

# report PUBLIC JUSTICE

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## **The Authority on Faith-Based Hiring Rights**

The most authoritative explanation of, and argument for, the freedom of organizations to hire staff members on a religious basis has just been published. The book is *The Freedom of Faith-Based Organizations to Staff on a Religious Basis*, written by Carl H. Esbeck, Stanley W. Carlson-Thies, and Ronald J. Sider (Center for Public Justice, 2004; ISBN 0-936456-04-3; paper, \$10).

Carlson-Thies, the Center's director of social policy studies, helped to design the White House Office of Faith-Based and Community Initiatives at the start of the George W. Bush administration in 2001. Esbeck, a professor of law at the University of Missouri-Columbia, served at the same time as director of the Task Force for Faith-Based and Community Initiatives in the U.S. Department of Justice. And Sider, a professor at Eastern Baptist Theological Seminary and prolific author is the president of Evangelicals for Social Action (ESA). The book is now available from ESA ([www.esa-online.org](http://www.esa-online.org); 1-800-650-6600).

The 170-page book is the most comprehensive account now available of the laws that hold for faith-based organizations when cooperating with government. It is particularly helpful in illuminating and assessing the inconsistencies and ambiguities that exist in current laws and Supreme Court decisions.

Following an executive summary, the first chapter introduces the faith-based initiative and the controversy that has arisen over religious staffing. Chapters Two and Three discuss in detail the legislation and constitutional interpretations that affect religious staffing by non-government organizations. Chapter Four looks particularly at the circumstances of federal funds passing through state and local governments.

Chapter Five offers policy justifications for religious staffing rights, and Chapter Six offers recommendations and precautions for both government officials and faith-based organizations. The last chapter is not the end of the book, however, for there are nine appendices at the end that summarize laws and executive decisions that have been made in this area over the last decade.

A few excerpts from the Executive Summary and Chapter Six give the flavor of this important book—the only one of its kind on religious staffing rights.

“Section 702(a) of the Civil Rights Act of 1964 expressly acknowledges the freedom of religious organizations to staff with those of like-minded faith. . . .

“Safeguarding the freedom of religious organizations to staff on a religious basis does not increase unlawful job discrimination for women or those with alternative lifestyles.

“The underlying legislation that implements most federal social-service programs has no additional restrictions concerning the employment practices of independent-sector providers receiving federal grants. . . .

“The situation is more complex when federal funds flow first to state or local governments before being awarded to independent-sector providers. . . .

“If Charitable Choice is not applicable, then where state and local procurement rules prohibit hiring in a manner that takes faith into account, there is a conflict of two laws. . . . It is presently unclear how this clash between restrictive procurement laws and a religious charity’s federal rights and defenses will be resolved.”

“Employment discrimination is an evil that our society has not yet fully overcome. Religious staffing by faith-based organizations, on the other hand, is an expression of religious freedom and not a bigoted effort to limit people’s employment. It is a means by which many faith-based organizations seek to maintain their religious character, just as political or ideological organizations maintain their character by hiring only like-minded employees. Faith-based organizations that insist on religious staffing are not being intolerant. Remember that they desire only to preserve their ability to serve the needy in their own distinctive way.”

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