Ten Affirmations on Religious Staffing

1. For over forty years, Title VII of the Civil Rights Act of 1964, as amended, has honored the right of faith-based organizations to choose the employees who can best further their missions by explicitly acknowledging in section 702(a) their freedom to use religious criteria when making their employment decisions.

2. This religious staffing option is not an exemption *from* the Civil Rights Act, but a *freedom incorporated into it*. Religious staffing is a civil right belonging to faith-based organizations, not a denial of civil rights. Under Title VII, religious organizations may not discriminate on the basis of sex, race, national origin, handicap, or age, but they are free to hire only staff who share their religious beliefs. By the terms of Title VII, if a religious organization staffs on a religious basis, it has not engaged in religious discrimination. Opponents of religious staffing are seeking to roll back a long-established civil right.

3. The religious staffing freedom applies to all positions in a faith-based organization, not only ministerial or clergy positions. This broad religious staffing freedom was upheld unanimously by the U.S. Supreme Court in 1987 in *Amos v. Corporation of Presiding Bishops*, a case involving the dismissal of a janitor from a faith-based health club. The Court ruled that the exemption permitting religious staffing by religious organizations was not only constitutionally permissible but fully consistent with the First Amendment.

4. Although the First Amendment has sometimes been interpreted as requiring a high wall of separation between church and state, thus forbidding funding for overtly religious organizations, the U.S. Supreme Court has decisively moved away from this interpretation in favor of a policy of treating faith-based and secular organizations on an equal basis. The religious staffing freedom is consistent with this policy and necessary to enable religious organizations to retain their religious identity when they serve in the public square.

5. In accommodating religious staffing by faith-based organizations, the Civil Rights Act only enables them to do what other mission-driven organizations, such as the Sierra Club and Planned Parenthood, also do: choose as staff those capable people who are most dedicated to the cause of the organization.

6. If a faith-based organization accepts federal funds to provide social services, it does not on that account give up its religious staffing freedom. There is no general federal legal or constitutional principle that eliminates the religious staffing freedom of faith-based organizations that accept government money. This principle was strongly affirmed in the New York federal religious job-discrimination case, *Lown* v. *Salvation Army* (2005). Title VI of the Civil Rights Act, the section that does deal with federally funded services, does not include religion as a prohibited basis of discrimination.

7. The current state of religious employment law is complex, inconsistent, and inadequate. Religious organizations are generally free to use religious criteria in employment deci-

sions, but certain federal programs, such as those funded under the Workforce Investment Act, prohibit all grantees, including faith-based organizations, from hiring on a religious basis. However, religious organizations in such cases may appeal to the Religious Freedom Restoration Act to override the restriction, as noted in regulations for SAMHSA drug treatment funding and an Department of Justice, Office of Legal Counsel, memorandum. Other laws for federal social service programs are silent about employment, and thus leave the general religious staffing freedom intact. During the Clinton administration, Congress added Charitable Choice language to laws authorizing four federal programs, in order explicitly to protect religious staffing for faith-based organizations that receive federal funds in these programs through state or local governments. Some state and local governments do forbid religious staffing by all grantees or contractors, even when the original source of the funds is the federal government.

8. The freedom to staff on a religious basis is not a freedom to discriminate on religious grounds against recipients of social services. Both Charitable Choice and the principles of the federal faith-based initiative, as set out in Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations (Dec. 12, 2002), explicitly forbid religious discrimination against people seeking assistance.

9. Religious staffing is not "government-funded job discrimination," as critics claim. When the government selects a faith-based organization to provide a government-funded service, it chose the organization because it was the one that will most effectively and efficiently serve the needy–an organization that, in this instance, has the legal freedom to ensure that its staff members are committed to its faith-based mission.

10. The government is acting in an even-handed way when it permits all organizations it funds, religious as well as secular, to hire staff devoted to their respective missions. Pro-choice organizations do not lose their ability to screen out pro-life employees when they accept government funds. In the same way, faith-based service groups should not be required to give up their religious staffing liberty if they accept federal grants. Keeping religious staffing legal is the only way to ensure equal opportunity and effectiveness for all organizations and to respect the diversity of faith communities that are part of our civil society.

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