

Law & Religion

Moot Court Competition *in Rome*

5-7 March 2020

Rome, Italy

The Case

For the European version of the competition

Freeland is a State and a Contracting Party to the European Convention of Human Rights.

For the U.S. version of the competition

Freeland is a Member State of the United States.

The case

John Flowerfieds, having experienced a heart attack, is hospitalized in Freecare Hospital, a state facility located in downtown Freetown, the capital of the State of Freeland.

A Freeland statute governs religious accommodations in the following terms:

“Private and public institutions cannot discriminate on the basis of religion and must put in place appropriate means to accommodate personal and group needs and preferences stemming from religious belief or affiliation.”

At the Freetown Hospital, many employees wear religious symbols, such as, a hijab, crucifixes or a kippah while working. John was taken there when he had the heart attack because the hospital was the closest facility to where the event occurred which provides affordable healthcare under a public insurance scheme.

John is a strong believer in secularism. After the surgery, he complained that he was being assisted by nurses wearing a hijab and crucifixes. He argued that, since Freeland is a secular state and the hospital is a place of public accommodation, nurses should not be wearing religious symbols while taking care of him. After his complaint, more patients and visitors complained to the hospital about the widespread custom among its employees of wearing religious symbols. The governing board of the hospital then passed a policy that moved all nurses and other employees who wear visible religious signs into areas not accessible to the public.

A group of employees wrote a letter of complaint arguing that this policy violates their right to manifest their religious beliefs *‘in practice’* in the public sphere. After receiving this complaint, the hospital board passed general rules establishing that all employees who work in direct contact with patients in any capacity must wear a religiously neutral uniform, which the hospital provides.

The hospital's general rules also establish that employees who refuse to wear the uniform provided can opt for jobs with no interactions with patients and visitors.

Maryam Karama, a nurse, and Martha Geist, a receptionist, brought a legal challenge to the regulation arguing that the choice between a "symbol-free" uniform or the back office compels them to choose between manifesting their faith in 'practice' or working in a non-public sphere. This, they allege, relegates them to the status of second-tier employees. They argue that the hospital's board failed to grant them an appropriate accommodation as is required by statute. In their view, the option of working in areas not accessible to the public operates as a general rule, regardless of the concrete duties that an employee might discharge. The hospital's policy, they argued, therefore, stigmatizes them and thereby violates their dignity and their right to religious freedom.

Freecare Hospital argued that its rules were necessary and appropriate on two grounds. Firstly, they prevented the spread of infection and, secondly, they not only reconciled but also prevented philosophical or religious clashes within the hospital's premises.

The state courts dismissed the appeal.

For the European version

Maryam Karama and Martha Geist lodged an application with the ECtHR against Freeland, alleging a violation of Art. 9 of the ECHR in conjunction with Art. 14 in that the state had failed to protect their right to religious freedom.

For the U.S. version

Maryam Karama and Martha Geist sued Freecare Hospital for violating their Free Exercise rights under the First Amendment and the state RFRA. (The EEOC has not issued a right to sue letter so any potential Title VII claims may not be raised.)