

a bill to amend the Immigration and Nationality Act and other laws of the United States relating to border security, illegal immigration, alien eligibility for Federal financial benefits and services, criminal activity by aliens, alien smuggling, fraudulent document use by aliens, asylum, terrorist aliens, and for other purposes.

S. 2120

At the request of Mr. INOUE, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 2120, a bill to amend and extend the authorization of appropriations for public broadcasting, and for other purposes.

S. 2120

At the request of Mr. DOLE, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 2120, a bill to amend the Internal Revenue Code of 1986 to adjust the death benefit limits for certain policies purchased to cover payment of burial expenses or in connection with pre-arranged funeral expenses.

SENATE JOINT RESOLUTION 158

At the request of Mr. WOFFORD, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Illinois [Ms. MOSELEY-BRAUN], and the Senator from Louisiana [Mr. JOHNSON] were added as cosponsors of Senate Joint Resolution 158, a joint resolution to designate both the month of August 1994 and the month of August 1995 as "National Slovak American Heritage Month."

SENATE JOINT RESOLUTION 166

At the request of Mr. SPECTER, the names of the Senator from Illinois [Mr. SIMON], the Senator from Nevada [Mr. REID], the Senator from New Mexico [Mr. DOMENICI], the Senator from South Carolina [Mr. THURMOND], the Senator from Virginia [Mr. WARNER], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of Senate Joint Resolution 166, a joint resolution to designate the week of May 29, 1994, through June 4, 1994, as "Pediatric and Adolescent AIDS Awareness Week."

SENATE JOINT RESOLUTION 175

At the request of Mr. MCCAIN, the names of the Senator from South Dakota [Mr. DASCHLE] and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of Senate Joint Resolution 175, a joint resolution to designate the week beginning June 13, 1994, as "National Parkinson's Disease Awareness Week."

SENATE JOINT RESOLUTION 178

At the request of Mr. DOMENICI, the names of the Senator from New Hampshire [Mr. SMITH], the Senator from Vermont [Mr. JEFFORDS], the Senator from Washington [Mr. GORTON], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of Senate Joint Resolution 178, a joint resolution to proclaim the week of October 16 through October 22, 1994 as "National Character Counts Week."

SENATE JOINT RESOLUTION 182

At the request of Mr. JOHNSTON, the names of the Senator from Pennsylvania [Mr. WOFFORD] and the Senator from California [Mrs. BOXER] were added as cosponsors of Senate Joint Resolution 182, a joint resolution to designate the year 1995 as "Jazz Centennial Year."

SENATE JOINT RESOLUTION 186

At the request of Mr. PACKWOOD, the names of the Senator from Maine [Mr. MITCHELL], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Maryland [Ms. MIKULSKI], the Senator from New York [Mr. MOYNIHAN], the Senator from Nevada [Mr.

REID], the Senator from North Dakota [Mr. CONRAD], the Senator from Virginia [Mr. ROBB], the Senator from Maine [Mr. COHEN], and the Senator from Utah [Mr. HATCH] were added as cosponsors of Senate Joint Resolution 186, a joint resolution to designate February 2, 1995, and February 1, 1996, as "National Women and Girls in Sports Day."

SENATE CONCURRENT RESOLUTION 66

At the request of Ms. MIKULSKI, the names of the Senator from Virginia [Mr. WARNER] and the Senator from Kansas [Mr. DOLE] were added as cosponsors of Senate Concurrent Resolution 66, a concurrent resolution to recognize and encourage the convening of a National Silver Haired Congress.

SENATE RESOLUTION 219—RELATING TO RELIGIOUS HARASSMENT

Mr. BROWN (for himself, Mr. GRAMM, Mr. SMITH, and Mr. NICKLES) submitted the following resolution, which was referred to the Committee on Foreign Relations:

S. RES. 219

Whereas the liberties protected by our Constitution include religious liberty protected by the first amendment;

Whereas citizens of the United States profess the beliefs of almost every conceivable religion;

Whereas Congress has historically protected religious expression even from governmental action not intended to be hostile to religion;

Whereas the Supreme Court has written that "the free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires";

Whereas the Supreme Court has firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the content of the ideas is offensive to some;

Whereas Congress enacted the Religious Freedom Restoration Act of 1993 to restate and make clear again our intent and position that religious liberty is and should forever be granted protection from unwarranted and unjustified government intrusions and burdens;

Whereas the Equal Employment Opportunity Commission has written proposed guidelines to title VII of the Civil Rights Act of 1964, published in the Federal Register on October 1, 1993, that expand the definition of religious harassment beyond established legal standards set forth by the Supreme Court, and that may result in the infringement of religious liberty; and

Whereas such guidelines do not appropriately resolve issues related to religious liberty and religious expression in the workplace: Now, therefore, be it

Resolved, That it is the sense of the Senate that, for purposes of issuing final regulations under title VII of the Civil Rights Act of 1964 in connection with the proposed guidelines published by the Equal Employment Opportunity Commission on October 1, 1993 (58 Fed. Reg. 51266), the Commission should withdraw religion as a category covered by the proposed guidelines, hold public hearings, and receive additional public comment before issuing similar new regulations.

Mr. BROWN. Mr. President, I appreciate the indulgence of the Chamber. I rise to draw attention to a resolution that I submitted today dealing with guidelines on harassment in the workplace published by the Equal Employment Opportunity Commission on October 1, 1993.

The Equal Employment Opportunity Commission is charged under various civil rights laws with preventing harassment in a variety of areas in our working environments, and in the past they have issued an established guideline to employers to prohibit harassment of individuals based on sex, race, creed, and color. The new guidelines, though, involve a different area than has been addressed in the past. Among other areas they specifically deal with religion. And the new guidelines are dramatically different than the legal and ethical philosophies that have affected this country over its entire history.

Our history is one of expanding individual freedom, one of expanding the right to exercise any religious belief that one may choose. It is a history which notes the expansion of individual freedom and rights of expression. The new religious harassment guidelines do the opposite.

For the first time that I am aware of in U.S. history, we will have a Government agency act to dramatically suppress the ability of people to express their own religious beliefs, even in a way that does nothing more than simply indicate their faith or preferences, or otherwise celebrate their joy and faith at holidays or other special times. Most Members, I suspect, when they hear this, will be surprised and find it hard to believe that the Equal Employment Opportunity Commission would be acting in such a manner. Yet what I think has happened here, simply is that the agency has followed the same guidelines that they have used to deal with sexual harassment or guidelines similar to those that they have used to deal with racial harassment, and tried to make them fit into the determination of what constitutes harassment in religious area. They simply do not fit.

What the Commission needs to do is to now withdraw religion as a category covered by the proposed guidelines, go back through published guidelines, review them in detail, hold public hearings, receive additional public comment, and, if it chooses, publish new ones that root out religious harassment in the workplace consistent with the Constitution, rather than trying to make religion fit in with other categories of harassment regardless of their different nature.

What is involved here is enormously important. Even though it is almost hard to believe, literally what the Commission does is establish guidelines for the determination of legal liability for employers. They require employers to issue their own religious harassment guidelines and then expose employers to liability if they do not do so or if any alleged religious harassment takes place, regardless of whether the employees knew or should have known about the alleged harassing conduct.

What is of such great concern about these new guidelines? Literally, the re-

sult of their implementation would be the suppression in the workplace of individual acts of religious expression, or celebrations of religious beliefs. They literally require companies to draft a set of religious harassment guidelines, and in the event that guidelines are not prominently displayed, or in the event that individual innocent acts of religious expression take place, then the employer can be held liable.

What could be these acts of harassment? Literally, the result of implementing the guidelines will provide that a whole series of acts of simple individual religious expression could well become proof of harassment, religious harassment. I do not believe that all Americans, regardless of their religious belief or background or lack of religious belief or background, think that it is in our country's best interest to have guidelines issued that prohibit the wearing of a cross or yarmulke, that outlaw a Christmas party, that would prohibit celebration of Hanukkah at work—a wide range of things which under the guidelines could become proof of harassment.

By way of example, let me just review briefly some of the things that could be used as proof of religious harassment in the workplace. Wearing a cross around the neck or wrist or any openly visible part of the body; wearing a yarmulke; displaying a picture of Christ on an office desk or wall; wearing a T-shirt or hat with any religious picture, drawing, phrase, or commentary; having on a desk or wall anything that has any religious significance; displaying a Bible or other religious book on a desk; making openly visible on display in a work or lounge area a work of art or any item of religious significance; hosting Christmas, Hanukkah, Thanksgiving, or Easter celebrations, parties or celebrations in any form that have any religious focus or reference; allowing for opening or closing prayer or invocation at a company program, banquet, celebration or event; sharing your faith or witnessing the gospel with a fellow employee; speaking openly with employees about your religious beliefs; allowing for nativity displays or scenes in the workplace during the Christmas holiday season.

