



The Religious Institutions Practice Group of Sidley Austin LLP

Sidley Austin LLP's nationwide Religious Institutions practice assists a diverse array of religiously affiliated organizations with legal issues and problems that uniquely affect those organizations. Churches, religious schools and universities, religious broadcasters, religious health care institutions, and religiously-affiliated philanthropic and community organizations have benefited from our depth of experience, not only with the constitutional and statutory protections for religion generally, but with many other features of the legal landscape that particularly affect these institutions.

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President Obama Establishes Advisory Council for Faith-Based and Neighborhood Partnerships

President Obama recently issued an Executive Order establishing the Advisory Council for Faith-Based and Neighborhood Partnerships. The Council is a modification of the White House Office of Faith-Based and Community Initiatives that previously was established by President Bush.

The Executive Order

On February 5, 2009, President Obama issued an Executive Order amending President Bush's Executive Order 13199, which, on January 29, 2001, established the White House Office of Faith-Based and Community Initiatives. The Obama amendments revised the policy statement of the Bush initiative to emphasize greater accountability for religious institutions receiving federal funds so as to ensure "measurable results in furtherance of valid public purposes." The Obama policy statement also highlights the importance of preserving fundamental constitutional guarantees such as equal protection, free exercise of religion, and forbidding the establishment of religion, while also empowering faith-based and neighborhood organizations to deliver community services.

Additional functions were integrated into the initiative such as training for service providers, better use of program evaluation, and monitoring the use of funds in a constitutionally permissible manner. Details were provided regarding the establishment, mission, and membership of the Advisory Council, which is to consist of 25 members with experience and expertise in fields related to the provision of social services by faith-based and other neighborhood organizations.

President Obama's Executive Order did not directly address the policy of the Bush administration permitting religious groups receiving federal money to make employment decisions on the basis of religion. The Order, however, does empower the Executive Director of the White House Office of Faith-Based and Neighborhood

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Partnerships, acting through the Counsel to the President, to seek the opinion of the Attorney General on any constitutional or statutory questions involving the program.

Religious Exceptions

Title VII of the Civil Rights Act prohibits employers from discriminating on the basis of race, religion, sex, or national origin. Sections 702 and 703(e), however, permit religious organizations to employ individuals based on their religion. The constitutionality of the religious organization exception was upheld by the United States Supreme Court in the case of *Corporation of Presiding Bishop of the Church of Latter Day Saints v. Amos*, 483 U.S. 327 (1987), a case in which the religious employer was represented by Sidley Austin.

The *Amos* case did not involve the receipt of federal funds. Consistent with *Amos*, regulations issued by the Office of Federal Contract Compliance in connection with the

implementation of Executive Order 11246, which generally prohibits federal contractors and sub-contractors from engaging in employment discrimination, including discrimination on account of religion, have long recognized the right of religious organizations to make employment decisions based on religion notwithstanding the receipt of federal funds. 41 CFR 60-1.5(a)(5) and (6).

Conclusion

President Obama's Executive Order sets forth the Administration's commitment to support programs provided by faith-based and neighborhood organizations. Moreover, the Executive Order does not address or resolve whether a faith-based organization's acceptance of federal funds would prohibit the religious organization from making employment decisions based on the religion of an applicant or employee.