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ANTI-DEFICIENCY ACT

Government shutdown interfered with military's religious services, priest says

By Catherine A. Tomasko, Esq.

A Catholic priest with a Defense Department contract claims in a lawsuit that the government shutdown prevented him from conducting religious services on a Navy base and deprived him of his First Amendment right to engage in religious expression as a result.

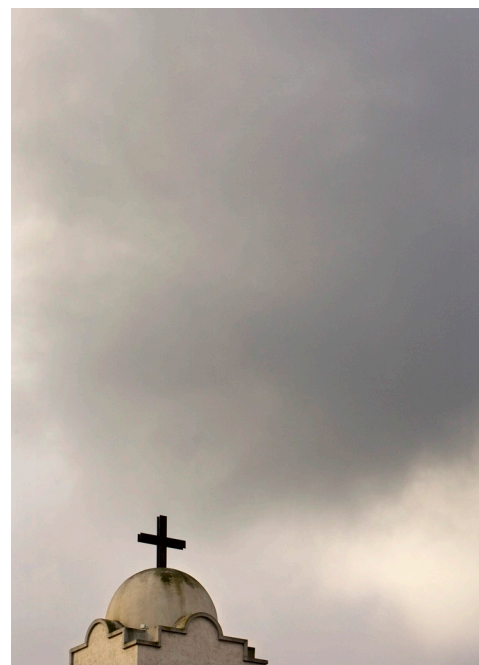
Leonard et al. v. U.S. Department of Defense et al., No. 1:13-CV-01571, complaint filed (D.D.C. Oct. 14, 2013).

In a complaint pending in the U.S. District Court for the District of Columbia, the Rev. Ray Leonard says the government violated his rights under the U.S. Constitution and federal statutory law by prohibiting him from fulfilling his religious duties at the Naval Submarine Base Kings Bay in Kings Bay, Ga.

He and co-plaintiff Fred Naylor, a Navy veteran who attends Catholic services at the base, are asking the District Court to stop the government from interfering with religious services performed by military chaplains for their congregants.

Although the government shutdown has ended since the filing of the case, the plaintiffs' attorney, **Erin E. Mersino** of the **Thomas More Law Center** in Ann Arbor, Mich., said the suit will not be withdrawn.

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REUTERS/Fred Greaves



Government shutdown

CONTINUED FROM PAGE 1

"We will continue to pursue the lawsuit," she said in an email. "This could happen in the future to military chaplains in time of government shutdown. The purpose is to correct this issue so the religious freedom of our military service members and our military chaplains is not infringed upon, now and in the future."

Regardless of its goal, the suit may prove difficult to pursue.

Constitutional law expert **John R. Vile**, a political science professor and dean of the Honors College at **Middle Tennessee State University** in Murfreesboro, Tenn., said: "The case ... is not likely to get very far unless the government somehow singled out chaplains for special mistreatment. Knowing how many other governmental agencies were closed, I do not believe this to be the case."

THE GOVERNMENT CLOSES AND FURLOUGHES BEGIN

In the complaint, Leonard says he is a civilian with a contract to provide daily Catholic religious services at the base's chapel. The contract's term began Oct. 1 and runs for one year, according to the suit.

Leonard says the Department of Defense notified him Oct. 4 that he had to stop performing his duties as a military chaplain because of the federal government shutdown.

The shutdown began Oct. 1 after members of Congress did not agree on a budget that would keep the government running, with funding for President Barack Obama's health care law being a major sticking point.

The shutdown caused federal agencies to place many employees on furloughed status, and a number of government services were curtailed. In addition, businesses holding government contracts were unable to gain access to federal facilities and some were directed by the United States to stop work. Many contractors furloughed their employees as well.

The shutdown ended late Oct. 16 when Obama signed legislation funding the government through Jan. 15 and providing back pay for federal employees who reported back to work Oct. 17.

According to an Oct. 16 statement on the Thomas More Law Center's website, government lawyers contacted Mersino

while the shutdown was still in effect and told her Oct. 15 that Leonard could return to work the next day. The Law Center said the government took this action in response to the lawsuit.

The Justice Department did not respond to a request for comment on the case.

THE CHAPEL IS LOCKED

In the complaint, Leonard says that as a result of the shutdown, the DOD locked the chapel and put up a sign stating that Catholic services would not be held until further notice. He says his religious items were locked inside.

He also claims the DOD canceled all his upcoming services, religious classes and events and told him Oct. 7 that he could not visit the chapel or his office at the base.

Mersino said she was aware of more than 50 Catholic priests serving as military chaplains who were unable to conduct services and serve their military communities because they had been furloughed. She added that she did not know of any similar lawsuits being filed as a result of these furloughs.

Naylor, the Navy veteran, further alleges that, because of the shutdown, he was unable to attend his usual Catholic services at the base. However, according to the suit, the Kings Bay chapel remained open to other faiths and was used for other denominations' services.

FEDERAL LAWS ARE IMPLICATED

Leonard and Naylor say two federal laws contributed to the shutdown's interference with their religious freedom. The first is the Anti-Deficiency Act, 31 U.S.C. § 1342, which prevents the government from accepting volunteer services. The statute provides for a fine of up to \$5,000 and a term of imprisonment for up to two years for violators.

According to the suit, the DOD told Leonard he would be arrested if he practiced his faith at the base, even if on a voluntary basis.

The plaintiffs further allege that prior to the shutdown, Congress passed the Pay Our Military Act, which allowed civilian personnel who provide support to the armed forces to continue working and avoid furlough.

The government determined that the statute, enacted Sept. 30, does not apply to military chaplains, and as such, the law in effect prevented Leonard from holding services at the base, even as a volunteer, the suit says.

The complaint alleges the government's actions deprived Leonard of his right to engage in religious expression and have hindered Naylor's right to religious exercise in violation of the Religious Freedom Restoration Act. The act, 42 U.S.C. § 2000bb, provides that the government should not substantially burden religious exercise without compelling justification.

The plaintiffs also say the United States has violated their First Amendment rights by prohibiting Leonard from holding services and preventing Naylor from practicing his faith.

The plaintiffs are seeking a declaration from the District Court that the Anti-Deficiency Act, as applied to the sermons and counseling of military chaplains, violates the First Amendment's clauses on free speech, association and exercise, as well as the Religious Freedom Restoration Act.

In addition to requesting a court order preventing the government from applying the Anti-Deficiency Act to Leonard's activities as a Catholic priest at the base, the suit requests an award of nominal damages.

With regard to damages, Merino said, "We are primarily seeking declaratory and injunctive relief. We want our plaintiffs to be able to practice their faith without penalty."

But Vile expressed caution over the First Amendment claims.

"In assessing cases of religious establishment, the court often uses what is known as the Lemon test. One prong of the test asks whether a law has the primary effect of advancing or inhibiting religion. Although the shutdown had many effects, it would be difficult to argue that its chief effect had been that of inhibiting religion."

Many in the legal community will be watching as the case progresses.

"This case shows some of the unintended complications that can arise from a government shutdown," **Proskauer Rose LLP** attorney **Daniel J. Davis**, whose practice concentrates on labor and employment law, said in an email.

As of press time, the United States had not filed a responsive pleading. [WJ](#)

Attorney:

Plaintiff: Erin E. Mersino, Thomas More Law Center, Ann Arbor, Mich.

Related Court Document:

Complaint: 2013 WL 5609307

See Document Section A (P. 17) for the complaint.