

# The US Government Has Taken a Number of Actions That Restrict Religious Freedom

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 Listen 

Sarah Pulliam Bailey is the online editor for *Christianity Today*, a religious magazine.

The past year [2011] has marked a shift in religious liberty debates, one that previously centered on hiring rights but became focused on health care requirements. When President [Barack] Obama first took office [January 2009], **faith**-based groups were especially concerned that organizations that discriminate in hiring based on religious beliefs would become ineligible for federal funding. In 2011, the President indicated that he would not rescind an executive order on hiring rights. Just a week later, though, Health and Human Services ruled that religious groups other than churches must provide their employees contraception, triggering lawsuits and petitions. But contraception is not the only religious freedom issue **faith**-based groups are eyeing. The following timeline shows a number of actions the government took in the past year, setting precedents and priorities on various issues, including sexual orientation, health care, and hiring decisions.

## *Health care workers and the 'conscience clause'*

February 18, 2011: The Obama administration revises "conscience clause" rules, maintaining the provision that allows workers to refrain from performing abortions but calling the Bush-enacted rule "unclear and potentially overbroad in scope." The earlier provision was interpreted as allowing such workers to opt out of a broad range of medical services, such as providing Plan B or other contraception.

## *Defense of Marriage Act*

February 23, 2011: President Obama announced that the federal government would no longer defend the constitutionality of the Defense of Marriage Act. The move stemmed from the administration's decision that sexual orientation should be protected by the highest legal scrutiny afforded by the 14th Amendment. Neither the Supreme Court nor federal law has added sexual orientation to the list of characteristics especially protected against discrimination, like race, gender, or national origin. But the administration's efforts to add it could set a precedent. Many observers believe such an inclusion would allow the government to invoke a "compelling government interest" in forbidding **faith**-based organizations from considering some sexual ethics questions in employment decisions.

## *Prisons*

April 13, 2011: The Justice Department files a lawsuit against a county in South Carolina where a South Carolina sheriff was prohibiting inmates from getting devotional materials. The county eventually agreed to let inmates receive religious materials.

## *National Day of Prayer and courts*

April 14, 2011: A federal appeals court dismisses a lawsuit against the National Day of Prayer, overturning a 2010 U.S. District ruling that the day was unconstitutional, which the Justice

Department appealed. Obama had discontinued President Bush's annual observances at the White House, but issued a proclamation on the 2011 National Day of Prayer.

#### *Hiring rights and federal funding*

July 25, 2011: Comments from President Obama suggested that he does not plan to change an executive order that permits some **faith**-based organizations that receive federal funding to discriminate in hiring based on applicants' religious beliefs. Obama maintained a position in an executive order that states that while federally-funded religious organizations cannot discriminate against beneficiaries, they may retain religious hiring practices.

#### *Contraception and religious exemption*

August 1, 2011: The Department of Health and Human Services announced that employers must provide contraceptives (including those that block uterine implantation) in insurance plans. Churches are exempt from the mandate, but not religious employers, such as soup kitchens, homeless shelters, parachurch ministries, religious hospitals, and religious universities. The ruling triggers petitions and requests for a stronger religious exemption, including a lawsuit from Colorado Christian University.

#### *Chaplains and 'Don't Ask Don't Tell'*

September 20, 2011: The military ended its "don't ask, don't tell" policy on gays and lesbians serving openly in the military. The Pentagon also issued a memo allowing military chaplains to perform same-sex marriages if it is allowed by the law and the chaplain's beliefs.

The United States Agency for International Development (USAID) began inserting new language in its mandatory requirements, saying that it "strongly encourages" all grant applicants to adopt USAID's hiring policy of not discriminating on the basis of sexual orientation.

#### *Hiring rights and discrimination*

October 5, 2011: As the Supreme Court considered *Hosanna-Tabor v. EEOC*, an employment dispute at a Lutheran school, the administration argued that the First Amendment's religion clauses do not exempt churches from employment discrimination laws, even when considering head clergy. (Though the administration did allow that the right of expressive association might be compromised by such laws.) In January 2012, a unanimous Court rejected the administration's argument as untenable, saying, "We cannot accept the remarkable view that the Religion Clauses have nothing to say about a religious organization's freedom to select its own ministers."

#### *Hiring rights and sexual orientation*

October 11, 2011: The United States Agency for International Development (USAID) began inserting new language in its mandatory requirements, saying that it "strongly encourages" all grant applicants to adopt USAID's hiring policy of not discriminating on the basis of sexual orientation. Christian aid groups like World Vision opposed the language and unsuccessfully asked for additional language clarifying that religious employers retain rights to consider religion in hiring. USAID says the policy is not binding and White House officials suggest dialogue on the issue will continue.

#### *Federal funding and sex trafficking*

October 2011: Health and Human Services [HHS] defunded the U.S. Conference of Catholic Bishops' [USCCB] domestic program to assist and resettle human trafficking victims. More than 20 U.S. senators wrote a letter to HHS requesting an explanation. The USCCB believes its program was defunded because of its religious opposition to providing abortions or contraceptives to trafficked women.

#### *Discrimination and hiring rights*

December 6, 2011: President Obama issued a memorandum announcing that ending discrimination against those who are gay "is central to the United States commitment to promoting human rights" and "directing all agencies engaged abroad to ensure that U.S. diplomacy and foreign assistance promote and protect the human rights of LGBT [lesbian, gay, bisexual, and transgendered] persons." On December 16, a dozen **faith**-based groups who engage in international relief and development sent a private letter to Obama, urging him to clarify to agencies that his directive does not affect religious organizations' hiring rights. The letter asked him to clarify that his memo would not mandate a new LGBT "litmus test" for indigenous groups that the organizations partner with in international relief work. The White House did not reply to the group's letter.

#### *Contraception and national security*

December 19, 2011: President Obama signed an executive order declaring women's access to reproductive healthcare during conflict and humanitarian emergencies a matter of U.S. national security. It is unclear whether the declaration will be cited as evidence that there would be a compelling government interest in compelling federal grantees to distribute emergency contraceptives that block uterine implantation.

#### *Contraception and religious exemption*

January 20, 2012: Health and Human Services announced that it will not expand the religious exemption for the August contraception ruling beyond churches, sparking further concern from religious groups. Secretary Kathleen Sebelius extends the enforcement of the mandate to 2013.

#### *Contraception and cost*

February 10, 2012: President Obama announced that insurers will be responsible for paying for contraceptives, raising questions about self-insured religious groups. The ruling did not expand the religious conscience exemption to **faith**-based groups other than churches. Pro-life groups suggest insurance companies could raise premiums to cover the cost of contraception. The White House suggests that the policy would not allow insurers to raise premiums due to contraception.

#### *A cross and establishment of religion*

March 14, 2012: The Obama administration filed a brief with the Supreme Court in opposition to the U.S. 9th Circuit Court of Appeals' 3-0 ruling that declared a 43-foot-tall cross that serves as a war memorial on Mt. Soledad in San Diego was an unconstitutional establishment of religion. The brief states, "The decision ... if permitted to stand, calls for the government to tear down a memorial cross that has stood for 58 years as a tribute to fallen service members. Nothing in the Establishment Clause compels that result."

#### *Administering contraception*

March 16, 2012: The Obama administration proposed further recommendations for its earlier ruling on contraception. The proposal does not expand the religious conscience exemption, specifying that the ruling would not set a precedent for future laws. The proposal suggests that a third-party administrator of the group health plan or another independent entity would assume responsibility for the contraception coverage for self-insured organizations. The final regulation will be implemented August 2013.