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## Brief History

In August of 1963, thousands of people gathered to march on Washington to urge the adoption of federal civil rights protections. Among their demands were an end to discrimination in the workplace and that federal funds be withheld from any agency which practices discrimination with those funds. The march laid the groundwork for monumental civil rights legislation, such as the Voting Rights Act and the Civil Rights Act.

When Civil Rights Act of 1964 was passed the following year, it became the most comprehensive legislation to achieve equal rights and protect citizens from discrimination. [Section 703 \(a\)](#)

of the Act made it unlawful for an employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges or employment, because of such individual's race, color, religion, sex, or national origin." Title VII however, makes exemptions for church groups and faith-based organizations, allowing them to discriminate in hiring practices in order to maintain their organization's integrity. This had traditionally referred to the actions of the organization while using its own money.

Both before and after the Civil Rights Act, Presidents throughout the past 60 years have used Executive Orders to strengthen federal anti-discrimination policy. On June 25, 1941, President Roosevelt signed an Executive Order that banned discrimination by defense contractors based on race, religion, color or national origin. Roosevelt's [Executive Order 8802](#) was the first to prohibit employment discrimination and marked the beginning of fair employment practices in the United States. These protections against employment discrimination were expanded by subsequent Presidents.

[Executive Order 11246](#)

, signed by President Johnson in 1965, expanded the prohibitions against employment discrimination to all government contractors, not just defense contractors. Every President of the United States since 1965 has enforced these Executive Orders. Over time, various civil rights laws were passed that contained similar prohibitions against discrimination and employment based on race, religion, color, national origin or sex. None of these Executive Orders affected the religious exemption set forth in Title VII, but they drew the separation between Church and State so that federal taxpayer money was not used to fund religious activity and discrimination based on religion was not permitted while using taxpayer dollars.

In the 1990s, then-Senator John Ashcroft created the concept known as 'Charitable Choice' during the drafting of the 1996 Welfare Reform Act. The concept altered existing law to permit taxpayer-financed social service funding of houses of worship in a few welfare programs.

This approach represented a radical change. In the past, government sometimes contracted with organizations such as Catholic Charities or United Jewish Communities to provide services, but safeguards were kept in place to protect the integrity of the groups and the interests of taxpayers. Houses of worship did not contract directly with the government; rather, religious institutions created separate entities (usually 501(c)(3)s) to handle public funds and did not incorporate religion into the publicly funded program. Further, Johnson's Executive Order had maintained safeguards against employment discrimination in these programs receiving taxpayer dollars.

President Clinton signed these Charitable Choice provisions into law but issued signing statements indicating that his Administration would not "permit governmental funding of religious organizations that do not or cannot separate their religious activities from [federally-funded program] activities" because such funding would violate the Constitution. In short, the Clinton Administration interpreted the provisions as being constrained by the constitutional mandates that prohibit the direct funding of houses of worship and government-funded employment discrimination. No federal money went to organizations that were pervasively sectarian, no money went to any organization with the Title VII exemption, and therefore no one could exercise discrimination using these funds while Clinton was President.

Under the Bush Administration, Charitable Choice was vastly expanded through a series of Executive Orders. In 2001, [Executive Orders 13198](#) and [13199](#) created and set out organizational guidelines for a White House Office of Community and Faith-Based Initiatives.

[Executive Orders 13280](#)

(2002),

[13342](#)

(2004), and

[13397](#)

(2006) mandated that the departments of Justice, Education, Labor, Health and Human Services, Housing and Urban Development, Agriculture, Commerce, Veteran Affairs, and Homeland Security, the Agency for International Development and the Small Business Administration all establish a Center for Faith-Based and Community Initiatives. In 2002, the most controversial Executive Order was issued –

[Executive Order 13279](#)

– which made it easier for churches and other faith-based organizations to receive federal money by letting them circumvent certain anti-discrimination laws. Under the umbrella of the Faith-Based Initiative, the Bush administration began allowing discrimination with federal money for the first time since the 1960s.