I do not know how Members react when they listen to this: "Oh, come on, let us be serious," some may say— "Surely no one could suggest these actions constitute harassment." Still others may say, "Surely no Government agency would decide they want to get involved to prohibit these kinds of things from taking place." Clearly all of us—or I hope all of us—would agree that harassing people is wrong and that religious harassment is wrong as well, even if the person genuinely intends well. But merely open displays of our religious beliefs, of our religious commitments, are quite different.

Let me draw the Members' attention to something that could be proof of harassment of a sexual nature: A cal-

endar with a depiction of a nude person on it, displayed openly in an office. That may be interpreted—and reasonably interpreted by some—as sexual harassment; something that could be offensive to the members of the opposite sex. Think now of the person who, instead of displaying a calendar with a nude person on it that could be interpreted as pornography, displays a calendar with a religious figure on that calendar. Sadly, under the proposed guidelines it could be treated the same, as proof of religious harassment.

But are they actually offensive? Does anyone really believe that it is real proof of harassment to have an office with a religious figure shown on a calendar displayed on a desk or wall? Do we really want to equate, in Government guidelines, the depiction of a pornographic nude photo with a picture of Christ? This is absurd. The guidelines as they pertain to religious harassment are idiotic. They have been disseminated without public hearings, without a great deal of thought, and without a reflection on the impact they can have.

What we have is a clear attempt to chill religious expression or displays of any religious feeling or belief in the workplace—an attempt to make the workplace a religion-free zone. None of us wants religious harassment to exist or be allowed to take place on the job. The EEOC should act in a responsible manner to assure that people in the workplace are protected from it. But the proposed religious harassment guidelines will unfortunately simply result in efforts to outlaw any visible form of religious expression from much of our daily lives.

Some will say that is not possible. No responsible employer would do that. But let me remind Members of the legal requirements of the proposed guidelines. If an employer fails to set forth guidelines in the workplace that restrict these kind of activities, they are subject to legal liability—liability imposed on them under title VII of the 1964 Civil Rights Act because the Commission has come forth with mandates through its proposed guidelines that they create religious harassment guidelines. "Well," someone would say, "surely no one at all would come up with these kind of guidelines that would prohibit this kind of conduct." But it is also true because all employers are required to create and display religious harassment guidelines.

By way of example, I would like to read to you a quote from religious harassment guidelines already created and put in place by one of America's major airlines in response to the EEOC proposed guidelines, and I might suggest, in defense of the company that put them out, that they were not their ideas. They were simply trying to comply with the new EEOC requirements:

Technical personnel should not possess or display in any manner on premises any material which may be construed by anyone to have racial, religious or sexual overtones, whether positive or negative.

That is an unfortunately incredible guideline with regard to religious beliefs and behavior. Any material construed by anyone to have any religious overtones, whether positive or negative. Surely America should not become the land of the intolerable. Surely our agencies should not become the "thought police" and "religion police." Surely dissenting and varying ideas have enriched our lives. Surely the very fiber of the American freedom is to promote, defend and protect people who have ideas they express both overtly and covertly. Surely the American psyche is not so fragile that we have to outlaw any public and private expressions of faith.

Mr. President, complaints to the EEOC resulted in fewer than 1.8 percent of those complaints relating to religion-based complaints. That 1.8 percent is in the entire category of religious complaints. Of the 1.8 percent, only a very small portion of those even alleged the affirmative conduct of religious harassment. The guidelines are clearly over-broad and disproportionate in their effort.

Mr. President, I am not saying that we should not abandon our commitment to prevent workers from having to face harassment on job sites, and we should not turn a blind eye to the potential of abuse even in the religious area, but these guidelines are so over-reaching, and are so devastating to our individual freedom of religion and speech that they should be rejected.

I have introduced a resolution today which asks the EEOC to withdraw religion as a category covered by the proposed guidelines and issue new ones only after they have held public hearings and received additional public comment. My hope is that any new proposed guidelines for the determination of religious harassment will respect people's right of religious liberty, to express religious and political convictions without the chilling effect of regulatory intimidation and burdens on the workplace.

I hope the EEOC will withdraw religion as a category covered by the proposed guidelines by the close of business today. Also, as I stated previously, I hope that any new religious harassment guidelines developed by the EEOC respect people's religious beliefs and constitutional rights.

I ask that the Members of this body immediately review the resolution to facilitate our acting quickly to make sure our fundamental rights of religious freedom and religious expression at work are not destroyed by the over-zealous proposed guidelines.

Behind me is a chart that lists over 61 different families religious affiliations as embraced by Americans. If an employer is to conscientiously fulfill his responsibilities under the EEOC guidelines, he must determine what would be considered offensive to some combination of almost every one of these 61 groups that are listed, and perhaps more as well. And then the em-

ployer must use the information gained to develop his own religious harassment guidelines. This task would be monumental.

Religious practices vary. The Sabbath is celebrated on Friday by some, on Saturday by others, on Sunday by still others. Religious holidays abound among these 61 groups. To prohibit the expression, or the celebration, or the remembrance of religion in a way that will offend no one jeopardizes the freedom of all.

I hope this Chamber will act quickly on the BROWN resolution to ensure the continuation of our religious freedoms.

AMENDMENTS SUBMITTED

FEDERAL ACQUISITION STREAMLINING ACT OF 1994

GLENN AMENDMENT NO. 1748

Mr. GLENN proposed an amendment to the bill (S. 1787) to revise and streamline the acquisition laws of the Federal Government, and for other purposes, as follows:

On page 24, line 10, strike out "that incorporates" and all that follows through "incorporated in" on line 12, and insert in lieu thereof "for a commercial item other than a commercial component, the make and model of the item being provided in accordance with".

On page 25, strike out lines 20 and 21, and insert in lieu thereof the following:

"(1) the same information that would have been provided to the original offerors.

On page 28, between lines 22 and 23, insert the following:

"(c) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to subsection (b)(1) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (b)(3).

On page 28, line 23, strike out "(c)" and insert in lieu thereof "(d)".

On page 29, line 3, insert end quotation marks and a period at the end.

On page 29, strike out lines 4 through 15. On page 50, line 21, strike out "that incorporates" and all that follows through "incorporated in" on line 23, and insert in lieu thereof "for a commercial item other than a commercial component, the make and model of the item being provided in accordance with".

On page 52, strike out lines 6 and 7, and insert in lieu thereof the following:

"(B) the same information that would have been provided to the original offerors.

On page 55, between lines 11 and 12, insert the following:

"(c) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to subsection (b)(1) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (b)(3).

On page 55, line 12, strike out "(c)" and insert in lieu thereof "(d)".

On page 55, line 17, insert end quotation marks and a period at the end.

On page 55, strike out line 18 and all that follows through page 56, line 2.

On page 58, line 12, strike out "severable contract" and all that follows through "services" on line 13, and insert in lieu thereof "contract for procurement of severable services".

On page 58, strike out line 17 and all that follows through page 59, line 2, and insert in lieu thereof the following:

"(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a)."

On page 63, strike out lines 11 through 14, and insert in lieu thereof the following:

"(C) policies for ensuring that—

"(1) offerors are afforded an opportunity to submit relevant information on past contract performance, including performance under contracts entered into by the executive agency concerned, contracts entered into by other departments and agencies of the Federal Government, contracts entered into by agencies of State and local governments, and contracts entered into by commercial customers; and

"(1) such information submitted by offerors is considered."

On page 63, on line 16, strike out "the policy" and insert in lieu thereof "guidance".

On page 63, on line 17, strike out "may" and insert in lieu thereof "should".

On page 68, line 9, strike out "contracting officer" and all that follows through line 17, and insert in lieu thereof "contracting officer obtains, in accordance with standards and procedures set forth in the Federal Acquisition Regulation, information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of the price of the contract or subcontract for a commercial item, or the contract or subcontract modification, as the case may be. The contracting officer may obtain such information from the offeror or contractor or, when such information is not available from that source, from another source or sources."

On page 70, strike out lines 7 and 8, and insert in lieu thereof the following:

prices at which the same or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.

