

FAITH-BASED INITIATIVES: CONSTITUTIONALITY AND EMPLOYMENT IMPLICATIONS

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ABSTRACT

Passage of faith-based aid to religious charities appears imminent and government barriers to faith-based organizations competing for government funding have been removed by executive order. The impact of these changes should be significant because today many thousands of religious organizations exist, employing several million workers. This article reviews the constitutional and employment implications of actual and contemplated initiatives that would provide such organizations with federal aid for nonreligious activities. In general, aid to religious organizations has been deemed constitutional as long as it is appropriately tailored and the religious organization meets certain guidelines. Faith-based organizations may discriminate based on religion when selecting those involved in ministerial positions. However, with respect to other positions, they cannot discriminate based on sex, race, age, etc. unless it is consistent with their religious beliefs. Thus their "right to discriminate" may not be much greater than that allowed to nonfaith-based organizations.

Soon after his inauguration, President George W. Bush proposed that federal funds be provided to religious entities, because so many services they provide afford vital assistance to the needy and disadvantaged. These initiatives have long been suggested for a variety of other reasons as well: to utilize an existing social support pipeline and forgo additional government bureaucracy, to redress a perceived government bias against religious programs [1], to tap religious organizations'

ability to provide assistance that the government cannot [2], and to expose the disadvantaged to values espoused by various religions that are seen by many as central to the creation of successful families, good citizens, and a vibrant nation.

To this end, President Bush introduced legislation in early 2001 that would provide federal aid to religious charities. In addition, in January 2001 he issued Executive Order 13198, delineating federal agency faith-based responsibilities, and in late 2002 he issued another executive order that removed many of the barriers faith-based organizations encountered when competing for federal grants and contracts [3, 4].

While the debate has raged for some time, the newly elected Republican majority in Congress is more likely to pass legislation that will provide federal tax dollars for religious charity programs. Precise figures are hard to come by, but of the 1.37 million tax-exempt organizations registered with the IRS in 1998, approximately 733,790 were religious charities [5] and thousands more religious groups do not apply for an IRS exemption unless there is a need for a ruling [5]. This number may exceed an additional 340,000 organizations [6].

Whatever the actual figure, it is clear that the proposed legislation will have employment implications for millions of workers who seek employment in the non-profit domain. Many articles have even stated that allowing faith-based charities access to federal grants would create serious employment implications such as religious organizations being able to discriminate as they wish in employment [4, 7, 8]. But comparatively few articles have clearly explained the basis for this form of discrimination and fewer still have closely examined the legal history and constitutional implications [9]. This article examines those constitutional and employment implications.

CONSTITUTIONALITY

The First Amendment to the Constitution commands that there be “no law respecting an establishment of religion” [10]. However, the Constitution’s authors did not precisely define what this actually allows or prohibits. The Supreme Court has said that, “total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable. . . . Judicial caveats against entanglement must recognize that the line of separation, far from being a ‘wall’ is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship” [11, at 603]. To determine where that blurred barrier is eventually crossed, the Supreme Court examines “three main evils against which the Establishment Clause was intended to afford protection: sponsorship, financial support, and active involvement of the sovereign in religious activity” [12, at 666]. Specifically, the Court in *Lemon v. Kurtzman* enunciated a three-pronged test for a statute to pass constitutional muster. First, it must have a secular purpose. Second, it must have a principal or primary effect that neither advances nor inhibits religion, and third, must not foster an excessive

government entanglement with religion [11, 13]. Employing this analysis the Supreme Court has both denied and allowed aid to faith-based organizations.

Failing the Lemon Test

In *Lemon*, the Court struck down direct financial aid to religious schools as excessive government entanglement with religion [11]. In this case, Rhode Island had provided salary supplements to teachers of secular subjects in nonpublic schools, and a Pennsylvania law had allowed nonpublic schools to be reimbursed for costs of teachers' salaries, textbooks, and instructional materials in secular subjects [11]. These actions were denied in large part due to the intrusive efforts it would take by the state to ensure that tax dollars did not support religious instruction and the difficulty in showing that aid was not being used for religious inculcation. The Court went on to say that, "the Constitution decrees that religion be a private matter for the individual, the family, and the institutions of private choice . . ." [11, at 607]. This latter quote becomes a guiding principle for meeting the Lemon test in later decisions that grant aid to faith-based institutions.