For decades, religious organizations have been providing social services, including in some cases with the use of government funds, without the Faith-Based Initiative. The fundamental differences between the Faith-Based Initiative and the long-standing legal provisions regarding faith-based organizations' participation are: (1) allowing proselytization during a secular, government-funded program; and (2) permitting employment discrimination with federal funds. Any program that could be federally funded under the Faith-Based Initiative could have been funded before it if the sponsoring organization agreed not to discriminate in employment and not to proselytize. Moreover, no religious organization has stated to Congress that it needs to be able to proselytize or discriminate in order to run a successful program. There has been a general consensus that proselytization with federal funds violates the First Amendment to the Constitution, but the issue of whether discrimination with federal funds should be permitted remains hotly debated.

## Recent Developments

During the 2008 campaign, President Obama said that he would not allow discrimination with federal money, unlike the Bush Administration. However, on February 5th 2009, when the Obama Administration unveiled its new [White House Office of Faith-Based and Neighborhood Partnerships](#), reversals of Bush's controversial policies were notably absent. Joshua DuBois, who has been appointed to lead the Office, stated that claims of discrimination will be investigated "on a case-by-case basis."

The policy of no discrimination in federal programs is a fundamental element of our civil rights strategy - if we fail to enforce civil rights in federal programs, we lose our moral authority to impose those laws on private employers who may be devoutly religious. With the troublesome Bush policies still intact, employment discrimination will continue. Because religious discrimination is explicitly allowed under the Faith-Based Initiative, there are other implications

for discrimination that also take place under the guise of religious discrimination. Many churches and faith-based institutions are ethnically and racially homogeneous. Where religious discrimination is allowed, it is difficult to ensure that racial discrimination is not also occurring. In addition, religious discrimination can also lead to discrimination based on sex.

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### Press

- [7.26.11 | Equality Matters Blog | Losing Faith In Obama's Pledge to End Taxpayer-Funded Employment Discrimination](#)
- [3.29.10 | Chicago Tribune | Help wanted, but only Christians need apply](#)
- [02.04.10 | | The Wall Street Journal | Faith Policies Part of Political Calculus](#)
- [02.03.10 | The Washington Post | Religious leaders worry that Obama's faith council is for show](#)
- [1.28.10 | The Washington Times | Op-Ed: Obama's Faith-Based Boondoggle](#)
- [1.11.10 | Global Post | Non-Christians Need Not Apply](#)
- [10.03.09 | LA Times | Op-Ed: Faith-Based Hiring](#)
- [09.15.09 | The Washington Post | Obama Cautious on Faith-Based Initiatives](#)
- [09.10.09 | USA Today | Obama's Faith-Based Panel: Talk, not Substance?](#)
- [04.20.09 | The Washington Post | Religious Hiring Taken Off Agenda](#)
- [03.01.09 | The New York Times | Op-Ed: Keeping the Faith, Ignoring the History](#)
- [02.18.09 | Anti-Defamation League | Press Release](#)
- [02.11.09 | The Washington Post | Op-Ed: Don't Use My Tax Dollars to Discriminate](#)
- [02.10.09 | Rainbow Push Coalition | Press Release, Rainbow Push Urges Separation of Church and State](#)
- [02.06.09 | Virginian Pilot | Plan to fund faith-based programs stirs backlash](#)
- [02.06.09 | Los Angeles Times | Obama upholds Bush faith policy](#)
- [02.06.09 | The New York Times | White House Office to Expand](#)
- [02.05.09 | The Wall Street Journal | Faith-Based Program Gets Wider Focus](#)
- [02.05.09 | Americans United for the Separation of Church and State | Press Release](#)
- [02.04.09 | NPR | Faith Initiative Caught Between Church, State](#)

