

Court Rules in Support of Religious Selection in Employment Decisions

On August 23, 2010, the United States Court of Appeals for the Ninth Circuit handed down a noteworthy ruling for any organization using religious criteria in making employment decisions. In this ruling, the court upheld the nonprofit World Vision's right to make employment decisions based on religion, determining that World Vision qualified as a religious entity entitled to make such decisions under Title VII of the 1964 Civil Rights Act.

World Vision is a Christian humanitarian organization unaffiliated with any particular church or denomination that works with children, families, and communities worldwide, primarily focusing on issues of poverty and injustice. World Vision clearly states and publicizes its religious hiring practices. For instance, its website includes this statement: *World Vision U.S. has the right to, and does, hire only candidates who agree with World Vision's Statement of Faith and/or the Apostles' Creed.*

In 2006, World Vision terminated three employees on the basis of their religious beliefs. Upon their hiring, each of the employees had agreed to the religious hiring criteria, submitting requisite statements of personal relationships with Jesus Christ and acknowledging agreement and compliance with World Vision's Statement of Faith, Core Values, and Mission Statement. When World Vision learned these individuals had subsequently denied parts of the Statement of Faith including the "deity of Jesus Christ" and the "doctrine of the Trinity," the organization terminated their employment. The three former employees then filed suit against World Vision in 2007, claiming World Vision had discriminated against them in their employment in violation of Title VII. After the district court granted summary judgment for World Vision, the former employees filed an appeal to the Ninth Circuit in 2009.

In their appeal, the former employees asserted that World Vision was primarily a humanitarian organization and not a religious one. Thus the issue before the Ninth Circuit Court was the determination whether World Vision qualified under the Title VII exemption permitting religion-based employment decisions by "[a] religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such [entity] of its activities."

In its ruling, the court's lead opinion states that an organization can qualify for the religious exemption under Title VII provided 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. A second opinion concurring with the ruling in favor of World Vision articulated a similar rationale, but would also require that an organization does not "engage primarily or substantially in the exchange of goods or services for money beyond nominal amounts." (The third member of the panel filed a dissenting opinion and would have found that the exemption applied only to "churches, and entities similar to churches.")

Based on its review of the record, the court determined that World Vision is primarily religious and satisfactorily qualifies for the Title VII religious exemption. The court went on to say:

World Vision is a nonprofit organization whose humanitarian relief efforts flow from a profound sense of religious mission. That mission is evinced in the organization's founding documents. Significantly, World Vision continues to act in accordance with those documents, and it explicitly and intentionally holds itself out to the public as a religious institution. While World Vision is neither owned by nor affiliated with a formally religious entity in the traditional sense, this does not preclude our finding that it is a "primarily religious" organization and thus eligible for section 2000e-1 exemption.

The court's decision is a positive affirmation of religious faith-based employment decisions. It also points, however, to the importance of clear articulation of religious purposes, and consistent conduct of activities furthering the religious purposes, by any organization asserting rights to utilize religious criteria in hiring. Given that it is likely the terminated employees will seek further discretionary review by a larger "en banc" panel of the Ninth Circuit Court and/or by the U.S. Supreme Court, any organization currently using religious criteria in employment decisions would be well-advised to review the court's three opinions and to continue monitoring the case for further developments.

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