

CAPITAL COMMENTARY

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Religious Staffing—2, Opponents—0

Although you'd hardly know it from the major media, the faith-based initiative recently won a huge victory in court, on exactly its most disputed point. For years, opponents have targeted religious staffing, calling the initiative a mere cover for "government-funded job discrimination." They've claimed that the Constitution and the courts ban faith-based organizations from considering employees' faith when government funds are involved. They got their court decision on September 30—but it went the other way.

The federal case was brought by the New York affiliate of the ACLU against the Salvation Army on behalf of some current and former staffers, who objected strenuously when a program began stressing its religious mission and the need for employees to support that mission. This must be unconstitutional job discrimination, the suit charged, because 95% of the program's funding was from government.

The federal district judge, Sidney Stein, didn't buy it. His decision mowed down the arguments, one by one. Federal, state, and local law all exempt the Salvation Army, as a faith-based organization, from the general ban on religious job discrimination, and that exemption was not forfeited when the Salvation Army accepted government funds. The money didn't turn this Army into a branch of government. Neither was the government aiding the Salvation Army to carry out illegal job discrimination, because its religious staffing was an exercise of its constitutionally protected religious liberty. Nor did the government unconstitutionally "establish" religion by contracting with the Salvation Army: the employment decisions were the Army's, not the government's. The government was merely accommodating the Army's religious liberty.

This was, as the Roundtable on Religion and Social Welfare Policy said, a "momentous victory" for the faith-based initiative. But, of course, the story isn't over yet. The decision, despite its careful arguments and solid precedents, may be appealed. Furthermore, while Judge Stein upheld the constitutionality of

religious staffing by government-funded religious organizations, he did not say that the government must allow the practice. In fact, although most federal laws, and many states and cities, do not require faith-based organizations that receive grants or contracts to give up religious staffing, sometimes that is the price of the government money.

And, as a battle in the House of Representatives the previous week showed, opponents are animated by something more than constitutional concerns in bitterly challenging religious staffing. That battle was about removing the ban on religious staffing in Head Start. Supporters of ending the ban wanted to remove a barrier that prevents some faith groups from operating Head Start programs. An exemption in the 1964 federal Civil Rights Act permits religious staffing, they pointed out. Why should the Head Start law ban it?

Opponents, alas, have taken to arguing the opposite. Their main argument these days is this: government support of an organization that practices religious staffing is wrong because the government must not subsidize evil—what one Congressman labeled "this most reprehensible form of discrimination." In their view, if the government allows the Salvation Army to ensure that all of its employees respect its Christian mission, then the government, far from accommodating religious liberty—that was the judge's view—is instead conniving in "bigotry and discrimination."

So much for the religious liberty of faith-based organizations! Fortunately, the House voted yet again to uphold religious staffing by religious organizations that collaborate with government. But isn't it time for believers, and every other citizen, to challenge those Members of Congress who keep claiming that it is rank bigotry for a faith-based organization to want all of its staff to be dedicated to its religious mission?

—Stanley W. Carlson-Thies
Director of Social Policy Studies

The Center for Public Justice

P.O. Box 48368 * Washington, DC 20002 * 410-571-6300 * Fax 410-571-6365 * www.cpjustice.org *
capcomm@cpjustice.org

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