

Major Religious Hiring Cases Since 2004

Since the publication of *The Freedom of Faith-Based Organizations to Staff on a Religious Basis*, four major developments have confirmed its main conclusion: As a basic rule, religious hiring by religious organizations is legal and constitutional, and does not become illegal nor unconstitutional simply because a religious organization receives government funds. Furthermore, even when a government program has a rule banning religious (and other forms of) job discrimination, because of the Religious Freedom Restoration Act a religious organization may be able to participate in such a program without giving up religious hiring. A fifth development—the unanimous United States Supreme Court ruling in the *Hosanna-Tabor* case—affirms these conclusions, although it is specifically relevant only to “ministerial” job positions and its reasoning applies only in a general sense to the religious hiring freedom that is acknowledged by the 1964 Civil Rights Act, as discussed in this book.

***Lown v. Salvation Army*, 393 F.Supp.2d 223 (S.D.N.Y. 2005)**

Brief Summary: The Salvation Army was sued by former employees who alleged that it was unconstitutional for the Army to use religious employment criteria when it received government funds. This case was heard by the United States District Court for the southern district of New York. The First Amendment’s Establishment Clause prohibits government-financed or government-sponsored indoctrination of religious faith. However, the court granted Salvation Army’s motion to dismiss since the Salvation Army is not a state actor and it enjoys statutory exemptions from liability for religious discrimination. The Amended Complaint conceded that The Salvation Army is a religious organization since it is a church. The court noted: “Freedom from religious discrimination in employment by a religious organization is not a civil right . . . [F]ederal, state and local statutory provisions expressly permit religious organizations to discriminate on the basis of religion in employment. Thus, plaintiffs have failed to allege that they were denied a civil right protected by the Civil Rights Clause of the New York Constitution.”

Principle: Even if a religious organization receives government funding, it is still allowed to hire on the basis of religion because of the religious organization exemption in the Civil Rights Act, unless the statute governing the government funds specifically prohibits religious hiring and the Religious Freedom Restoration Act provides no relief.

***LeBoon v. Lancaster Jewish Community Center Ass’n*, 503 F.3d 217 (3rd Cir. 2007)**

Brief Summary: Linda Leboon worked for the Lancaster Jewish Community Center (LJCC). The LJCC is a non-profit corporation whose stated mission is to enhance and promote Jewish life, identity, and continuity. The relationship between Leboon and LJCC’s Executive Director began deteriorating near the spring of 2002. On August 30, 2002, Leboon was let go on the grounds that the LJCC was having serious financial difficulties and because the Executive Director had concluded that Leboon’s position was unnecessary and her work could be performed by another co-worker. Leboon claimed she was terminated based on religious discrimination since she is an Evangelical Christian. The court held that the Jewish community center was a “religious organization” exempt as an employer from compliance with the religious discrimination provision of Title VII.

Principle: The court determined that to decide whether a religious organization exemption applies under Title VII, all significant religious and secular characteristics of the organization must be weighed to determine whether its purpose and character are primarily religious. Although the courts have trended away from consulting a narrow checklist of religious qualities, the following are some factors the *LeBoon* court took into consideration: (1) whether the entity operates for a profit, (2) whether it produces a secular product, (3) whether the entity’s articles of incorporation or other pertinent documents state a religious purpose, (4) whether it is owned, affiliated with, or financially supported by a formally religious entity such as a church or synagogue, (5) whether a formally religious entity participates in the management, for instance by having representatives on the board of trustees, (6) whether the entity holds itself out to the public as secular or sectarian, (7) whether the entity regularly includes prayer or other forms of worship in its activities, (8) whether it includes religious instruction in its curriculum, to the extent it is an educational institution, and (9) whether its membership is made up by coreligionists. It is noteworthy that the LJCC’s character as an exempt religious organization was upheld by the court even though some key Jewish values that guide it, such as tolerance of other religions, are not sectarian Jewish beliefs, some of the services it provided were cultural rather than narrowly religious, and it hired mostly non-Jews for its staff.

***Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2011)**

Brief Summary: Former employees of World Vision Inc. brought action against this non-profit faith-based humanitarian organization alleging that their termination on account of their religious beliefs was in violation of Title VII. When they were hired, the employees submitted required personal statements describing their “relationship with Jesus Christ.” All acknowledged their “agreement and compliance” with World Vision’s Statement of Faith, Core Values, and Mission Statement. In 2006, World Vision discovered that the employees denied the deity of Jesus Christ and disavowed the doctrine of the Trinity. As this was incompatible with World Vision’s doctrinal beliefs the employees were fired. World Vision’s action was upheld by the federal court and its decision was confirmed by a panel of the Ninth Circuit Court of Appeals. The court held that the non-profit faith-based Christian humanitarian organization dedicated to helping children, families, and their communities worldwide by tackling causes of poverty and injustice fell within the scope of the Title VII exemption for a “religious corporation, association, or society.” Therefore, World Vision’s termination of employees who denied the deity of Jesus Christ and disavowed the doctrine of the Trinity did not violate Title VII. One judge mentioned that he believes the best approach in determining if an organization is “religious” can be summarized as follows: a nonprofit entity qualifies for the exemption if it establishes that it 1) is organized for a self-identified religious purpose (as evidenced by Articles of Incorporation or similar foundational documents), 2) is engaged in activity consistent with, and in furtherance of, those religious purposes, and 3) holds itself out to the public as religious.

Principle: Although the judges differed somewhat on the exact criteria for determining what is a religious organization, the lower court and the appeals court were clear that serving the public in a humanitarian way—rather than by engaging only in religious activities—and serving people of many and no faiths and not just co-religionists, is no bar to being classified as a religious organization that is legally permitted to hire on a religious basis.

Department of Justice, Office of Legal Counsel, Memo, *Re: Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act* (June 29, 2007)

Brief Summary: World Vision is a religious organization that had been awarded a grant by the Office of Justice Programs under the Juvenile Justice and Delinquency Prevention Act of 1974. A condition of the grant program was to refrain from various forms of job discrimination, including religious hiring. The opinion of the Office of Legal Counsel of the Department of Justice maintains that the Religious Freedom Restoration Act is reasonably construed to require that an accommodation should be made for World Vision, whose religious hiring is protected by the Title VII religious exemption. World Vision could participate in the grant program without abandoning its religious hiring practices. This OLC opinion has not been withdrawn or modified since it was issued.

Principle: The Religious Freedom Restoration Act can enable a faith-based organization that hires based on religion to participate even in federal programs that specifically prohibit religious job discrimination.

***Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S.Ct. 694 (2012)**

Brief Summary: In 1999, Cheryl Perich started teaching at Hosanna-Tabor Evangelical Lutheran Church and School. Her job duties included leading students in prayer and teaching a religion class several days a week, as well as teaching grade school art, science, social studies, and music. In 2004, Perich left on disability and returned in 2005. However, the school informed her that they had already found a replacement for her. Perich threatened to file suit. The school then fired her for “insubordination and disruptive behavior” because she had not turned to the church’s own dispute resolution method. The United States Supreme Court unanimously held that the suit should be dismissed on First Amendment grounds. The Establishment Clause prevents the government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own leaders.

Principle: This case provided a robust defense of the ministerial exception, which is a court-created protection for church autonomy. The broad ministerial exception allows a religious organization to take any factor into account when hiring for a “ministerial” role within the organization, including the person’s race, sex, ethnicity, etc. This freedom is different than the Title VII religious hiring freedom discussed in the book—a freedom that extends to all positions within a religious organization but does not permit job discrimination on bases other than religion.