



July 21, 2011
Via email or facsimile

Dear _____:

Alliance Defense Fund (“ADF”), the Justice Foundation, and Liberty Institute would like to advise you of our recent religious liberty victory at the University of Texas at San Antonio (“UTSA”), and to urge you to take actions to rectify policies at your university that may place you in the same legal peril as UTSA. As set out below, our victory deals with the right of religious organizations to use the services and communication channels provided by career service centers at public universities to recruit and hire employees who share their religious beliefs.

Background

Our client, a non-profit, Christian organization named Adoption Priorities, Inc., exists for the purpose of promoting and facilitating adoption as a pro-life alternative to abortion. Adoption Priorities’ commitment to providing comprehensive adoption services is rooted in its biblically-based opposition to abortion. To maintain and further its religious commitments, Adoption Priorities only hires individuals who share its Christian beliefs, including its opposition to abortion, for those positions where adherence to these beliefs is required.

Adoption Priorities recently launched the Amaris Home project, through which it will provide assistance to expectant mothers by providing a safe and compassionate home in which they may reside during their pregnancy. Adoption Priorities hoped to hire “house parents” who would live at the facility, serve the needs of the residents, and act as Christian role models for, and provide Christian instruction to, the residents.

As part of their search for house parents, Adoption Priorities submitted a job announcement for posting at UTSA’s career services center. The announcement stated that Adoption Priorities was seeking a “pro-life married Christian couple” who would provide “care, oversight and spiritual guidance” to a group of up to four women living in the home. One spouse was required to have Christian ministry experience.

UTSA rejected the announcement, claiming that the requirements that applicants be pro-life and Christian were impermissibly discriminatory. UTSA relied on university policies that required employers to “comply with Equal Employment Opportunity regulations and related legislation in their recruitment and hiring practices,” and that prohibited employers from discriminating in their recruitment or hiring practices on the basis of, *inter alia*, religion.

ADF wrote a letter to UTSA, explaining that both Title VII of the Civil Rights Act of 1964 and the analogous Texas state statute exempt religious employers from their bans on religious discrimination, and that Adoption Priorities qualifies for these exemptions. The letter also stressed that UTSA was violating Adoption Priorities' First Amendment rights by rejecting the announcement. UTSA still refused to post the job announcement, and so ADF sent a "notice of claim" under the Texas Religious Freedom Restoration Act, V.T.C.A., Civ. Prac. & Remedies Code § 110.003. Subsequent communications between ADF attorneys and UTSA eventually led to UTSA deciding that Adoption Priorities qualified as a religious employer, and UTSA posted the job announcements in their original form.

Brief Discussion

UTSA made the right choice in posting Adoption Priorities' job announcements for a simple reason: the law compels them to do so.

Indeed, it violates the First Amendment for public universities to allow People for the Ethical Treatment of Animals to post jobs requiring adherence to a vegetarian diet, the Republican Party to post jobs open only to those committed to the Republican Party Platform, and the Texas Campaign for the Environment to post jobs requiring commitment to environmental change and reform, yet to prohibit religious organizations from posting jobs requiring adherence to their religious belief systems.

The First Amendment's Free Speech Clause protects the right of an expressive association to select its representatives based upon their adherence to the organization's viewpoints. *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). It violates this fundamental First Amendment protection for a public university to require religious organizations to abandon their right to associate with and hire persons who share their religious convictions as a condition to accessing the benefits provided by career service centers. This is especially true when nonreligious employers are permitted to require prospective employees to share their nonreligious views and access these same benefits.

The Free Speech Clause also prohibits public universities from excluding speakers from a speech forum based on the content or viewpoint of their speech. *Widmar v. Vincent*, 454 U.S. 263 (1981); *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819 (1995). The benefits and communication channels career service centers provide to employers for recruiting employees are forums for speech. Targeting employers for exclusion from these speech forums based on the religious nature of the employment qualifications listed in job postings is impermissible content- and viewpoint-based discrimination.

State law also prohibits public universities from excluding religious organizations from the benefits of career service centers based on the religious qualifications for jobs they desire to advertise. For example, Texas' Religious Freedom Restoration Act forbids the government from

substantially burdening a person's sincerely held religious beliefs, unless that burden is the least restrictive means of furthering a compelling government interest. Requiring religious organizations to abandon their constitutional and statutory right to recruit and select employees who share their religious beliefs as a condition to accessing the benefits of career service centers, while not requiring the same concession from nonreligious employers, imposes a substantial burden on the religious exercise of scores of religious organizations. No compelling state interest could justify such a deep intrusion into the internal affairs of religious organizations.

What the United States Supreme Court said of religious organizations in *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos* is particularly apt here:

[R]eligious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: "select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions. Religion includes important communal elements for most believers. They exercise their religion through religious organizations, and these organizations must be protected"

483 U.S. 327, 341-42 (1987) (citation omitted).

For this very reason, federal and state anti-discrimination laws exempt religious organizations from prohibitions on religious discrimination. *See* 42 U.S.C. § 2000e-1(a); V.T.C.A., Labor Code § 21.109. Such organizations are not "discriminating" when they select employees based on their religious beliefs, but rather are preserving their religious character and advancing their religious missions. To require religious organizations to abandon their right to make faith-based employment decisions would result in them no longer being religious. Yet this is precisely what UTSA was requiring of Adoption Priorities as a condition to gaining access to its career service center, and it was not within its legal power to do so.

Conclusion

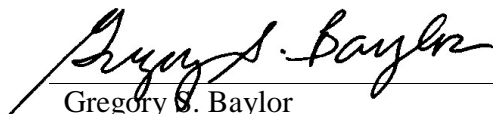
ADF urges you to review the policies at your university to determine whether on their face, or in their application, they require (or permit) the exclusion of religious employers from the benefits provided by your university's career service center. If so, you should take action now to amend those policies so as to eliminate the possibility of future legal liability. The easiest way to do so is to include an express statement affirming that: 1) religious organizations are exempted from any prohibition on discrimination in recruitment and hiring practices that burdens their religious freedom, or 2) religious organizations may utilize the benefits provided by career service centers to recruit and hire employees who share the organizations' religious commitments.

July 21, 2011
Page 4

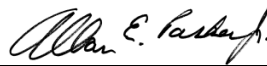
Not only is such a policy change legally required, it is also the right thing to do. Public universities should serve the interests of all of their students, which include many religious students who may desire to work at institutions affiliated with their particular religious beliefs and values. Eliminating religious employers from the pool of employers who may advertise at university career centers is a serious disservice to these students, and will likely be an enormous obstacle to them finding meaningful and fulfilling work after graduating.

Should you have any questions about this important matter, please do not hesitate to call me at 202-393-8690.

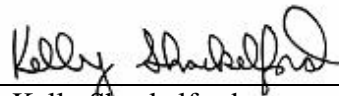
Sincerely,



Gregory S. Baylor
Alliance Defense Fund



Allan Parker
The Justice Foundation



Kelly Shackelford
Liberty Institute

Enc. ADF press release regarding UTSA victory

cc: The Presidents of each Texas Public College and University