On page 78, line 25, strike out "contracting officer" and all that follows through page 79, line 8, and insert in lieu thereof "contracting officer obtains, in accordance with standards and procedures set forth in the Federal Acquisition Regulation, information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of the price of the contract or subcontract for a commercial item, or the contract or subcontract modification, as the case may be. The contracting officer may obtain such information from the offeror or contractor or, when such information is not available from that source, from another source or sources."

On page 84, line 22, strike out "such offeror" and all that follows through line 23, and insert in lieu thereof "the same or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of a proposed contract or subcontract for the procurement."

On page 110, line 20, insert "commercial component" after "commercial item".

On page 116, line 15, insert "commercial component" after "commercial item".

On page 125, between lines 18 and 19, insert the following:

(h) RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS.—Section 2307(f) of title 10, Unit-

ed States Code, as amended by subsection (f), is not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law, that relate to progress payment requests, as such procedures are in effect on the date of the enactment of this Act.

On page 125, line 19, strike out "(h)" and insert in lieu thereof "(1)".

On page 126, line 4, strike out "(1)" and insert in lieu thereof "(j)".

On page 133, line 2, strike out "amendments" and insert in lieu thereof "amendment".

On page 133, line 3, strike out "are" and insert in lieu thereof "is".

On page 159, strike out lines 6 through 20 and insert in lieu thereof the following:

not required—

"(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

"(B) where the agency head determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

"(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

On page 175, line 12, strike out "for a" and all that follows through "officer's decision" on line 13, and insert in lieu thereof "made to a contracting officer".

On page 175, line 17, strike out "render a decision" and insert in lieu thereof "reply".

On page 175, line 20, strike out "reach a decision" and insert in lieu thereof "respond".

On page 175, between lines 20 and 21, insert the following:

The provisions shall not apply to a request for a contracting officer's decision under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

On page 196, line 12, strike out "(as defined)" and all that follows through "Administrator of General Services)" on line 14.

On page 203, between lines 3 and 4, insert the following:

"(5) A requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

On page 204, line 7, strike out "section 8(a)" and insert in lieu thereof "subsection (a) or (c) of section 8".

On page 205, line 2, strike out "will vest" and insert in lieu thereof "vests".

On page 205, line 4, strike out "and".

On page 205, line 10, strike out the period at the end and insert in lieu thereof "and".

On page 205, between lines 10 and 11, insert the following:

(3) funds are available for making the payment.

On page 206, between lines 13 and 14, insert the following:

(c) NOTICE NOT REQUIRED IN ELECTRONIC COMMERCE.—Subsection (c)(1) of such section, as amended by section 1055(b), is further amended—

(1) by redesignating subparagraphs (A), (B), (C), (D), (E) and (F) as subparagraphs (B), (C), (D), (E), (F), and (G), respectively; and

(2) by inserting above subparagraph (B), as so redesignated, the following new subparagraph (A):

"(A) the proposed procurement is conducted by means of electronic commerce pursuant to a system that, as determined by the Administrator for Federal Procurement

SENT BY:
PAUL SIMON
CLERK

*Turf
Prob
Christina*

6-7-94 : 6:29PM :

EEOC-

202 456 7028:# 2

COMMITTEE:
LABOR AND HUMAN RESOURCES
ADJUDICARY
FOREIGN RELATIONS
BUDGET
INDIAN AFFAIRS

United States Senate

WASHINGTON, DC 20510-1302

June 7, 1994

The Honorable Tony Gallegos
Acting Chairman, Equal Employment Opportunity Commission
9th Floor
1801 L Street N.W.
Washington, D.C. 20460

Dear Mr. Gallegos:

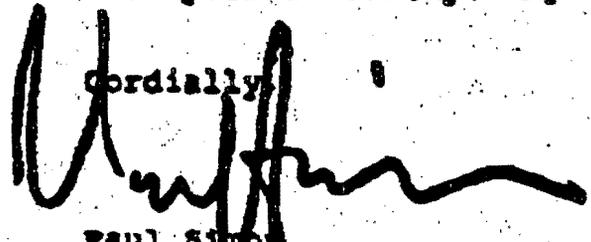
I am writing to invite you to testify at an oversight hearing before the Senate Labor and Human Resources' Subcommittee on Employment and Productivity on the Equal Employment Opportunity Commission. The oversight hearing will be held June 21, 1994, at 10:00 AM in Room 430 of the Dirksen Senate Office Building.

As you recall I held an oversight hearing in 1992. At that time I made the commitment to do regular oversight hearings. I have refrained from holding additional oversight hearings in anticipation of confirmation hearings on new Commissioners, and in particular a new Chair. It has been almost two years with no appointment of a Chair. I am deeply concerned about the lack of appointments to the Commission.

Your written testimony may be of any length and will be included in the hearing record. The Subcommittee requires that the Commission provide one hundred (100) copies of your testimony by close of business June 18, 1994. Please have the copies of the testimony delivered to Room 644 of the Senate Dirksen Office Building.

Should you have any questions about the hearing, please feel free to contact me or have a member of your staff contact Kristina Zahorik at (202)224-5575. I look forward to your testimony. My best wishes.

Cordially,



Paul Simon
U.S. Senate

PS/kz

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LAW

EEOC May Pit Church vs. State at Work

By RICHARD B. SCHMITT

Staff Reporter of THE WALL STREET JOURNAL
Ever since he became a Christian in the 1960s, John Beckett has labored to build a company in his own image. Now, he may face questions about whether he has also created a hostile work environment.

Employees of R.W. Beckett Corp., an Elyria, Ohio, maker of oil burners, attend lunch-time Bible studies, say grace before company-sponsored dinners, and sing carols at the company Christmas party. Mr. Beckett recently sent a personal note to all 400 employees, urging them to attend an appearance by evangelist Billy Graham in nearby Cleveland.



"Our success can be traced to the practical application of biblical truths and values," Mr. Beckett says. "These are things we take for granted. Now they could be called into question because a person might say, 'That offends me.'"

Church and state are colliding again, this time in the workplace. The driving force are guidelines proposed by the U.S. Equal Employment Opportunity Commission aimed at eliminating harassment of employees who hold certain religious beliefs. But Mr. Beckett and many religious conservatives say the guidelines also threaten sincere religious expression, and they are crusading to abolish them.

These are Draconian regulations that have the potential to turn the workplace into a religious-free zone, says Ralph Reed, executive director of the Christian Coalition, the organization founded by one-time presidential candidate Pat Robertson. The group has threatened to sue the government if the guidelines are enacted as proposed, on grounds that they violate the First Amendment.

Religious discrimination has been prohibited under federal law since the Civil Rights Act of 1964. While still relatively rare, such complaints are growing. About 800 complaints for religious harassment were filed with the EEOC last year, out of about 16,000 total complaints, most of which alleged sexual harassment.

Over the years, courts have carved out some protections for employees. The federal appeals court in San Francisco has held that companies are prohibited from requiring workers to attend devotional services during work hours. In a decision last December, a federal judge in Alexandria, Va., held that two Russian-Jewish U.S. Army employees had been harassed when their supervisor made repeated anti-Semitic comments and kept a coffee mug in the office that bore a swastika.

The EEOC proposals, originally issued in October 1993, define religious harassment as conduct that "denigrates" or shows "hostility or aversion" toward someone because of his or her religion. The

guidelines require proof that the conduct created an "offensive work environment" and interfered with work performance or employment opportunities. Although the guidelines don't have the force of law, they do convey the views of the commission, which is charged with enforcing federal discrimination statutes.

"We think these are necessary," Mark Pelavin, Washington representative for the American Jewish Congress, says of the EEOC guidelines. Without them, he says, there is "a message that religious harassment is less important than other forms of harassment and not a problem. We think that is exactly the wrong message to send."

Kay Dohmer, government affairs spokeswoman for the Evangelical Lutheran Church of America, says she is concerned that the focus of the debate be on the rights of employees. "It has gotten somehow twisted around," she says. "It is to the religious community's advantage to have employers reminded of the religious liberty obligations."

Critics say the guidelines are drafted in broad terms that will lead to frequent conflicts among workers of differing faiths or conflicts even in situations where management seeks to espouse certain religious views on a voluntary basis. Furthermore, critics contend there is a danger that some employers will respond to the guidelines by restricting appropriate religious expression in order to lower the risk of being hauled into court.

Under the guidelines, for example, a Jewish employee could be found to have offended an Islamic co-worker by simply posting a photograph of the Walling Wall in the office, according to Robert Cynkar, a Washington lawyer advising one of the guidelines' conservative opponents.

