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ARMY WINS CASE ON RECRUITMENT

Judge Holds Homosexual Ban Takes Precedence Over Local Anti-Bias Law

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Special to The New York Times

PHILADELPHIA, Sept. 11 — In a case watched closely by military officials, educators and advocates of homosexual rights, a Federal judge held today that rules barring homosexuals from the armed forces took precedence over conflicting local antidiscrimination laws.

Judge James T. Giles of Federal District Court in Philadelphia ruled that a local law enacted in 1982 that prohibits discrimination based on sexual preference must yield to the power of the United States Government to run its armed forces as it sees fit.

The ruling invalidated an order issued earlier this year by the Philadelphia Commission on Human Relations requiring Temple University to bar representatives of the Judge Advocate General's Corps from interviewing law students on campus for legal duty with the military. Along with the rest of the military, the corps refuses to hire homosexuals.

Law Students Filed Suit

The commission issued its ruling in a case originally brought by two homosexual law students at Temple who had unsuccessfully sought positions with the corps. By allowing employers who discriminate on the basis of sexual orientation to use campus facilities, the students charged, Temple was in effect guilty of discrimination itself.

Lawyers for the commission had acknowledged that it had no authority to invalidate military regulations, but asserted that it could prevent Temple Law School from participating in such discrimination.

But the commission's ruling, Judge Giles held, marked an improper attempt by local authorities "to regulate, directly or indirectly" the conduct of the American military.

While its hiring policy was "abhorrent to the local ordinance," he said, the military's autonomy in such matters was established under the Constitution and protected by its Supremacy Clause, which makes Federal law paramount when it conflicts with state or local statutes.

Defense Department regulations state that homosexuality is "incompatible" with military service, and adversely affects the ability of the armed forces "to maintain discipline, good or-

der and morale." The military's policy toward homosexual hiring has been upheld by the Federal courts.

Precedent for Other Cities

About 50 other cities and counties have anti-discrimination statutes similar to Philadelphia's, and lawyers for the armed forces had warned that a court decision holding them applicable to the military could seriously hamper recruiting. The military departments must recruit approximately 550,000 new members each year. Some 5,000 of them — the equivalent of six Army infantry battalions — come from Philadelphia.

"If the Commission on Human Relations gets away with this, there are dozens, perhaps hundreds of localities in the United States which might do the same thing," David J. Anderson of the Justice Department told Judge Giles before his ruling.

Judge Giles declined to rule on whether an order to ban recruiters from campus violated the First Amendment, as argued both by Temple and the American Council on Education in a friend-of-the-court brief.

But Robert J. Reinstein, Temple's counsel, said that the ruling nonetheless marked an important victory for free speech. The commission's order, he contended, marked the first time that Temple had been ordered to bar anyone from its campus on ideological grounds.

"We're not endorsing the military's hiring policy," Mr. Reinstein said, noting that university policy prohibits discrimination against homosexuals. "But the First Amendment has meaning only if you're willing to give protections to people you hate."

Possible Appeal of Decision

Susan Shinkman of the Philadelphia City Solicitor's office, who argued the case for the commission, said no decision had been reached on whether to appeal Judge Giles' ruling. But David W. Webber, the attorney for the two students, Richard Brown and Loretta B. DeLoggio, said he planned to do so.

Both Miss Shinkman and Abby Rubenfeld of the Lambda Legal Defense and Education Fund, a homosexual rights organization in New York that also filed a friend-of-the-court brief, said that because of the role of the military in the case, the ruling should be read narrowly.

"The legal protections gays and Lesbians have are pretty much limited to local legislation," Miss Rubenfeld said. "But the military has traditionally been given deference by the courts."

The two Temple law students filed their complaints with the Philadelphia Commission on Human Relations in November 1982, after they sought unsuccessfully to be interviewed by the Army, Navy, and Marine Judge Advocate General's Corps.

Earlier this year, the commission ruled that by allowing corps representatives to use its job-placement facilities, Temple was aiding the military's discriminatory hiring policy, and ordered it to cease the practice.

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