Fifteen years later, the use of federal funds to pay for the salaries of public employees who taught in New York City's parochial schools was disallowed in *Aguilar v. Telton*. The Supreme Court felt that, "the pervasive monitoring by public authorities in sectarian schools (to ensure teachers in these schools were not conveying religious messages to their students) infringes precisely those Establishment Clause values at the root of the prohibition of excessive entanglement" [14, at 404].

About the same time, the Court struck down a law that would provide federal grants for capital spending as long as there was a proscription on use for religious purposes for a 20-year period. The Court felt that after the expiration of the religious prohibition the federal grant would then have the effect of advancing religion [15]. In *Committee for Public Education and Religious Liberty v. Nyquist*, the Court found that unrestricted direct money grants for maintenance and repairs to religious institutions and tuition grants to low-income families (this was not available to parents of students attending public schools) had the primary effect of advancing religion. The Court did not agree that, a mere statistical judgment would suffice as a guarantee that state funds would not be used to finance religion [16], even though the overwhelming majority of private schools in this case were sectarian.

Passing the Lemon Test

The Supreme Court has approved a number of state and federal programs that funnel aid to religious institutions. In 1983, the Court approved Minnesota's tax deduction for education that included payments to sectarian schools [17]. The Supreme Court agreed with the district court's holding that "the statute was neutral on its face and in its application does not have the primary effect of either

advancing or inhibiting religion” [17, at 388]. Importantly, the tax deduction assisted families regardless of the type of school attended. It was also only one of many deductions allowed by the state, and any payment to a particular school was based on the private choice of individual parents.

In *Witters v. Washington Department of Services for the Blind*, the Court found no problem allowing the State of Washington to extend vocational rehabilitation assistance to a blind individual studying at a Christian College [18]. The program was neutral on its face (or secular in nature), in that it was intended to rehabilitate the disabled in an area of study of their choice, even though the recipient in this case was pursuing a religious vocation. The Court noted, “that the Establishment clause is not violated every time a money previously in the possession of the State is conveyed to a religious institution. It is equally well-settled, on the other hand, that the State may not grant aid to a religious school, whether cash or in kind, where the effect of the aid is that of a direct subsidy to the religious school from the State” [18, at 482]. In the *Witters* case, the Court further noted “that any aid provided under the Washington program that ultimately flows to religious institutions does so only as a result of genuinely independent and private choices of aid recipients . . . and is no way skewed towards religion” [18, at 482].

In *Zobrest v. Catalina Foothills School District*, the Supreme Court reversed a lower court decision denying a person who had been blind since birth from being provided a sign-language interpreter (paid for by the government) to accompany him to classes at a Roman Catholic school [19]. Writing for the majority, Chief Justice Rehnquist emphasized that, “we never said that religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs. For if the Establishment Clause did bar religious groups from receiving general government benefits, then a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair” [19, at 2]. Moreover, the Court pointed out that parents were free to choose the school of their choice, albeit in this case their private choice was a sectarian school. Additionally, the federal program (Individuals with Disabilities Education Act) created no financial incentive to choose a sectarian school over one that was not, and the aid was dispensed to individual handicapped children and not to a particular religious organization.

In *Bowen v. Kendrick*, the Court also reversed a lower court ruling, which had disallowed federal grants to public or nonprofit private organizations (religious organizations were also eligible for grants) under the Adolescent Family Life Act (AFLA) for services and research in the area of premarital adolescent sexual relations and pregnancy [20]. The Court found that AFLA had a legitimate secular purpose the elimination or reduction of social and economic problems caused by teenage pregnancy and parenthood, and that Congress intended broad-based community involvement. The Court also found it sensible that Congress recognized that religious institutions influence values and family life but went on to say, “to the extent that this Congressional recognition has any effect of advancing

religion, the effect is at most incidental and remote” [20, at 594]. The Court also pointed out that where a program is neutral on its face and a wide variety of organizations can receive funding, there is nothing to prevent religious institutions from being barred from participation [20]. Moreover, the Court did not see normal grant monitoring (ensuring that grant money was spent as Congress intended; both sectarian and nonsectarian organizations received such monitoring) as excessive government entanglement with religion [20].