"The measure for harassment [under the guidelines] is extremely subjective," says Mr. Cynkar, a former Justice Department official in the Reagan administration and currently a partner in Washington's Shaw, Pittman, Potts & Trowbridge.

The guidelines have been a rallying point for such conservative groups as the Traditional Values Coalition, the American Family Association, and the Family Research Council, whose members have flooded Congress and the EEOC with thousands of letters and comments. An EEOC official says the agency has never received more mail on an individual issue.

Reflecting the pressure, more than 100 members of Congress late last month threw their support behind a House resolution that calls for the EEOC to withdraw the guidelines. A Senate Judiciary subcommittee plans to hold hearings on the issue tomorrow. The panel's chairman, Howell Heflin, (D., Ala.), who is chairman of the Senate Prayer Breakfast, considers the proposals "problematic."

While they privately acknowledge the need for possible revision, EEOC officials

defend the guidelines, saying employers have no reason for concern unless the alleged harassment is severe and pervasive. Nonetheless, the agency recently extended the time for public comment on the proposals. And it is circulating fact sheets aimed at damping concerns raised by evangelicals that the guidelines would lead to bans on wearing crosses or yarmulkes to work.

"The intent was merely to explain existing law," says Dianna Johnston, assistant legal counsel of the EEOC. "It is intended to help everybody out."

Gulf War Payments

The first payments to victims of the Gulf War are expected to be made today.

The United Nations Compensation Commission, charged with processing claims stemming from Iraq's invasion of Kuwait, will make payments to 16 countries to compensate individuals and families who suffered deaths or serious injuries.

A U.S. State Department official said the commission authorized \$2.7 million in payments to 667 claimants on May 26. About \$35,000 will go to 11 U.S. claimants. In a statement, the commission called the payments "small" but "highly symbolic of the aims and purposes of the commission."

Nevertheless, many more claims from companies, governments and individuals are outstanding. Ambassador Carlos Alzamora, executive secretary of the commission, said \$80 billion in claims have been received from 90 countries. Corporate claims must be filed with the Geneva commission by July 1, and government claims by August 1. So far, roughly \$1.6 billion has been demanded by about 185 U.S. companies, according to the State Department official.

Iraq is supposed to contribute 30% of its oil revenue to Gulf War victims. But Iraq has been prevented from exporting most oil by the trade embargo. The money available to pay claims comes from frozen assets and contributions from the international community. The commission also hopes to get a share of proceeds from oil now stuck in the Iraq-Turkey pipeline, which the U.N. is considering flushing. "It's going to take a while before we have real money for the big corporate claims and big government claims and even big individual claims," said Arthur Rovine, a New York lawyer representing claimants.

—Ellen Joan Pollock contributed to this column.

Briefings on Hill
Heflin, Grassley
Conservative
Prayer
Breakfast
Committee

Send to
30 cases Senate Conserv
Coalition
Bray II
Comm
Amend
People for American
House Ed
Standard
Person
Conf

end w/ some public message -

py 4

This in no way seeks to or advance what was sought by religious freedom

what was sought doing guidelines

Proposed Consolidated Harassment Guidelines

Thank you for providing the opportunity to discuss the Equal Employment Opportunity Commission's Proposed Consolidated Guidelines on Harassment. My comments today will be necessarily limited because the comment period on these Guidelines is still open and the comments will have to be evaluated before any final decisions can be made. As you know, on October 1, 1993, the Commission published a Notice of Proposed Rulemaking in the Federal Register promulgating Proposed Guidelines on Harassment Based on Race, Color, Religion, Gender, National Origin, Age or Disability and invited public comment. The original comment period ran for sixty days and, due to an unexpected interest in the Guidelines after the comment period closed, the Commission extended the comment period to June 13, 1994.

There has been a lot of confusion about the purpose and effect of the Proposed Guidelines, as well as the law on which they are based, with regard to religious harassment. This has prompted an outpouring of concern by thousands of Americans who care deeply about religious freedom, and we are grateful for the opportunity to set the record straight.

→ insert A

The gist of the criticism leveled at the inclusion of religion in the Proposed Guidelines is that it represents an attempt by the Commission to articulate a new rule designed to suppress religious

*① change testimony -
repetition at the end*
② clear statement of intent

③ contact approval/clarify
④ vetting process -

expression by employees in the workplace. This is simply wrong. As you know, for thirty years Title VII has protected this country's workers from discrimination in employment on the basis of their religious beliefs. The Commission has strongly defended the right of employees to exercise their religion in the workplace, even when employers have found it inconvenient to accommodate those beliefs.

As originally enacted by Congress, Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the bases of race, color, religion, sex and national origin. Congress has also afforded employees protection against discrimination on the bases of age and, more recently, disability. From its inception, Title VII has prohibited discrimination that affects hiring, firing or other tangible job benefits. In construing Title VII, courts have consistently held that it also protects employees who are subjected to severe or pervasive hostility because of their race, religion, or other covered bases. That is the definition of harassment. The Supreme Court in Meritor Savings v. Vinson, 477 U.S. 57, 66 (1986) and in Harris v. Forklift Systems, 62 U.S. L.W. 4004, 4005 (November 9, 1993) has held that harassment violates Title VII, and that Title VII applies to all of the statutorily covered bases.

To clear up the misunderstandings surrounding the Proposed Guidelines, it may be helpful to provide some historical context.

The primary force behind the initiation of the Guidelines was former Commissioner Joy Cheria who was concerned about the lack of guidance on the subject of racial harassment. Prior to the development of the Proposed Guidelines, the Commission had issued separate Guidelines for only sexual and national origin harassment. Instead of continuing to address harassment on a piecemeal basis, the Commission determined that guidelines addressing all protected bases of prohibited harassment in the workplace should be developed.

*Insert
A*

In drafting the Proposed Consolidated Guidelines, EEOC's Office of Legal Counsel sought to consolidate twenty years of judicial and Commission precedent. The Proposed Guidelines were intended to explain and interpret existing law rather than to create new legal theories. The Commission simply combined information and interpretations that courts and the Commission had articulated for many years.

Conduct that denigrates personal characteristics such as race, religion, or gender is never nice or pleasant to experience, but it is not always unlawful. The established body of law does not protect employees from every insult or offense that comes their way and it does not cover the hypersensitive employee's every complaint. The Supreme Court has made clear that harassing conduct is unlawful only when it is unwelcome and when it severely or pervasively denigrates or shows hostility on the basis of race,

religion, gender, national origin, age or disability. The law of workplace harassment recognizes that when conduct is severely or pervasively abusive because of one of those protected bases, it "offends Title VII's broad rule of workplace equality". Harris v. Forklift Systems, 62 U.S. L.W. at 4005. [Thus, contrary to suggestions by their critics, the Proposed Guidelines do not provide that it would be unlawful to wear a cross or a yarmulke, have a Bible on your desk or invite a colleague to church. Such actions would be neither hostile nor severe nor pervasive. The Commission appreciates the concern that overly cautious employers may misconstrue the Proposed Guidelines and resort to blanket prohibitions of religious expression to avoid any possible liability. Not only are the Proposed Guidelines not intended to create such result, such a broad policy would likely run afoul of Title VII's requirement that employers reasonably accommodate an employee's religious exercise unless doing so would be an undue hardship. Any final Guidelines ^{would} could make clear that such blanket prohibitions are neither required nor permissible.

genuine, non-intentional expression in one's place

RJRA would in no way be abridged

Commission staff acknowledge that commentors have raised some valid concerns. For example:

- The Proposed Guidelines definition of harassment includes, as one of three definitions, conduct that "otherwise adversely affects employment opportunities." [§1609.1(b)(1)(iii)]. This language was taken directly

from the Guidelines on National Origin harassment that have been in effect since 1980. Critics are correct, however, in stating that courts have not used this language. Hence, the concern that the language might be misconstrued as an attempt to create a new category of harassment is well taken.

- .. Much of the criticism focuses on the Proposed Guidelines' articulation of the "reasonable person" standard used in determining whether a hostile work environment exists. [§ 1609.1(c)]. This standard for "reasonable person" allows "consideration of the perspective of persons of the alleged victim's race, ... religion, etc."

Critics argue that this may be interpreted to mean that alleged harassing conduct will be judged solely from the subjective, and ever changing, standpoint of the complaining party. They further contend that the standard is so subjective and vague that wary employers will feel forced to prohibit any religious expression in the workplace rather than risk offending anyone.

