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The Other Half of the Solomon Amendment As It Applies to College ROTC

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The U. S. Supreme Court in 2006, in an 8-0 decision (see *Rumsfeld v. Forum for Academic and Institutional Rights (FAIR) Inc.*, No. 04-1152, March 6, 2006), upheld as constitutional the law referred to as the Solomon Amendment, 10 U.S. Code Section 983. Not only was the court's decision unanimous, there was only one written opinion signed by all the justices. Usually in such cases there may be two or three concurring opinions supporting the outcome but with different rationales.

The FAIR case involved Solomon as it applies to military recruiters being able to have access to college campuses or the school losing its federal funding if it denies access. The same law, however, requires colleges to permit ROTC on their campuses or lose their federal funding as well.

The relevant portion of the law regarding ROTC reads:

“§ 983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense (DoD), Department of Education, and certain other departments and agencies

“a) Denial of Funds for Preventing ROTC Access to Campus.—

“No funds described in subsection (d)(1) may be provided by contract or by grant to an institution of higher education (including any subelement of such institution) if the secretary of defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

“(1) the secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (in accordance with section 654 of this title and other applicable federal laws) at that institution (or any subelement of that institution); or

“(2) a student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education....”

Based on the court upholding the Solomon Amendment, the DoD could seek to enforce the ROTC portion of the law. To date, DoD has never done so. At the moment, DoD leaves it up to the schools as to whether they want ROTC. Solomon would require them to have ROTC if DoD requested that they have a program. Thus, for a college to be forced to have ROTC, DoD must first ask.

Harvard, Yale, Stanford, California Institute of Technology, Columbia, and the University of Chicago each receive 20 percent or more of their funding from the federal government but do not allow ROTC on their campuses. Most of these schools dropped their ROTC programs about 30 years ago because of their anti-military views and, in more recent years, their not liking the federal law barring open homosexuals from serving in the military. Before the Vietnam War, most if not all of these schools had ROTC programs.

DoD could look at any college that receives federal money that does not allow ROTC on its campus and ask it to allow at least one ROTC program on campus. If the school declines the request, it would lose federal funding.