In 1997, the Supreme Court, in effect, reversed *Aguilar*, which had found New York City’s payment of salaries in parochial schools to be unlawful [14], when it ruled that “a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis (nonsectarian schools were also eligible for federal funding) is not invalid under the Establishment Clause when such instruction is given on the premises of sectarian schools by government employees pursuant to a program containing safeguards such as those present in this situation” [21, at 213]. Notably, because monitoring was not as pervasive as in *Aguilar*, unannounced monthly visits of public supervisors to prevent and/or detect religious teaching were not viewed by the Court as excessive entanglement of government and religion.

Most recently, in June of 2002, the Supreme Court approved an Ohio voucher assistance grant system that was open to both religious and nonreligious schools [22]. In issuing the Court’s opinion, Chief Justice Rehnquist noted that the program “was enacted for a valid secular purpose of providing educational assistance to poor children in a demonstrably failing public school system, was a program of true private choice that did not have the effect of advancing religion, was neutral in all respects toward religion, in that it conferred educational assistance directly to a broad class of individuals without reference to religion, and permitted the participation of all schools, religious or nonreligious, within the district” [22, at 2468].

PRESENT FAITH-BASED INITIATIVES

Many faith-based proposals were presented by the president and others to Congress from early 2001 through the fall of 2002. It is still cloudy as to what final form the faith-based legislation will take (presently a combination of tax incentives and grants) [23]. However, the Lemon test tells us that the legislation must possess a nonsectarian purpose such as providing assistance to the needy. Furthermore, its funding should be open to both sectarian and nonsectarian institutions, and any earmarked funds should usually be funneled directly to private citizens who in turn make private, individual choices as to where to spend those funds. In fact, as long as the Charity Aid, Recovery, and Empowerment Act or “CARE Act” (current faith-based bill before Congress) is similar to the voucher system in *Zelman* there should be little problem in its constitutionality [1].

The president's executive orders allowing faith-based charities to contend more for federal grants and contracts also appear to pass constitutional muster. They are neutral on their face in that both secular and nonsecular organizations are eligible for funds. They do not foster religion, in that the orders explicitly bar organizations from using the public funds provided to support religious activities such as worship and religious instruction [4]. Religious organizations are allowed to maintain a religious tone and iconography (so long as not used to advance religion).

However, as the Supreme Court has noted that the barrier between government and religion is blurred and indistinct [11] and clearly our culture and even government related rituals such as the Pledge of Allegiance, oaths of office, etc. abound with religious icons and references. So, there should be no problem in this regard. Further, the monitoring needed to enforce these specifications should be constitutional, since the Supreme Court has previously stated that supervision of government grants (and the like) does not excessively entangle government and religion [21].

With respect to employment considerations, the current civil rights statutes in the United States sometimes exempt religious organizations from their coverage and sometimes do not.

Requirements of Religious Organizations

The first requirement of all federal civil rights laws is that in order for a particular statute to cover an employer, the employer's business (secular or nonsecular) must affect interstate commerce; if it does not, it is exempt [10, 24, 25]. Many religious organizations are quite small and self-contained within a small geographic area [26], much akin to "Mom and Pop" operations. Hence, a goodly number would likely be exempted from employment related laws despite their ties to religion.

Next, in order to qualify as a religious organization and the protections provided by the Establishment clause, such entities must hold themselves out to the public as providing a religious environment [27, 28], be organized as nonprofit [25, 27, 28], and be affiliated with, owned, operated, or controlled directly or indirectly by a recognized religious organization, or with an entity, membership of which is determined, at least, in part, with reference to religion [25, 27, 28]. To establish this, the religious organization's primary duties must consist of teaching, spreading the faith, church governance, supervision of religious instruction, and participation in religious ritual or worship [29]. It is usually necessary (but not always) that a qualifying religious entity's stated purpose be one of a sectarian nature [28]. While each case is decided on its own merits, one of the key principles that qualify organizations for the religious exemption seems to be whether a particular entity is wholly or partially owned by a church [30, 31]. Organizations claiming to be religious but lacking any religious content are considered secular in

nature and are not entitled to protections under the Establishment clause nor Title VII's religious exemption, discussed below [32].

RELIGION AND THE CIVIL RIGHTS ACT

Section 702 of the Civil Rights Act of 1964 as amended explicitly states that its prohibition on religious discrimination:

shall not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with carrying on by such corporation, association, educational institution, or society of its activities [33].

