

POLITICO

The culture wars reach new heights

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September 10, 2015

Charee Stanley, an American flight attendant and recent convert to Islam, just filed a discrimination complaint against her employer, ExpressJet, because it won't excuse her from serving alcohol to passengers. Stanley's backers at the Michigan chapter of the Council on American-Islamic Relations (CAIR) say that for a time Stanley worked out an arrangement for other attendants to handle liquor serving duties, but it broke down.

Stanley's scruples about screwpulls instantly drew the attention of culture warriors, who after a whole week spent bickering about defiant Kentucky clerk Kim Davis — in terms of online controversy, practically a Thirty Years' War — pivoted deftly to the Stanley case and away from Davis's refusal to license same-sex marriage as her job requires her to. According to partisans on each side, if you spoke up against Davis but for Stanley, or vice versa, you are a most awful hypocrite.

"The lack of GOP (Republican) support for [Stanley] proves that the [#KimDavis](#) case isn't about 'religious freedom,' it's about Christian privilege," claimed one online progressive. A conservative countered that Davis had been "jailed for practicing religious beliefs," while Stanley was "cheered" for the same thing. Some even hinted that, slippery-slope-like, the Kentucky case had led to the airline case: "Congratulations [#KimDavis](#) and supporters. You've opened a door you don't want opened."

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At a legal level, this is all sheer nonsense. Contrary to what many imagine, the United States has no overarching law of workplace religious accommodation that covers the two women's situation in the same way. In fact, almost no element is alike between the two cases. But consistency has rarely been a feature of the culture wars in America.

To begin with the obvious: Davis is an elected official with enforceable obligations to the public, Stanley is not. Davis is charged with legal misconduct in violation of an oath of office, Stanley is not. Davis has defied a court order, putting her in contempt, while Stanley is not in court in the first place, though she may get there eventually; for now her lawyers have filed a complaint with the federal Equal Employment Opportunity Commission. Stanley's employer is trying to dismiss her, rather than asking a court to enjoin her to do her job. And so on.

Now to the specifics. Unlike Davis, Stanley has a potential federal case because Congress in 1972 chose to amend Title VII of the Civil Rights Act specifically to require private employers like ExpressJet to accommodate employees' religious beliefs and practices. Most of the resulting requests for accommodation fall into a few recurring categories, notably scheduling (e.g., being excused from working on particular days or times of religious obligation), garb, and grooming (as in the recent case, successful at the Supreme Court, of a Muslim applicant who wanted to wear a hijab as a sales associate at an Abercrombie & Fitch store.)

Here's the thing: The EEOC has *already* sided with Muslim employees who wish to avoid handling alcohol. In 2013 the commission sued the Star Transport Co. in Illinois for failing to provide a reasonable accommodation to two Muslim truck drivers when it dismissed them for refusing to haul booze, a case that appears still to be pending. That wasn't the first such case, either, although it was the first in which the federal agency weighed in on behalf of a right of accommodation.

Workplace religious accommodation cases are by no means a novelty — 582 were filed with the EEOC last year — and they have been headed into culture-war territory for years. Two truckers and an emergency driver sued employers for putting them into situations where men and women shared overnight runs. An employee sued and lost in 2004 after pro-gay themes in the diversity program at Hewlett-Packard — this under then-CEO Carly Fiorina, now a Republican White House hopeful — offended his religious sensibilities. One reason many of these suits fail is that courts allow employers to plead a relatively low threshold of hardship in Title VII cases: If granting a religious accommodation would be significantly costly or disruptive to them, the courts will back them up in saying no.

There's something surreal about letting Stanley dodge one of the core job duties of a flight attendant. But fixing that is ultimately Congress's job, by making the law less indulgent toward private employees' demands for religious accommodation.

And here's where we circle back to the question of consistency. Because it's a high-flown principle for the campaign stump and popular with individual constituencies, the U.S. Congress loves to posture in favor of more, almost never less, on-the-job religious accommodation. Expanding employees' rights to such accommodation at work has been a vocal cause both for socially conservative Republicans like Bobby Jindal and Rick Santorum and for liberals like Hillary Clinton and John Kerry. When individual applications of the right to religious accommodation stir public controversy — at 39,000 feet in the air, or down below on the ground — there will always be someone else to blame, such as the courts or the EEOC.

If Charee Stanley or a future counterpart someday wins the right to bob and weave through the passenger cabin, handing out only beverages that meet with her spiritual approval, she'll have this record of Congressional posturing to thank.

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