In articulating the standard, the Commission's intent was to retain an objective rather than a subjective perspective while taking account of historical discrimination aimed at various groups. It was not

intended to provide special protection for the hypersensitive employee. Given the amount of controversy generated by this provision, however, it is clear that the language should be revised to more accurately reflect the intended meaning.

- There has also been a substantial amount of comment on that portion of the definition of harassment that includes hostility toward an individual because of a covered characteristic of their relatives or associates. Some commentators have misconstrued this language to mean that an employee's associates can bring suit against an employer. Its intent was simply that an employee has a claim under anti-discrimination laws if s/he is subjected to severe or pervasive hostility because, for example, he/she is married to a person of another race or religion.

•• The final and overarching concern expressed in the comments is the interaction of the Proposed Guidelines and the First Amendment right of free exercise of religion. The Commission is sensitive to the First Amendment concerns that have been raised by the Guidelines' critics. During the original comment period in the fall, some of the eighty-six comments received focused on whether the inclusion of religion in the

intended to provide special protection for the hypersensitive employee. Given the amount of controversy generated by this provision, however, it is clear that the language should be revised to more accurately reflect the intended meaning.

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→, or has a child with a disability.

.. The final and of comments is the i and the First A religion. The C Amendment concern Guidelines' critic in the fall, some focused on whether the inclusion of religion in the

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This might be another symptom the illustration of this point to add.

→, or has a
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disability.

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This might be
~~an~~ another sympathetic
illustration of
this point to add.

Proposed Guidelines violated the First Amendment's guarantee of free exercise. Legal Counsel staff immediately began and is continuing to explore the First Amendment issue.

Many critics are particularly concerned that the Guidelines conflict with the recently enacted Religious Freedom Restoration Act (RFRA). RFRA generally provides that the government may not substantially burden free exercise, even by a neutral rule, unless the government has a compelling interest and does so using the least restrictive means. RFRA had not been enacted when the Guidelines were originally published for comment. RFRA's potential impact on the Proposed Guidelines is being analyzed by Legal Counsel and will certainly be addressed by the Commission during its reconsideration of the Proposed Guidelines.

In order to understand and respond to these and other concerns involving the inclusion of religion in the Proposed Guidelines, Commission staff have met with representatives of several interest groups, including an "Ad Hoc Coalition" composed of the Traditional Values Coalition, the Family Research Council, the National Association of Evangelicals, the Center for Law & Religious Freedom, the Christian Legal Society, the American Civil Liberties Union. The representatives at that February 24th meeting expressed

concern that the Proposed Guidelines were overly broad and ultimately would force employers wishing to avoid liability to ban religion from the workplace entirely. Several representatives suggested that religion should be removed from the Guidelines.

On March 18, 1994, Commission staff met with another group of religious and civil liberties organizations that argued that removing religion from the Proposed Guidelines would send the wrong signal to employers by undermining Title VII's protection of religious expression in the workplace. Among the groups represented in that meeting were the Baptist Joint Committee, the American Jewish Congress, the General Conference of Seventh-day Adventists, the American Jewish Committee, the Anti-Defamation League of B'nai B'rith and People for the American Way. It should be noted that those representatives also expressed concern that, as proposed, portions of the Guidelines were subject to misinterpretation. They suggested that any problems with vagueness could best be solved by including specific examples of what does and does not constitute prohibited religious harassment.

Through the comments received, the Commission better understands the Proposed Guidelines' strengths and weaknesses, particularly in terms of how the public might construe them. The comments have made the point well that some parts of the Proposed Guidelines might be interpreted far differently than the Commission intended. We are continuing to receive, analyze and evaluate the

comments. One effective response to these concerns might be to revise the language in any final Guidelines to clarify the intended meaning and to include easy to understand examples of both permissible and prohibited conduct.

Although deletion of religion from the Proposed Guidelines seems like a simple solution, Commission staff remains extremely cautious about treating one protected basis differently than all others. Religious discrimination, including harassment, is an unfortunate reality in today's workplace. Any action that would weaken the protections afforded by Title VII for religion expression should be very closely examined.

One of the most critical elements of the Commission's mandate is the education of employers and employees about applicable law in the area of employment discrimination. The Proposed Guidelines were intended to explain existing law in the complex area of harassment, and the principles set forth are neither new nor solely the creation of the Commission. The EEOC is deeply committed to promoting equal employment opportunities for all people in this society. Properly understood and applied, anti-harassment law can be a tool that helps employers provide working conditions in which people of diverse beliefs and backgrounds can work together productively.

I would be glad to answer any questions you may have. However, because we are still in the comment period and because any action on these Proposed Guidelines requires approval by the full Commission, it would be inappropriate to commit at this time to any conclusions concerning or suggested changes to the Guidelines.

ORAL STATEMENT
OF
DOUGLAS CALLEGOS, EXECUTIVE DIRECTOR
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
JUNE 9, 1994

Oral Statement

Good Afternoon, I am Douglas Gallegos, Executive Director of the Equal Employment Opportunity Commission. I would like to introduce Elizabeth Thornton, EEOC's Acting Legal Counsel, and Dianna Johnston, Assistant Legal Counsel for Title VII policy.

We are here today to testify before the Subcommittee regarding the Equal Employment Opportunity Commission's Proposed Consolidated Guidelines on Harassment, particularly focusing our comments on the religious harassment provisions. These guidelines would protect from unlawful harassment those wishing to express their faith at work, just as the guidelines would protect workers from being forced to comply with someone else's religious beliefs.

Let us be clear that the guidelines are intended to explain existing law, consolidating existing judicial and Commission precedent, not to create any new legal theories or in any way abridge the free exercise of religion in the workplace. The guidelines provide that conduct towards an employee constitutes unlawful harassment only when it is unwelcome and when it severely or pervasively denigrates or shows hostility on the basis of religion.

Contrary to some erroneous commentary, the guidelines do not prohibit religious expression in the workplace. Such a prohibition would itself violate Title VII of the Civil Rights Act of 1964. Thus, while the proposed guidelines would prohibit

using repeated and offensive religious epithets in the workplace, the guidelines would not forbid wearing a cross or a yarmulke at work, having a Bible on one's desk, or inviting a colleague to church. As you know, the Commission has vigorously defended the right of employees in the workplace to exercise their religious faiths.

The public comment period for the proposed guidelines will continue until June 13, 1994. Any final guidelines would make clear not only that an employer is not required to prohibit non-intrusive religious expression, but that employers could not lawfully ban such expression.

In reiterating existing law, the proposed guidelines are fully consistent with the principles embodied in the Religious Freedom Restoration Act, signed by the President this past fall.

We would be glad to answer any questions you may have. However, because we are still in the comment period and because any action on these proposed guidelines requires approval by the full Commission, it would be inappropriate to commit at this time to any conclusions concerning or suggested changes to the guidelines.

U.S. Equal Employment Opportunity Commission

NEWS

FOR IMMEDIATE RELEASE
Thursday, June 9, 1994

CONTACT: Claire Gonzales
Reginald Welch
(202) 663-4900
TDD (202) 663-4494

**EEOC DEFENDS INCLUSION OF RELIGION IN PROPOSED CONSOLIDATED
GUIDELINES ON WORKPLACE HARASSMENT**

WASHINGTON -- The staff of the U.S. Equal Employment Opportunity Commission (EEOC) testified before a Senate subcommittee today about the Commission's Proposed Consolidated Guidelines on Harassment, particularly focusing those comments on the religious harassment provisions. These guidelines would protect from unlawful harassment those wishing to express their faith at work, just as the guidelines would protect workers from being forced to comply with someone else's religious beliefs.

The Commission staff made clear that the guidelines are intended to explain existing law, consolidating existing judicial and Commission precedent, not to create any new legal theories or in any way abridge the free exercise of religion in the workplace. The guidelines provide that conduct towards an employee constitutes unlawful harassment only when it is unwelcome and when it severely or pervasively denigrates or shows hostility on the basis of religion.

The Commission staff also made clear that, contrary to some erroneous commentary, the guidelines do not prohibit religious expression in the workplace. Such a prohibition would itself violate Title VII of the Civil Rights Act. Thus, while the proposed guidelines would prohibit using repeated and offensive religious epithets in the workplace, the guidelines would not forbid wearing a cross or yarmulke at work, having a Bible on one's desk, or inviting a colleague to church. The staff noted that the Commission has vigorously defended the right of employees in the workplace to exercise their religious faiths.