This means that religious entities are permitted to make employment decisions based on a person's religious values and related conduct. In its landmark ruling on the subject in 1987, the Supreme Court upheld the constitutionality of the Section 702 exemption under the Lemon test and provided guidance as to the type of discrimination that is permissible under this exemption [34].

In *Amos*, a custodial worker working at a nonprofit facility (gymnasium) which performed activities on behalf of the Church of Jesus Christ of Latter-day Saints (Mormon) was discharged for failure to qualify for "temple recommend." This status is granted to those who observe church standards such as regular church attendance, tithing, abstinence from coffee, tea, alcohol, and tobacco. While the gym was owned and managed by the church, there was no connection between the primary function of the gym and Mormon beliefs or tenets, and the worker's duties were not even tangentially related to any religious belief of the Mormon Church. Nevertheless, the Supreme Court felt that it was not up to a secular court to determine what activities were or were not religious under the 702 exemption and ruled for the church, holding that it was Congress's intent to minimize government interference with the decision-making process in religions organizations [34].

This case indicates that any employee, regardless of the nature of his/her work, in any type of religious organization can be discharged, etc. based on his/her religious beliefs and practices (or lack of such beliefs and practices). Reinforcing this decision, a rejection on the basis of not being a Christian Scientist was even upheld for a reporter's position with the Christian Science Monitor [35] and a termination was allowed to stand when a non-Catholic elementary teacher would not modify her conduct to conform to Catholic mores at a church-operated school [36].

Sexual Preference and Title VII

A recurring argument against faith-based initiatives and the organizations that might take advantage of the Section 702 exemption is that it allows said organizations to discriminate on the basis of different sexual preference [7] when it is

contrary to the religion's teachings. This implies that other nonreligious organizations in the private sector cannot discriminate based on sexual preference (affinity orientation). This could not be further from the truth. Affinity orientation is not a protected category under Title VII (although it can be under state law) of the Civil Rights Act [37]. The circuit courts have also made similar rulings on affinity orientation [38-40]. Furthermore, since sexual preference is not a protected class under Title VII, faith-based institutions would not even have to prove that such discrimination is related to their religious mores. However, the other protected classes under Title VII are another matter altogether.

Other Protected Classes

The federal appeals courts have generally taken the position that Title VII does not confer upon religious organizations a license to discriminate on the basis of race, sex, national origin, or pregnancy [41-44]. In a case involving a Baptist college and black female psychology professor, the Fifth Circuit remanded a portion of the civil action to ascertain whether her rejection for a teaching position was based on religion or sex/race considerations (if sex or race based then she would prevail) [44]. The Appeals Court found that, Title VII did not bar the EEOC from investigating her allegations that the college engages in class discrimination against women and blacks [44] (*cert. denied*) [45].

However, a religious organization's discriminatory practices may overcome Title VII's provisions under Section 702 if it can demonstrate that its actions were related to its religious tenets. For instance, in *Boyd v. Harding Academy* (affirmed on appeal) all faculty members were required to be Christians (preference given to Church of Christ members) and generally subscribe to various religious tenets, including a ban on sex outside of marriage [46, 47]. Boyd's employment was terminated when the school learned that she was both unmarried and pregnant. Because the school had consistently terminated employees who had become pregnant outside of marriage, the courts sustained its religious based policy [47].

Bona Fide Occupational Qualifications

If for some reason, a religious-related entity fails to convince the court that it meets the stipulations of Section 702, it may use the bona fide occupational qualification (BFOQ) exemption allowed any secular organization under Section 703 of the Civil Rights Act (or it may use this defense in conjunction with the 702 exemption, as many do). Section 703 allows discrimination based on religion where religion is a necessary BFOQ to the normal operation of the business [48].

In *Pime v. Loyola University*, the school reserved three tenure track teaching positions for Jesuits. Even though over 90 percent of the staff were non-Jesuits, the courts allowed the BFOQ defense because there was evidence that a Jesuit "presence" was important to the successful operation of the university [49]. In a somewhat unusual case, being a Muslim was upheld as a BFOQ for pilots of

Dynalectron (a nonreligious entity) who flew passengers into and over the holy area, Mecca. To be a non-Muslim would have violated Saudi Arabian law [50]. In *Dolter v. Wahlert High School* (Roman Catholic), the courts upheld a BFOQ termination of an unmarried teacher who became pregnant contrary to moral teachings of the church [51].