### Letters

[Representatives Bobby Scott, Chet Edwards, Barney Frank, Jerrold Nadler, Melvin Watt, Lynn Woolsey, Carolyn McCarthy and Chris Van Hollen Letter to Chairman Henry Waxman](#): urging nondiscrimination standards in upcoming Substance Abuse and Mental Health Services Administration (SAMHSA) reauthorization [March 13, 2009]

[Anti-Defamation League Letter to President Obama](#) : expressing that federal funding of faith organizations should include essential constitutional safeguards for protecting religious organizations, beneficiaries, and the government [February 19, 2009]

[Representatives Bobby Scott and Carolyn McCarthy Letter to Attorney General Mukasey](#) : soliciting information regarding a 2007 Department of Justice Ruling that World Vision could discriminate on the basis of religion and maintain a federal grant under the Juvenile Justice and Delinquency Prevention Act [February 29, 2008]

[Representative Bobby Scott Letter to the Former President Clinton](#) : urging the Former President to speak out against Charitable Choice by reaffirming the Presidential signing statements [September 5, 2007]

## **Testimony**

[Representative Scott's Testimony before the House Rules Committee](#) : urging the acceptance of a non-discrimination provision in the text of HR 1, a multi-billion dollar recovery and reinvestment plan [January 27, 2009]

Representative Scott's [Floor Statement](#) during consideration of HR 1429 in the 110th Congress: speaking against an Amendment to allow employment discrimination in the Head Start program [May 2, 2007]

Representative Scott's [Floor Statement](#) during consideration of HR 27 in the 109th Congress: speaking in favor of an Amendment to prohibit discrimination in job training programs [March 2,

2005]

### **Administration Officials on the Issue**

2011 Testimony of Obama Administration officials when asked about the faith-based initiative and the ability of religious organizations receiving federal funding to discriminate in employment based on religion with the federal funds. Click on the links to watch video.

[March 28, 2012 - Secretary Duncan, United States Department of Education \(2:15:05\)](#)

[June 1, 2011 - Tom Perez, Assistant Attorney General for the Civil Rights Division of the United States Department of Justice \(1:22:02\)](#)

[May 5, 2011 - Secretary Sebelius, Department of Health and Human Services \(1:46:00\)](#)

Received May 24, 2011 from the Dept. of Health and Human Services as a follow-up to/clarification of the Secretary's response in the hearing on May 5th:

Grantees and contractors are typically the organizations operating programs funded by the Department. A variety of statutes and regulations address the hiring rights of HHS grantees and contractors, depending upon the program or kind of funding instrument involved. Most of those authorities apply Title VII of the Civil Rights Act of 1964 ("Title VII"), See, 42 U.S.C. § 2000e-1, which prohibits discrimination on the basis of religion when hiring but includes an exemption for any "religious corporation, association, educational institution, or society." Religious organizations that receive any HHS grants or contracts generally retain that

exemption after receiving the funds. Consequently, religious organizations that receive HHS awards may usually consider the religious orientation of persons that apply for employment provided that no other law applies.

May 3, 2011 - [Attorney General Holder, United States Department of Justice](#) (58:16)

[March 9, 2011 - Secretary Duncan, United States Department of Education](#) (2:17:50)

Received May 10, 2011 from the Dept. of Education in response to a further Question for the Record submitted by Rep. Scott:

*Are any programs permitted to discriminate based on religion using federal funds supplied, granted or otherwise given out by the Department of Education?*

The Education Department General Administrative Regulations (EDGAR) expressly provide that in the selection of grantees and contractors, the Department and grantees shall not discriminate for or against a private organization on the basis of the organization's religious character or affiliation and that private organizations that receive grants or contracts under Department programs may not discriminate against a program beneficiary or prospective beneficiary in the provision of program services on the basis of religion or religious belief. However, these regulations also provide that a religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion is not forfeited when the organization receives assistance from the Department or a grantee. Additionally, Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex, states "this section shall not apply to any educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization." See also the Title IX regulation implementing this provision at 34 CFR 106.12.

