

The Coalition Against Religious Discrimination

December 7, 2011

Eugene Schneeberg
Director
Office of Faith-based and Neighborhood Partnerships
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20002

Dear Mr. Schneeberg:

The Coalition Against Religious Discrimination (CARD), comprised of dozens of religious, civil rights, labor, secular, and women’s organizations, writes to seek information about how the Obama Administration determines whether religious organizations may discriminate when hiring for government-funded positions. Administration officials have repeatedly stated that the Administration makes this determination on a “case-by-case” basis, yet it has never explained the standard it applies or the process it uses for the analysis.

In 2008, then-candidate Barack Obama promised to restore anti-discrimination protections and end policies put in place by the George W. Bush Administration that permit the federal government to subsidize employment discrimination on the basis of religion.¹ Instead of reversing the Bush-era policies, however, various Administration officials have stated that hiring discrimination is now being reviewed on a “case-by-case” basis.² For example, Joshua Dubois, the head of the White House Office of Faith-based and Neighborhood Partnerships, explained that the President has decided that “[a]s issues arise out in agencies . . . we will consider them. We will work with the White House Counsel and with the Department of Justice, the Attorney General, to fully explore that individual case and make a recommendation to the President. At the end of the day, he will determine what he thinks the best path forward is.”³ Mr. Dubois

¹ In a speech on July 1, 2008 in Zanesville, Ohio, then-candidate Obama promised: “If you get a federal grant, you can’t use that grant money to proselytize the people you help and you can’t discriminate against them—or against the people you hire—on the basis of their religion.”

² *E.g.*, Jeff Zeleny & Laurie Goodstein, *White House Faith Office to Expand*, N.Y. Times, Feb. 6, 2009, at A14, <http://www.nytimes.com/2009/02/06/us/politics/06obama.html>; see also Lauren Markoe, *Critics Push Obama to Change Faith-Based Hiring Rules*, Religion News Service, June 22, 2011, http://www.usatoday.com/news/religion/2011-06-22-obama-religion-hiring_n.htm.

³ Joshua DuBois, White House Office of Faith-based and Neighborhood Partnerships, Remarks at the Pew Forum on Religion and Public Life: Government Partnerships With Faith-Based Organizations: Looking Back, Moving Forward (June 11, 2009), available at <http://pewforum.org/Social-Welfare/Government-Partnerships-With-Faith-Based-Organizations-Looking-Back-Moving-Forward.aspx> (DuBois Pew Remarks). Mr. DuBois has described this mechanism on other occasions. *E.g.*, Conference Call with Joshua DuBois, White House Office of Faith-based and Neighborhood Partnerships (Sept. 22, 2009), available at http://www.usaid.gov/our_work/global_partnerships/fbci/dubois_092209.html; Video: Religion & Ethics News

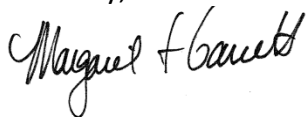
defended this process as one the Administration believes is “the best approach . . . to fully understand this issue.”⁴

More than two years since first announced, however, we know little about these case-by-case reviews. Thus, we seek transparency and information regarding the mechanism the Administration uses in these reviews.

- (1) What is the process for how your agency begins the “case-by-case” review of an organization that seeks to discriminate on the basis of religion with federal funds? Is there a process for a person who suspects federally funded religious discrimination is taking place to report a potential violation? To whom would they report? How are individuals informed of this process? Is there an appeal process? How are grants or contracts to these organizations handled during the review process?
- (2) What offices and components of your agency are involved in the “case-by-case” analysis and what are their roles in the review?
- (3) Utilizing a “case-by-case” analysis requires that the Administration have a set standard that applies to each case. What principles and criteria does your agency apply when developing a case for the White House Counsel, Department of Justice, and President to review?
- (4) If there have, in fact, been cases forwarded from your agency for review under this mechanism, (a) how many have there been; (b) what were the facts of those cases; and (c) what was the decision reached in each case? Have there been any cases reported to or reviewed by your agency that were not forwarded on under this mechanism?

We look forward to receiving answers to our questions and learning more about the case-by-case review process. We would be pleased to meet with you to discuss this issue further.

Sincerely,



Maggie Garrett
Chair of CARD
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