

RELIGION

Comprehensive Airman Fitness (CAF) Program

This is in response to your question about whether the Comprehensive Airman Fitness (CAF) Program, which includes a pillar on spirituality and a voluntary assessment tool that scores an Airman's fitness in the spiritual realm, violates the First Amendment's Establishment Clause. U.S. Const. amend. I. For the reasons explained below, we do not believe this program violates the Establishment Clause.

Factual Background

In early 2010, Air Combat Command (ACC) and Air Mobility Command (AMC) adopted the CAF approach in an effort to reverse a disturbing rise in negative behavioral health trends, such as suicides. The stated intent of CAF is to strengthen and sustain a culture of balanced, healthy, self-confident Airmen and their families whose resilience and total fitness enables them to thrive in an era of high operational tempo and persistent conflict around the world. CAF is governed by the Community Action Information Board (CAIB) and its action arm is the Integrated Delivery System (IDS).

CAF has four pillars: physical, social, mental, and spiritual. These pillars help focus leadership on means and methodology for addressing and meeting the needs of Airmen and their families. The purpose of the spiritual pillar is to strengthen a set of beliefs, principles, or values that sustain a person beyond family, institutional, and societal sources of strength. The AMC CAF Implementation Plan specifically states that spiritual fitness is "not about religion. It's about having a sense of purpose and meaning, having hope and faith, and strengthening the values that keep you going."

ACC's efforts were based on the Army's Comprehensive Soldier Fitness approach. The Army requires every soldier to take the Global Assessment Tool (GAT), also known as the "Soldier Fitness Tracker." The GAT's 21 questions contain numerous subparts and in total the tool asks for 125 separate responses. The introductory language of the GAT makes clear that it is a self-assessment tool -- no one other than the respondent has access to the answers provided or to the scores. Research shows that low spirituality fitness correlates to higher rates of negative behavioral health issues such as suicides. See [NPR interview](#) with BGEN Cornum, USA, Director of Comprehensive Soldier Fitness, 13 Jan 2011. As such the GAT includes questions that squarely deal with spirituality and provides the respondent an assessment of one's spiritual fitness. Specific questions include asking the respondent whether the following statements describe how the respondent actually lives his or her life (answers range from "not like me at all" to "very much like me"):

- I am a spiritual person
- My life has lasting meaning
- I believe that in some way my life is closely connected to all humanity and all the world
 - The job I am doing in the military has lasting meaning
- I believe there is a purpose for my life

After completing the GAT and receiving a score on their emotional, social, family, and spiritual fitness, Soldiers proceed to a website with a variety of training modules. Soldiers are required to complete one module in emotional, social, and family areas. The spiritual training module is recommended but not required.

Under the CAF program, ACC started a pilot resiliency training program focused on deployers and those attending First Term Airmen Center (FTAC). As part of this training, Airmen are given the website to the GAT and encouraged to take the assessment and look at whatever Army training modules might be helpful. Both the GAT and the training modules are voluntary.

AMC has defined in its CAF Implementation Plan metrics or success indicators for each of its four pillars of fitness. The focus of the spiritual pillar is to enhance personal and spiritual development and to develop a caring outreach ministry that promotes a sense of purpose and meaning, spiritual well-being, faith, and hope. Specific success indicators for the spiritual pillar include: Airmen ministry, counseling, and marriage enrichment seminars/retreats. AMC does not use the GAT.

Establishment Clause Tests

The First Amendment provides that, “Congress shall make no law...respecting an establishment of religion, or prohibiting the free exercise thereof.” The fundamental principle of the Establishment Clause is that the government must be neutral toward religion, neither favoring a particular religion over other religions nor favoring religion over non-religion. McCreary County v. ACLU, 125 S Ct. 2722, 2733 (2005).

If government action – either by an Air Force organization or personnel – appears to be “helping” religion or showing a preference between religion over non-religion, the action should be reviewed and analyzed using a variety of tests laid out by the Supreme Court. The major test for determining the constitutionality of governmental action challenged under the Establishment Clause is Lemon v. Kurtzman. 403 U.S. 602 (1971). In Lemon, the Court laid out a three-part test: 1) does the government action have a secular purpose, 2) does the primary effect of the action advance or inhibit religion, and 3) does the government action foster excessive government entanglement with religion.

When evaluating the “purpose” prong of the Lemon test, one must first determine if the action has been done for a legitimate non-religious purpose. Courts use an “objective observer” approach and consider all the surrounding circumstances of the government action, including its history, context, logical effect, and how the action was implemented.

McCreary, 545 U.S. 844, 862 (2005). Next, one must determine whether the *primary* effect of the government action promotes or constrains religion. See Zelman v. Simmons-Harris, 536 U.S. 639 (2002). A mere secondary effect that promotes religion is permissible under Establishment Clause jurisprudence. Finally, one must evaluate whether the government action excessively intrudes into church matters¹ or whether the government allows the church to intrude excessively in governmental matters.

The Supreme Court has also used two additional tests when evaluating government action under the Establishment Clause.² The “endorsement test” asks whether a reasonable and informed observer would view a government practice as endorsing religion. County of Allegheny v. ACLU, 492 U.S. 573, 593 (1989). In other words, would a rational observer, aware of the history and context surrounding the particular government action in questions, determine that the government is conveying a message that religion or a particular religious belief is favored or preferred.³ In addition to the endorsement test, the Supreme Court has also utilized the coercion test to determine whether the government action has coerced “anyone to support or participate in religion or its exercise.” Lee v. Weisman, 505 U.S. 577, 587 (1992); *see also* Mellen v. Bunting, 327 F.3d 355 (4th Cir. 2003) (striking down daily prayer at the Virginia Military Institute’s evening meal).