The public comment period for the proposed guidelines will continue until June 13, 1994. Any final guidelines would make

Religious Harassment (cont'd.) - Page 2

clear not only that an employer is not required to prohibit non-intrusive religious expression, but that employers could not lawfully ban such expression.

In reiterating existing law, the proposed guidelines are fully consistent with the principles embodied in the Religious Freedom Restoration Act, signed by the President this past fall.

#

DRAFT**QUESTIONS AND ANSWERS ON PROPOSED CONSOLIDATED GUIDELINES****A. Protected and prohibited religious practices**

1. Can supervisors wear religious symbols such as crosses, yarmulkes, or turbans?

Answer: Yes. The wearing of religious symbols does not denigrate another's religion and is not harassment.

2. Can a coworker ask an individual to attend a church service or function with him?

Answer: Generally yes. Repeated requests might, however, amount to harassment if the individual has told the employer that he finds the requests objectionable.

3. May a supervisor ask an employee to attend a church service with him?

Answer: As with a coworker, a supervisor may ask an employee to attend a church service unless the employee indicates that he is offended by such requests or repeatedly refuses to go. A supervisor may not, however, force an employee to attend a church service or take employment action against the employee for failure to attend.

4. May a supervisor keep religious posters or artifacts in her office?

Answer: Yes. In limited circumstances, a supervisor might be obliged to hold meetings outside of her office with any employee who objected on religious grounds to meeting in her office.

5. May an employer sponsor a Christmas party with religious holiday decorations?

Answer: Yes. An employer could not, however, require employees to attend the party.

6. May an employer conduct a weekly prayer breakfast?

Answer: Yes, although employees may not be forced to attend and may not be sanctioned for failing to attend.

7. May an employer force employees to participate in new age training programs?

Answer: No. Employees who object to doing so may not be forced to participate in religious training programs.

DRAFT

8. May an employer encourage employees to attend new age training programs or prayer breakfasts?

Answer: Generally, an employer may invite employees to attend religious events. An employer may not, however, take or threaten to take action against employees who do not attend. An employer may also may have to stop repeatedly inviting particular employees who indicate that they find such invitations unwelcome on religious grounds.

9. May an employer broadcast a prayer over the loudspeaker system each morning?

Answer: Generally yes. However, if an employee protests that the message conflicts with her/his religious beliefs, the employer may have to try to reasonably accommodate him/her.

10. May an employer hire a chaplain?

Answer: An employer may hire a chaplain, for example, to conduct the prayer breakfasts or other religious observances the employer is permitted to sponsor in the workplace.

11. May an employer use stationery that states that the company is "Christ centered" or place a religious poster in a common area?

Answer: The Townley case suggests that the answer is, generally, yes. However, we know of no case that has addressed this issue directly. However, principles of accommodation law -- not harassment law -- would seem to suggest that if an employee explains that such practices conflict with his/her religious beliefs, the employer may be required to attempt to reasonably accommodate the employee.

12. May an employer say grace before a company sponsored social event?

Answer: Yes, although any employee who objected on religious grounds to hearing or saying grace would have to be excused from participating in that portion of the company sponsored event.

13. May a supervisor speak to employees about his religious faith?

Answer: Generally, yes. It would not be harassment for a supervisor to make positive statements to employees about the existence or content of his religious faith. It would be unlawful for a supervisor to make severely

DRAFT

or pervasively hostile, denigrating or abusive statements about the religious faith of an employee, however.

For Carol

List mtg attendees

39,000 25%

List groups EEOC netw/

Halt

Consolidated Harassment Guidelines

Finaly +
Very unbalanced

[Race, color, religion, gender, national origin, age or disability]

Attempts to explain existing law - not new rule

EEOC does not have power to issue regulations

Purpose: Education of Employers + EEs
Does not change enforcement of law.

Sup Ct has said

creation of hostile
environment is

harassment

Harassing conduct is unlawful when it severely or
pervasively denigrates or shows hostility toward religion
(also race etc)

Reasonable person standard - A overly sensitive
(critics say this is subjective everchanging standard of complaining party)

Repeated + offensive religious epithets

Not all activity that denigrates religion (race etc) is unlawful
Not religious-free workplace
Not Bible on desk

Wearing cross or yarmulke

Valid concerns raised

Public comment period until 6/13

Do not prohibit ^{or suppress} religious expression in the workplace

① That would violate Title VII of the Civil Rights Act of 1964

② Likely violate 1st Amendment

Guidelines are suppose to help accommodate everyone's free exercise

EEOC testimony committed to: final guidelines

First Amendment = EEOC "legal counsel staff is continuing to explore the 'First Amendment issue' p 2

Consistent w/ Religious Freedom Restoration Act

RFRA generally says the government cannot burden free exercise of religion unless it has a compelling interest to do so.

p. 7

Met w/ National Assoc. of Evangelicals etc
Baptist Joint Cause

Groups counseling leaving in



GILBERT F. CASELLAS

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O:\FLA\FLA94.365

Hank Brown

AMENDMENT NO. _____

Calendar No. _____

Purpose: To express the sense of the Senate regarding the issuance under Title VII of the Civil Rights Act of 1964 of administrative guidelines applicable to religious harassment in employment.

IN THE SENATE OF THE UNITED STATES—108d Cong., 2d Sess.:d Sess.

AMENDMENT No 1804

To amend the
to authorize

By *Brown-Heflin* *coauthors*

82

Bill/Res. No. *S. 1491*

Referred to the

493

GPO: 1982 O-143 (19)

Ordered

AMENDMENT intended to be proposed by Mr. BROWN (for himself and Mr. HEFLIN)

Viz:

- 1 At the appropriate place, insert the following new sec-
- 2 tion:
- 3 SEC. _____ RELIGIOUS LIBERTY.
- 4 (a) FINDINGS.—The Congress finds that—
- 5 (1) the liberties protected by our Constitution
- 6 include religious liberty protected by the first
- 7 amendment;
- 8 (2) citizens of the United States profess the be-
- 9 liefs of almost every conceivable religion;

AS MODIFIED

1 (3) Congress has historically protected religious
2 expression even from governmental action not in-
3 tended to be hostile to religion;

4 (4) the Supreme Court has written that "the
5 free exercise of religion means, first and foremost,
6 the right to believe and profess whatever religious
7 doctrine one desires";

8 (5) the Supreme Court has firmly settled that
9 under our Constitution the public expression of ideas
10 may not be prohibited merely because the content of
11 the ideas is offensive to some;

12 (6) Congress enacted the Religious Freedom
13 Restoration Act of 1993 to restate and make clear
14 again our intent and position that religious liberty is
15 and should forever be granted protection from un-
16 warranted and unjustified government intrusions
17 and burdens;

18 (7) the Equal Employment Opportunity Com-
19 mission has written proposed guidelines to title VII
20 of the Civil Rights Act of 1964, published in the
21 Federal Register on October 1, 1993, ~~that expand~~
22 ~~the definition of religious harassment beyond estab-~~
23 ~~lished legal standards set forth by the Supreme~~
24 ~~Court, and that may result in the infringement of~~
25 religious liberty;

1 (8) such guidelines do not appropriately resolve
2 issues related to religious liberty and religious ex-
3 pression in the workplace;

4 (9) properly drawn guidelines for the deter-
5 mination of religious harassment should provide ap-
6 propriate guidance to employers and employees and
7 assist in the continued preservation of religious lib-
8 erty as guaranteed by the first amendment;

9 (10) the Commission states in its proposed
10 guidelines that it retains wholly separate guidelines
11 for the determination of sexual harassment because
12 the Commission believes that sexual harassment
13 raises issues about human interaction that are to
14 some extent unique in comparison to other harass-
15 ment and may warrant separate treatment; and

16 (11) the subject of religious harassment also
17 raises issues about human interaction that are to
18 some extent unique in comparison to other harass-
19 ment, ~~and thus warrants separate treatment.~~

20 (b) SENSE OF THE CONGRESS.—It is the sense of
21 the Congress that, for purposes of issuing final regulations
22 under title VII of the Civil Rights Act of 1964 in connec-
23 tion with the proposed guidelines published by the Equal
24 Employment Opportunity Commission on October 1, 1993
25 (58 Fed. Reg. 51266)—

O:\FLA\FLA94.365

S.L.C.