## **The Democratic Record**

### **The 2008 Democratic Party Platform:**

“We honor the central place of faith in our lives. Like our Founders, we believe that our nation, our communities, and our lives are made vastly stronger and richer by faith and the countless acts of justice and mercy it inspires. We believe that change comes not from the top-down, but from the bottom-up, and that few are closer to the people than our churches, synagogues, temples, and mosques. To face today’s challenges—from saving our planet to ending poverty—we need all hands on deck. Faith-based groups are not a replacement for government or secular non-profit programs; rather, they are yet another sector working to meet the challenges of the 21st century. We will empower grassroots faith-based and community groups to help meet challenges like poverty, ex-offender reentry, and illiteracy. At the same time, we can ensure that these partnerships do not endanger First Amendment protections – because there is no conflict between supporting faith-based institutions and respecting our Constitution. We will ensure that public funds are not used to proselytize or discriminate. We will also ensure that taxpayer dollars are only used on programs that actually work.”

### **The 2004 Democratic Party Platform:**

“We honor the central place of faith in the lives of our people. Like our Founders, we believe that our nation, our communities, and our lives are made vastly stronger and richer by faith and the countless acts of justice and mercy it inspires. We will strengthen the role of faith-based organizations in meeting challenges like homelessness, youth violence, and other social problems. At the same time, we will honor First Amendment protections and not allow public funds to be used to proselytize or discriminate. Throughout history, communities of faith have brought comfort to the afflicted and shaped great movements for justice. We know they will continue to do so, and we will always protect all Americans’ freedom to worship.”

### **The 2000 Democratic Party Platform:**

“Faith-based and community-based organizations have always been at the forefront in combating the hardships facing families and communities. Democrats believe it is time that government found ways to harness the power of faith-based organizations in tackling social ills such as drug addiction, juvenile violence, and homelessness. However, in contrast with the Republicans, Democrats believe that partnerships with faith-based organizations should augment – not replace – government programs, should respect First Amendment protections, and should never use taxpayer funds to proselytize or to support discrimination.”

### **The Clinton Administration Record on Charitable Choice**

**1996** – The Clinton Administration submitted amendments as part of its technical corrections package to Congress regarding concerns over the constitutionality of Charitable Choice provisions contained in welfare reform. They filed the following comments with the amendment:

“[P]rovisions of sec. 104 and its legislative history could be read to be inconsistent with the constitutional limits.... We recommend amending sec. 104 to clarify that it does not compel or allow States to provide TANF benefits through pervasively sectarian organizations, either directly or through vouchers redeemable with these organizations.”

Congress did not act on those amendments.

**1998** – The Clinton Administration issued a signing statement placing limitations on the Charitable Choice provisions contained in the Community Services Block Grant:

“The Department of Justice advises, however, that the provision that allows religiously affiliated organizations to be providers under CSBG would be unconstitutional if and to the extent it were construed to permit governmental funding of “pervasively sectarian” organizations, as that term has been defined by the courts. Accordingly, I construe the Act as forbidding the funding of pervasively sectarian organizations and as permitting Federal, State, and local governments involved in disbursing CSBG funds to take into account the structure and operations of a religious organization in determining whether such an organization is pervasively sectarian.”

**2000** – The Clinton Administration issued a signing statement placing limitations on the Charitable Choice provisions contained in the reauthorization of the Substance Abuse Mental Health Services Act (SAMHSA):

“The Department of Justice advises, however, that this provision would be unconstitutional to the extent that it were construed to permit governmental funding of organizations that do not or cannot separate their religious activities from their substance abuse treatment and prevention activities that are supported by SAMHSA aid. Accordingly, I construe the Act as forbidding the funding of such organizations and as permitting Federal, State, and local governments involved in disbursing SAMHSA funds to take into account the structure and operations of a religious organization in determining whether such an organization is constitutionally and statutorily eligible to receive funding.”