

**Congress of the United States**  
**Washington, DC 20515**

February 29, 2008

The Honorable Michael B. Mukasey  
Attorney General  
The United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

Dear Attorney General Mukasey:

We are writing to request documents related to an October 2007 ruling by the Department of Justice allowing World Vision to receive a \$1.5 million grant under the Juvenile Justice and Delinquency Prevention Act program and to engage in religious employment discrimination contrary to statutory non-discrimination provisions. A recent op-ed by former Senior Counsel to the Deputy Attorney General at the U.S. Department of Justice, Carl Esbeck, published in *The Hill* newspaper details how the Department of Justice's recent approval of World Vision's request under the Religious Freedom Restoration Act (RFRA) circumvents the statutory religious non-discrimination provision that is contained in both the Juvenile Justice and Delinquency Prevention Act (42 U.S.C. § 5672) and the Omnibus Crime Control and Safe Streets Act (42 U.S.C. § 3789d(c)). A copy of the op-ed is attached for your review.

As Chairs of the respective Subcommittees that have jurisdiction over these programs, we accordingly request that you provide us with DOJ documents both related to and associated with this ruling, including any internal analysis from the Office of Legal Counsel and any documents provided to DOJ by World Vision. We would also like clarity as to whether DOJ intends to apply this ruling to other programs funded under its jurisdiction, and whether or not this ruling could be applied to programs funded by other federal departments or agencies. We respectfully request your response within two weeks of the date of this letter.

Should you have any questions regarding this request, please contact Ilana Brunner (Chairman Scott) at 202-225-8351 or Deborah Koolbeck (Chairwoman McCarthy) at 202-225-3725. We appreciate your attention to this matter.

Sincerely,



Carolyn McCarthy  
Chairwoman  
Subcommittee on Healthy Families and  
Communities  
United States House of Representatives  
Committee on Education and Labor



Robert C. "Bobby" Scott  
Chairman  
Subcommittee on Crime, Terrorism and  
Homeland Security  
United States House of Representatives  
Committee on the Judiciary

cc: The Honorable John Conyers, Chairman,  
U.S. House of Representatives Committee on the Judiciary  
The Honorable George Miller, Chairman,  
U.S. House of Representatives Committee on Education and Labor

## Religious liberty and the gay-equality movement

Contributed by Carl H. Esbeck  
October 30, 2007

What happens when a claim to religious liberty comes up against a powerful social movement for gay equality? In a recent determination by the U.S. Department of Justice, religious liberty came out on top on the basis of the Religious Freedom Restoration Act (RFRA).

Although DoJ as of late has been the gang that couldn't shoot straight, its ruling here is on target.

World Vision, a Christian world relief and community development organization, sought the ruling. In 2005, World Vision was awarded a \$1.5 million grant by DoJ to address an escalating gang presence and juvenile crime in Northern Virginia. The grant was awarded under the Juvenile Justice and Delinquency Prevention Act, which is subject to provisions of the Safe Streets Act. That Act requires grant applicants to give assurances that when using grant money the applicant will not discriminate on the basis of religion.

Like many evangelical and other conservative religious organizations, World Vision employs workers that are committed to its religious purposes. It is common among religious groups that are traditional in their beliefs to require that employees remain chaste, thus not engaging in extramarital sexual activity. It also means no homosexual activity.

Religious hiring had put World Vision in danger of losing the grant - but if RFRA were to apply, it would override contrary federal law.

The DoJ told World Vision it could keep the grant.

This clash of religious liberty with gay equality is a well-trod battlefield inside Washington's Beltway. The Workforce Investment Act, Head Start, and the Community Development Block Grant program have employee nondiscrimination provisions like that in the Safe Streets Act. By way of contrast, the "charitable choice" legislation passed under President Clinton in 1996, 1998 and 2000, protects religious hiring over state and local nondiscrimination laws. The fissure opened wide as attempts by President Bush in 2001 and 2002 to expand the faith-based initiative were blocked in the Senate over the issue of gay equality versus the right of religious charities to employ those of like-minded faith.

RFRA protects religious practices from substantial burdens that are imposed by the federal government. Religious charities have an interest in maintaining their religious character, and that character in turn is modeled to the poor and needy through its employees. The White House Office of Faith-Based and Community Initiatives published a booklet in June 2003 arguing that secular organizations receiving government grants freely hire based on their core mission, such as Planned Parenthood requiring that employees be pro-choice or Sierra Club asking applicants their view of global warming. Religious groups likewise cannot remain true to their founding purposes unless employees are aligned with the energizing core of the mission.

It is true that government-funded social services must be delivered without prayer, proselytizing or other specifically religious activities, all as required by the separation of church and state. So critics have argued that the delivery of government-funded services does not require an employee of a particular religion. The quip heard among Senate critics was: "An evangelical homeless shelter doesn't need an evangelical employee if all she is doing is ladling soup."

But the quip evidences an ignorance of religion. More to the point is Supreme Court Justice William Brennan's observation in a seminal 1987 opinion that religious charities often regard the provision of social services as a means of fulfilling religious duty and as providing a ready example of the life of faith they seek to foster. World Vision will tell you that its work in reducing gang violence and juvenile delinquency is successful among hard-to-reach adolescents because its employees credibly do what they do "in Christian love."

The common response to World Vision's request was that if it doesn't want restrictions on its hiring, then don't take the money. There was little doubt that the hiring restriction put enormous pressure on World Vision to recant on a central religious belief or lose the grant and with it the opportunity to help America's youth. And it is a close question whether a religious charity has a constitutional right to compete for grant money the same as any secular charity and yet not be burdened in its religious hiring. In the case of RFRA, however, Congress has already resolved the question. RFRA states that a "denial of government funding" on account of a grantee's religious practice can be a substantial burden.

Not all employment discrimination is the same. Disapproving of a job applicant because of her race is senseless and invidious. But one's religious beliefs speak to real and important differences about the meaning of life, which in turn shape one's vocational purposes and job performance. While the Constitution ascribes no value to racial discrimination, discrimination on the basis of religion is often protected as a matter of free exercise. One who has never disagreed with others about religion is not thereby tolerant, but is treating religious differences as trivial, as if religious beliefs do not matter. That is just a soft form of religious bigotry.

Two years after World Vision submitted its request for an RFRA ruling, DoJ has said that World Vision could keep the

\$1.5 million. The wheels of justice turn slowly at the Department of Justice, but this reasoned result, one that chooses liberty over forced equality, will serve to reinforce America's diverse and religiously plural society.

Esbeck is a law professor at the University of Missouri-Columbia and previously worked with the Department of Justice. He was not involved in the World Vision matter, which transpired after his employment at DoJ.