4

1 (1) the category of religion should be withdrawn
2 from the proposed guidelines ~~and receive separate~~ *at this time;*
3 ~~treatment from the other categories of harassment;~~

4 (2) any new guidelines for the determination of
5 religious harassment should be drafted so as to
6 make explicitly clear that symbols or expressions of
7 religious belief consistent with the first amendment
8 and the Religious Freedom Restoration Act of 1993
9 are not to be restricted and do not constitute proof
10 of harassment;

11 (3) the Commission should hold public hearings
12 on such new proposed guidelines; and

13 (4) the Commission should receive additional
14 public comment before issuing similar new regula-
15 tions.

misrepresented

Red Rpt

existing law - answers should be different whether or not
guidelines are passed

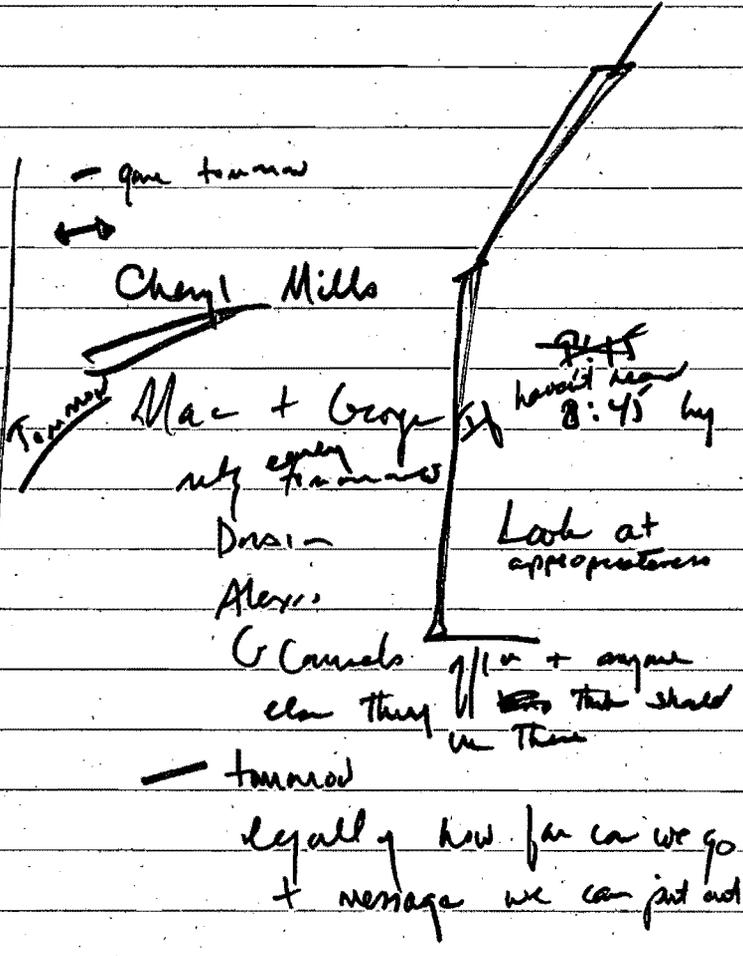
reasonable p.s.m.
too subjective

overly broad
bible in desk
prayer nearby

extension of consent process

Call Linda Ladd

Linda
638-1999 -> 11:00
Fax 638-4141
announce



Lead of minutes
President
- statement of support of P.E.R.A. + 1st Amendment rights
nothing

Carol
Phil
Ann
Stan

Bill

Carol,

I learned indirectly that Senator Simon is proposing to send a letter to the EEOC urging that it suspend action on the consolidated harassment guidelines until the Commission is in place.

I have also been told that
There is reason to believe that Senators Heflin and Brown might be sufficiently satisfied with this approach to agree not do something more drastic right now, such as pushing a resolution to kill the guidelines completely. There is also reason to believe that the EEOC would find this *acceptable* because it can't really move on this issue until that time anyway (there is only one Commissioner who would vote in support).

This would permit the Administration to get its Commissioners in place who could properly address and speak to the issue. ~~In the~~ *of the* *guidelines*
meantime, the word would be put out that consideration ~~has been~~ suspended rather than remaining actively under consideration -- a better stance to be ~~until~~ until the Commission is in place.

~~Senator Simon's~~
Senator Simon's staff is interested in whether this makes sense. What do you think? ~~3~~

Brown resolution

103D CONGRESS
2D SESSION

S. RES. _____

IN THE SENATE OF THE UNITED STATES

Mr. BROWN submitted the following resolution: which was _____

RESOLUTION

Expressing the sense of the Senate regarding the issuance under Title VII of the Civil Rights Act of 1964 of administrative guidelines applicable to religious harassment in employment.

Whereas the liberties protected by our Constitution include religious liberty protected by the first amendment;

Whereas citizens of the United States profess the beliefs of almost every conceivable religion;

Whereas Congress has historically protected religious expression even from governmental action not intended to be hostile to religion;

Whereas the Supreme Court has written that "the free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires";

Whereas the Supreme Court has firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the content of the ideas is offensive to some;

Whereas Congress enacted the Religious Freedom Restoration Act of 1993 to restate and make clear again our intent and position that religious liberty is and should forever be granted protection from unwarranted and unjustified government intrusions and burdens;

Whereas the Equal Employment Opportunity Commission has written proposed guidelines to title VII of the Civil Rights Act of 1964, published in the Federal Register on October 1, 1993, that expand the definition of religious harassment beyond established legal standards set forth by the Supreme Court, and that may result in the infringement of religious liberty; and

Whereas such guidelines do not appropriately resolve issues related to religious liberty and religious expression in the workplace: Now, therefore, be it

1 *Resolved*, That it is the sense of the Senate that, for
2 purposes of issuing final regulations under title VII of the
3 Civil Rights Act of 1964 in connection with the proposed
4 guidelines published by the Equal Employment Oppor-
5 tunity Commission on October 1, 1993 (58 Fed. Reg.
6 51266), the Commission should withdraw religion as a
7 category covered by the proposed guidelines, hold public
8 hearings, and receive additional public comment before is-
9 suing similar new regulations.

Sen. Brown's remarks at introduction

SENATE RESOLUTION 219--RELATING TO RELIGIOUS HARASSMENT

Mr. BROWN (for himself, Mr. Gramm, Mr. Smith, and Mr. Nickles) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 219

Whereas the liberties protected by our Constitution include religious liberty protected by the first amendment;

Whereas citizens of the United States profess the beliefs of almost every conceivable religion;

Whereas Congress has historically protected religious expression even from governmental action not intended to be hostile to religion;

Whereas the Supreme Court has written that "the free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires";

Whereas the Supreme Court has firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the content of the ideas is offensive to some;

Whereas Congress enacted the Religious Freedom Restoration Act of 1993 to restate and make clear again our intent and position that religious liberty is and should forever be granted protection from unwarranted and unjustified government intrusions and burdens;

Whereas the Equal Employment Opportunity Commission has written proposed guidelines to title VII of the Civil Rights Act of 1964, published in the Federal Register on October 1, 1993, that expand the definition of religious harassment beyond established legal standards set forth by the Supreme Court, and that may result in the infringement of religious liberty; and

Whereas such guidelines do not appropriately resolve issues related to religious liberty and religious expression in the workplace: Now, therefore, be it

Resolved, That it is the sense of the Senate that, for purposes of issuing final regulations under title VII of the Civil Rights Act of 1964 in connection with the proposed guidelines published by the Equal Employment Opportunity Commission on October 1, 1993 (58 Fed. Reg. 51266), the Commission should withdraw religion as a category covered by the proposed guidelines, hold public hearings, and receive additional public comment before issuing similar new regulations.

Remarks by BROWN (R-CO) on S.Res. 219

Resolution Concerning Administrative Guidelines Applicable to Religious Harassment [CR page S-6536, 180 lines]

Attributed to BROWN (R-CO)

Mr. BROWN. Mr. President, I appreciate the indulgence of the Chamber. I rise to draw attention to a resolution that I submitted today dealing with guidelines on harassment in the workplace published by the Equal Employment Opportunity Commission on October 1, 1993.

The Equal Employment Opportunity Commission is charged under various civil rights laws with preventing harassment in a variety of areas in our working environments, and in the past they have issued an established guideline to employers to prohibit harassment of individuals based on sex, race, creed, and color. The new guidelines, though, involve a different area than has been addressed in the past. Among other areas, they specifically deal with religion. And the new guidelines are dramatically different than the legal and ethical philosophies that have affected this country over its entire history.

Our history is one of expanding individual freedom, one of expanding the right to exercise any religious belief that one may choose. It is a history which notes the expansion of individual freedom and rights of expression. The new religious harassment guidelines do the opposite.