Ministerial Capacity

None of the nondiscrimination safeguards on the basis of sex, race, color, or natural origin are extended to those working in a “ministerial capacity” [24]. The Supreme Court views any attempt by government to restrict a church’s free choice of its leaders as a burden on the church’s free exercise of its religious rights [52, 53]. Besides, to subject church employment decisions concerning positions of ministerial capacity to government scrutiny gives rise to “excessive government entanglement” with religious institutions which is forbidden by the Establishment Clause [41]. The Fourth Circuit has defined “ministerial capacity” as someone whose “primary duties consist of teaching, spreading the faith, church governance, supervision, of a religious order, or supervision or participation in religious ritual or worship” [41, at 1168] (*cert denied*) [54].

This definition is important for faith-based charities because a variety of nonprofit religious jobs might fall within this definition such as a deacon, bible study leader, a lay eucharistic minister, singles group leader, or some other church leadership position. Positions such as clerks, janitors, organist, and vocalist would likely not be viewed as being in a ministerial capacity since they do not supervise religious worship. In *Rayburn*, for example, sex and race discrimination was waived by the Fourth Circuit involving an associate in pastoral care [41]. The employee was not an ordained minister but held a leadership role with regard to church related activities. Most of the employee’s duties involved acting as a counselor to the singles group, serving as a church liaison, leading Bible studies, and occasionally preaching from the pulpit. Such people could conceivably be given the additional duties of running faith-based funded, charitable operations.

RELIGIOUS DISCRIMINATION UNDER OTHER EMPLOYMENT LAWS

By now it should be clear that faith-based operations are subject to other federal civil rights laws such as the Age Discrimination in Employment Act and the Americans with Disabilities Act. Moreover, many states have their own employment laws as well and often have additional protected classes. For example, Connecticut provides protection from discrimination based on sexual orientation (one of only seven states that protects homosexuals: California, Hawaii, Massachusetts, Minnesota, New Jersey, and Vermont are the others) [55]. Under the

Establishment Clause or exemptions clauses sometimes included in these acts, religion can generally be excluded from coverage by these laws if the religion can produce evidence that its religious beliefs are related to the discriminatory practice. However, it should be rare that a religion's beliefs would lead it to discriminate on the basis of such factors as age or disability.

There is one employment law that does not cover religious organizations. The Supreme Court in *National Labor Relations Board v. Catholic Bishop* involving teachers in schools operated by a church to teach religious and secular subjects ruled that such teachers are not included under the confines of the National Labor Relations Act [25]. In *Great Falls v. NLRB*, an appeals court made a similar ruling. In *Great Falls*, where the National Labor Relations Board was attempting to determine if it had jurisdiction, the District of Columbia Circuit of Appeals noted, "that it is not the government's business to be trolling through the beliefs of a religious institution to determine if it is sufficiently religious" [28, at 1339]. Consequently, workers in faith-based organizations are not granted the right to organize for collective bargaining purposes.

Off the Job Considerations

Religious entities may regulate off-duty-conduct to the extent that it conforms to the religion's prescriptions [34]. This may seem that faith-based organizations enjoy much greater freedom to discriminate as compared to private sector firms with respect to off the job behavior. However, the vast majority of private sector companies are in employment-at-will states which allow them to discriminate with respect to off the job behavior (in these states religious entities may discriminate as well). However, this right is limited by 21 states in varying degrees [56]. For example some states only protect off duty use of tobacco products and a few such as Montana require a job-related reason for any adverse employment action related to off-duty conduct.

In addition, federal and state case law protects individual privacy and free speech rights off the job except in certain job-related situations [57, 58]. Private sector organizations sometimes further limit themselves through company policies that only allow job-related employment actions (e.g., discipline, etc.). It should be pointed out that faith-based entities, other than for religious-based conduct, are subject to the same restrictions.

CONCLUSIONS

It appears that faith-based charity programs funded by the government are constitutional as long as they follow the principles outlined herein. Mainly, any such legislation must possess a nonsectarian purpose, be open to both sectarian and nonsectarian institutions, and funds should go directly to private citizens who can then choose where to spend those funds.

Any monies directly attained by faith-based organizations cannot be used to foster religion and the government may monitor those grants in such a way as to ensure compliance. However, faith-based charities can make use of religious references and icons.