Analysis

The use of spirituality as a pillar of the Comprehensive Airmen Fitness program does not violate the Establishment clause. A review of the program’s purpose, implementation, and context demonstrates that the program passes Lemon analysis as well as the endorsement and coercion tests.

Using Lemon analysis, it is clear that the purpose of CAF is secular. The stated command intent of the program is to improve well-being and enhance life balance for Airmen and their families and, in turn, strengthen personnel readiness. Courts generally defer to the government’s stated purpose “as long as it is not a sham.” *See* Ind. Civil Liberties Union v. O’Bannon, 259 F.3d 766, 771 (7th Cir. 2001). In addition, the primary effect of CAF – including its spirituality pillar – does not advance or inhibit religion. Instead, the primary effect is to develop resilient Airmen. Under the spirituality pillar, this means developing in Airmen a sense of purpose and meaning, having hope and faith,

¹ In Lemon, government financial assistance to private school teachers in the form of salary supplements failed this final prong because the law capped the salary of parochial school teachers, restricted the content and book selection of classes, and required government examination of church finances to determine eligibility for salary supplements.

² The Court has also upheld an opening prayer for a legislative session because the practice was “deeply embedded in the history and tradition of this country.” Marsh v. Chambers, 463 U.S. 783, 786 (1983). The Court has not used this rationale outside the narrow factual situation presented in the Marsh case and thus this historical exception is not generally considered a standard Establishment Clause test – and certainly not applicable in the factual context presented in this OpJAGAF.

³ Some have questioned whether or not the endorsement test is simply a part of Lemon analysis; however, lower courts routinely treat the endorsement test as a separate test altogether. *See, e.g.,* Ingebretsen v. Jackson Pub. Sch. Dist., 88 F.3d 274, 280 (5th Cir. 1996); Mellen v. Bunting, 327 F.3d 355, 370 (4th Cir. 2003).

and strengthening the values that keeps a person going. A secondary effect that promotes religion is permissible and does not lead to jeopardy under Lemon. See Zelman v. Simmons-Harris, 536 U.S. 639 (2002) (upholding law that provided computers to all schools including private religious schools).

The third prong of Lemon is also met as the inclusion of spirituality as a pillar of CAF does not excessively entangle the Air Force with religion. Although chaplains and chapel programs are a part of both ACC and AMC's CAF, the level of participation and support by chaplains for the spirituality pillar does not amount to excessive entanglement. See Freedom from Religion Foundation v. Nicholson, 469 F. Supp.2d 609, 619-623, (W.D. Wis. 2007) (finding no Lemon violation in VA programs that integrated spirituality into treatment programs and in VA hospitals where chaplaincy programs focused on pastoral and spiritual care for patients), *vacated on other grounds*, 536 F.3d 730 (7th Cir. 2008) (finding plaintiffs lacked standing). CAF is run using the Community Action and Information Board (CAIB), which utilizes a team approach from personnel across specialties to develop programs under each pillar. Care should be taken to continue this practice and not relegate the spirituality pillar solely to the province of chaplains.

Furthermore, under "endorsement" analysis, a reasonable, informed observer would not believe the Air Force is endorsing religion or conveying a message that religion is favored or preferred simply by including spirituality as a pillar of CAF. CAF materials make very clear that spirituality does not mean religion. While some Airmen may have religious beliefs that contribute to their spiritual fitness, others may have other beliefs, values, or principles that sustain the person's spiritual strength. The Air Force has historically used the term "spirituality" to be broader than religion. For example, in 2005, [CSAF's Sight Picture](#) linked spiritual strength to our core values. Then-Chief of Staff General Jumper explained,

Spiritual strength is what drives us to make sacrifices for others, for our Nation, and for the greater good. For some, a commitment to a specific religious faith is a source for that spiritual strength, but not for all. For some, it is their heritage and the experience of a community of people within our human family. For others, it is the way they were touched as individuals by a family member, teacher, or leader's work of faith or charity.

This use of spirituality as a concept broader and separate from religion stands in sharp contrast to government actions that have been found to violate the endorsement test. See McCreary County v. ACLU of Kentucky, 545 U.S. at 883 (O'Connor, J., concurring) (finding a courthouse display of the Ten Commandments an "unmistakable message of endorsement" where the "unstinting focus" of the legislature was on religious passages and the sectarian content of the Commandments.)

Finally, inclusion of spirituality as a pillar of CAF does not run afoul of the coercion test. See Lee v. Weisman, 505 U.S. 577, 587 (1992) (using and defining coercion test to strike

down a nonsectarian prayer at a secondary school graduation ceremony). Airmen are not forced or coerced to participate in religion or its exercise through participation in CAF resiliency training. The inclusion of a voluntary assessment of spirituality through the use of the Army's GAT survey does not alter this analysis.

Conclusion

The inclusion of spirituality as a pillar of Comprehensive Airmen Fitness does not violate the Establishment Clause. As additional programs under CAF are developed, however, MAJCOMs should ensure that the practice of implementing the spiritual pillar highlights the variety of support mechanisms, tools, and approaches to developing and maintaining spiritual growth...not just religious.

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