For the first time that I am aware of in U.S. history, we will have a Government agency act to dramatically suppress the ability of people to express their own religious beliefs, even in a way that does nothing more than simply indicate their faith or preferences, or otherwise celebrate their joy and faith at holidays or other special times. Most Members, I suspect, when they hear this, will be surprised and find it hard to believe that the Equal Employment Opportunity Commission would be acting in such a manner. Yet, what I think has happened here, simply, is that the agency has followed the same guidelines that they have used to deal with sexual harassment or guidelines similar to those that they have used to deal with racial harassment, and tried to make them fit into the determination of what constitutes harassment in religious area. They simply do not fit.

What the Commission needs to do is to now withdraw religion as a category covered by the proposed guidelines, go back through published guidelines, review them in detail, hold public hearings, receive additional public comment, and, if it chooses, publish new ones that root out religious harassment in the workplace consistent with the Constitution, rather than trying to make religion fit in with other categories of harassment regardless of their different nature.

What is involved here is enormously important. Even though it is almost hard to believe, literally what the Commission does is establish guidelines for the determination of legal liability for employers. They require employers to issue their own religious harassment guidelines and then expose employers to liability if they do not do so or if any alleged religious harassment takes place, regardless of whether the employees knew or should have known about the alleged harassing conduct.

What is of such great concern about these new guidelines? Literally, the result of their implementation would be the suppression in the workplace of individual acts of religious expression, or celebrations of religious beliefs. They literally require companies to draft a set of religious harassment guidelines, and in the event that guidelines are not prominently displayed, or in the event that individual innocent acts of religious expression take place, then the employer can be held liable.

What could be these acts of harassment? Literally, the result of implementing the guidelines will provide that a whole series of acts of simple individual religious expression could well become proof of harassment,

religious harassment. I do not believe that all Americans, regardless of their religious belief or background or lack of religious belief or background, think that it is in our country's best interest to have guidelines issued that prohibit the wearing of a cross or yarmulke, that outlaw a Christmas party, that would prohibit celebration of Hanukkah at work--a wide range of things which under the guidelines could become proof of harassment.

By way of example, let me just review briefly some of the things that could be used as proof of religious harassment in the workplace. Wearing a cross around the neck or wrist or any openly visible part of the body; wearing a yarmulke; displaying a picture of Christ on an office desk or wall; wearing a T-shirt or hat with any religious picture, drawing, phrase, or commentary; having on a desk or wall anything that has any religious significance; displaying a Bible or other religious book on a desk; making openly visible on display in a work or lounge area a work of art or any item of religious significance; hosting Christmas, Hanukkah, Thanksgiving, or Easter celebrations; parties or celebrations in any form that have any religious focus or reference; allowing for opening or closing prayer or invocation at a company program, banquet, celebration or event; sharing your faith or witnessing the gospel with a fellow employee; speaking openly with employees about your religious beliefs; allowing for nativity displays or scenes in the workplace during the Christmas holiday season.

I do not know how Members react when they listen to this: "Oh, come on, let us be serious," some may say--"Surely no one could suggest these actions constitute harassment." Still others may say, "Surely no Government agency would decide they want to get involved to prohibit these kinds of things from taking place." Clearly all of us--or I hope all of us--would agree that harassing people is wrong and that religious harassment is wrong as well, even if the person genuinely intends well. But merely open displays of our religious beliefs, of our religious commitments, are quite different.

Let me draw the Members' attention to something that could be proof of harassment of a sexual nature: A calendar with a depiction of a nude person on it, displayed openly in an office. That may be interpreted--and reasonably interpreted by some--as sexual harassment; something that could be offensive to the members of the opposite sex. Think, now, of the person who, instead of displaying a calendar with a nude person on it that could be interpreted as pornographic, displays a calendar with a religious figure on that calendar. Sadly, under the proposed guidelines it could be treated the same, as proof of religious harassment.

But are they actually offensive? Does anyone really believe that it is real proof of harassment to have an office with a religious figure shown on a calendar displayed on a desk or wall? Do we really want to equate, in Government guidelines, the depiction of a pornographic nude photo with a picture of Christ? This is absurd. The guidelines as they pertain to religious harassment are idiotic. They have been disseminated without public hearings, without a great deal of thought, and without a reflection on the impact they can have.

What we have is a clear attempt to chill religious expression or displays of any religious feeling or belief in the workplace--an attempt to make the workplace a religion-free zone. None of us wants religious harassment to exist or be allowed to take place on the job. The EEOC should act in a responsible manner to assure that people in the workplace are protected from it. But the proposed religious harassment guidelines will unfortunately simply result in efforts to outlaw any visible form of religious expression from much of our daily lives.

Some will say that is not possible. No responsible employer would do that. But let me remind Members of the legal requirements of the proposed guidelines. If an employer fails to set forth guidelines in the workplace that restrict these kind of activities, they are subject to legal liability--liability imposed on them under title VII of the 1964 Civil Rights Act because the Commission has come forth with mandates through its proposed guidelines that they create religious harassment guidelines. "Well," someone would say, "surely no one at all would come up with these kind of guidelines that would prohibit this kind of conduct." But it is also true because all employers are required to create and display religious harassment guidelines.

By way of example, I would like to read to you a quote from religious harassment guidelines already created and put in place by one of America's major airlines in response to the EEOC proposed guidelines, and I might suggest, in defense of the company that put them out, that they were not their ideas. They were simply trying to comply with the new EEOC requirements:

Technical personnel should not possess or display in any manner on premises any material which may be construed by anyone to have racial, religious or sexual overtones, whether positive or negative.

That is an unfortunately incredible guideline with regard to religious beliefs and behavior: Any material construed by anyone to have any religious overtones, whether positive or negative. Surely America should not become the land of the intolerable. Surely our agencies should not become the "thought police" and "religion police." Surely dissenting and varying ideas have enriched our lives. Surely the very fiber of the American freedom is to promote, defend and protect people who have ideas they express both overtly and covertly. Surely the American psyche is not so fragile that we have to outlaw any public and private expressions of faith.

Mr. President, complaints to the EEOC resulted in fewer than 1.8 percent of those complaints relating to religion-based complaints. That 1.8 percent is in the entire category of religious complaints. Of the 1.8 percent, only a very small portion of those even alleged the affirmative conduct of religious harassment. The guidelines are clearly over-broad and disproportionate in their effort.

Mr. President, I am not saying that we should not abandon our commitment to prevent workers from having to face harassment on job sites, and we should not turn a blind eye to the potential of abuse even in the religious area, but these guidelines are so overreaching, and are so devastating to our individual freedom of religion and speech that they should be rejected.

I have introduced a resolution today which asks the EEOC to withdraw religion as a category covered by the proposed guidelines and issue new ones only after they have held public hearings and received additional public comment. My hope is that any new proposed guidelines for the determination of religious harassment will respect people's right of religious liberty, to express religious and political convictions without the chilling effect of regulatory intimidation and burdens on the workplace.

I hope the EEOC will withdraw religion as a category covered by the proposed guidelines by the close of business today. Also, as I stated previously, I hope that any new religious harassment guidelines developed by the EEOC respect people's religious beliefs and constitutional rights.

I ask that the Members of this body immediately review the resolution to facilitate our acting quickly to make sure our fundamental rights of religious freedom and religious expression at work are not destroyed by the overzealous proposed guidelines.

Behind me is a chart that lists over 61 different families religious affiliations as embraced by Americans. If an employer is to conscientiously fulfill his responsibilities under the EEOC guidelines, he must determine what would be considered offensive to some combination of almost every one of these 61 groups that are listed, and perhaps more as well. And then the employer must use the information gained to develop his own religious harassment guidelines. This task would be monumental.

Religious practices vary. The Sabbath is celebrated on Friday by some, on Saturday by others, on Sunday by still others. Religious holidays abound among these 61 groups. To prohibit the expression, or the celebration, or the remembrance of religion in a way that will offend no one jeopardizes the freedom of all.

I hope this Chamber will act quickly on the Brown resolution to ensure the continuation of our religious freedoms.

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

13-Jun-1994 02:05pm

TO: Stephen C. Warnath

FROM: Carol H. Rasco
 Economic and Domestic Policy

SUBJECT: RE: religious harassment guidelines

I think I am in good shape, thanks for checking. If you talk to her tell I am thinking about her, appreciate the stuff she got out to me yesterday. Phil Lader is calling some of the conserative religious folks today to make sure they know the clarifying info.