Despite the stated unease of some public figures, religious organizations cannot discriminate as freely as one might assume. They can discriminate on the basis of sexual preference (absent a state law to the contrary) but so can nonreligious organizations. They can discharge employees without just cause. But so can other employers in “employment-at-will” states [55]. Faith-based organizations may also discriminate based on religion off the job but this is not far different than the rights granted private sector firms in “employment-at-will” states. Additionally, a large percentage of faith-based charities are rather small operations involving just a few employees [26]. Consequently, these faith-based operations are not subject to the provisions the Civil Rights Act (it requires at least 15 employees) [59]. But, this is no different than the other more than 65 percent of private employers [60] that also have 15 or fewer employees.

But religious organizations are free to discriminate in choosing those delegated duties of a ministerial nature. However, this is not much different than allowing sovereign powers under treaty with the United States to discriminate in executive selection. Japan, for example, whose companies operate businesses in the United States and engage the service of thousands of workers, is allowed by treaty to discriminate on the basis of citizenship (thereby escaping the Civil Rights Act and other civil rights laws) when selecting executives (Japanese citizens) who are employed in the United States [61].

Moreover, all private enterprises, even those receiving federal funding, under most present civil rights laws may discriminate against protected classes as long as it is consistent with business necessity. For example, in a recent case, *Healey v. Southwood Psychiatric Hospital*, the hospital assigned shifts based on sex [59]. The courts upheld this discriminatory action because troubled adolescent patients, many of whom had been sexually abused, respond better to a female [62].

In general, faith-based organizations can discriminate based on religious values and rituals but cannot discriminate based on race, color, sex, national origin, age, etc. except where it is consistent with a religion’s tenets or is necessary for successful operations of the business (profit or nonprofit). While it is difficult to imagine that some religions would possess religious beliefs that would force them to discriminate in such a manner, it is not beyond the realm of possibility, especially when one considers that there are some 1500 religions in the United States [63].

Even then, the Supreme Court has ruled that there are limits to religious expression, in that some religious attitudes may result in “socially harmful conduct” contrary to the public’s interest [64]. For example, in *Employment Div. v. Smith*, the Supreme Court upheld an Oregon law permitting denial of unemployment

compensation to several Native Americans. They were terminated from their drug rehabilitation jobs for using peyote, even though peyote was a part of their religious ritual [61]. Similarly, in *Reynolds v. United States*, the Court upheld a polygamy conviction of those practicing the Mormon faith (one of their religious tenets) [65]. The courts may find religious mores that discriminate against protected factors such as race or disability so extreme in degree as to be contrary to the public's interest.

Moreover, although there is no such provision in the bill that is now being considered, Congress may require that faith-based organizations receiving federal funds do not discriminate in employment based on sexual preference, religion, age, race, etc. A similar stipulation requiring participating schools to agree not to discriminate on the basis of race, religion, or ethnic background was inserted into the recent Ohio voucher assistance grant system which the Supreme Court allowed to stand [22]. In which case, all of the contentious debate and gnashing of teeth over faith-based organizations' ability to discriminate would have been for naught.

Turning to the recently issued executive order, the discriminatory impact might be far less than its critics claim. While charitable organizations receiving federal grants or contracts may discriminate based on religion, they are still limited by the considerations mentioned in this article and the discrimination that is allowed to them is not far different from that already permitted to privately sector companies.

Moreover, these operations' (including "Mom and Pop" charities) freedom to discriminate may be restricted in that they must meet the same requirements as other private sector organizations accepting funding or contracts from the federal government. Any organization obtaining federal contracts over \$10,000 must conduct affirmative action under Executive Order 11246 [37], and not discriminate regardless of the number of employees it possesses. And, some state and local laws place more stringent conditions on receipt of public grants, such as prohibiting sexual orientation discrimination [66]. The executive order further prevents such organizations from using government monies to promote "inherently religious activities" such as worship, religious instruction, and proselytizing [67].

Basically, criticisms of faith-based initiatives are overblown. The government does not appear to be supporting or fostering religion any more than has been tolerated under the Constitution in the past. There should be no measurable increase in employment discrimination because the religious discrimination that is permitted under the Constitution and other laws is similar to the coverages and the job-related exceptions granted private organizations under the Civil Rights Act and comparable legislation. Moreover, faith-based organizations may fear that accepting public contracts and grants will limit their religious and employment practices and they may prefer to avoid governmental assistance when funding their charities.

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