular ministry concept that prompted *Rigdon* and the 2006 regulations. This highlights the need to protect a chaplain’s religious freedom through a statutory definition stating chaplains are responsible to their religious endorsing agencies in all that pertains to the religious sphere because they represents their religious organization to the military, a unique and historic role. A statutory definition would minimize future disputes and litigation. ICECE and the Chaplains Alliance for Religious Liberty agree this statutory definition is especially important now to protect all chaplains’ independence and integrity as faith group representatives given the ambiguity, confusion and issues arising out of “Don’t ask-Don’t tell’s” repeal. As the Chaplains Alliance for Religious Liberty explains, the threats to religious liberty are not theoretical, a fact reinforced by the attached email written to Senator McCain in support of Senate bill 3526 (the Military Religious Freedom Act) by CAPT Steve Brown, a recently retired Navy Chaplain and now the president of the Associated Gospel Churches, a chaplain endorsing agency and ICECE member.

It is especially important to define a chaplain because several atheist and freethinker groups have stated they will seek to endorse chaplains, a concept completely foreign to the historic role of chaplains as providers of faith. Some courts have held atheism is a religion in a civilian, theoretical context, but those interpretations are wrong in a military context for many reasons. Congress can and should define the role of a chaplain in terms of faith in the military context where chaplains and opportunities for traditional religious expression are limited. The Constitution recognizes it is difficult for service members to practice their faith and experience the comfort and strength it provides without chaplains, especially while deployed or in combat.

In summary, a definition of a chaplain approved by Congress is necessary to protect chaplains’ constitutional rights to accurately represent their faith and forestall legal and regulatory challenges to the historic role of chaplains.

/s/
Arthur A. Schulcz, Sr.
Counsel for ICECE