

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF IOWA
 CENTRAL DIVISION

ASSOCIATION OF FAITH-BASED ORGANIZATIONS, a Virginia Limited Liability Company, on Behalf of its Members,)	Case No. _____
)	
<i>Plaintiff,</i>)	COMPLAINT
)	
v.)	
)	
MOLLIE ANDERSON, in her Official Capacity as Director of the Department of Administrative Services, and the ADMINISTRATOR of the Iowa One Gift Campaign in his or her Official Capacity,)	
)	
<i>Defendants.</i>)	

PRELIMINARY STATEMENT

Each year Iowa state employees may voluntarily donate via payroll deduction to any of more than four hundred charities participating in the Iowa “One Gift” program, a campaign created by state statute as the only means for charitable solicitation in the state workplace. However, two of the program’s eligibility requirements effectively eliminate faith-based charitable organizations as an option for state employees’ voluntary contributions. In order to qualify, charities must, among other requirements, pledge that they do not “discriminate” on the basis of religious belief in their employment. Further, any charity “engaged in any way in sectarian activities, including activities aimed at promoting the adoption or defeat of any one or more religious viewpoints, shall not be eligible to participate.” Although participating organizations may espouse a broad range of political, social and other views, and limit their staff

to those who share those views, organizations that engage in any religious activity or espouse any religious views, or only hire those who share the organization's religious views, are excluded from the campaign. Excluding organizations from the Iowa "One Gift" campaign because they refuse to relinquish their federal constitutional and statutory rights to share and exercise their religious faith as well as their rights to associate with, hire, and be led by persons who share the organizations' religious faith violates the First and Fourteenth Amendments and should be enjoined.

The Plaintiff brings this Complaint through its undersigned counsel, Kenneth L. Butters, Brick, Gentry, Bowers, Swartz, Stoltz, & Levis, P.C; Gregory S. Baylor, M. Casey Mattox, and Isaac J. Fong of the Center for Law & Religious Freedom, Springfield, Virginia; and Benjamin W. Bull and Gary S. McCaleb of the Alliance Defense Fund, Scottsdale, Arizona, against Defendants Mollie Anderson, Susan Churchill, and the Chair and Co-Chair of the "One Gift" campaign, each in their official capacities. In support thereof, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1.1 Plaintiff brings this civil rights action pursuant to 42 U.S.C. §§ 1983 and 1988 for deprivations of the rights of Plaintiff's members secured by the First and Fourteenth Amendments to the United States Constitution.

1.2 Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343(a)(3) and 1343(a)(4), which provide for original jurisdiction in this Court of all suits brought pursuant to 42 U.S.C. § 1983. Jurisdiction is also conferred on this Court by 28 U.S.C. § 1331 because the cause of action arises under the Constitution and laws of the United States. The Court has authority to grant declaratory relief pursuant to the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202.

1.3 Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to these claims arose in this district and because Defendants reside in this district and may be found and served in the district.

THE PARTIES

2.1 Plaintiff Association of Faith-Based Organizations (herein “AFBO”) is an expressive membership association organized as a limited liability company under the laws of the Commonwealth of Virginia. AFBO brings this lawsuit on behalf of its members, including non-profit religious charitable organizations otherwise eligible to participate in the Iowa One Gift campaign but for the eligibility restrictions challenged herein.

2.2 Defendant Mollie Anderson is sued in her official capacity as the Director of the Iowa Department of Administrative Services (“DAS”). Defendant Anderson is responsible for the formulation and implementation of the policies and regulations of the Department of Administration and the implementation and interpretation of Iowa statutes governing the Department of Administration. Specifically, Defendant Anderson is responsible for the implementation, interpretation and application of statutes and regulations governing the Iowa “One Gift” campaign. Defendant Anderson is also authorized to hear appeals and make determinations regarding the eligibility of a charitable organization to participate in the Iowa “One Gift” campaign.

2.3 Defendant Administrator of the “One Gift” campaign is responsible for the administration and operations of the campaign, including interpreting the campaign’s eligibility requirements and determining whether a charitable organization is eligible to participate in the campaign. Pursuant to Fed. R. Civ. P. 25(d)(2) the Administrator is named by his or her title. The Defendant Administrator is sued in his or her official capacity.

ASSOCIATION OF FAITH-BASED ORGANIZATIONS

3.1 AFBO is a Virginia limited liability corporation whose membership includes non-profit faith-based charitable organizations. Each of AFBO's member charities is a non-profit religious charitable organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

3.2 AFBO was formed for the purpose of eliminating discrimination against member organizations because they exercise their constitutional and statutory rights to associate around the religious beliefs at the core of their purposes and missions. AFBO has standing to sue on behalf of its members, which include one or more charities excluded from participation in the "One Gift" campaign by operation of the policies, procedures and practices of Defendants complained of herein.

3.3 All of AFBO's member organizations exercise their constitutional and statutory rights to require that certain or all of their employees and/or board members agree with the basic religious beliefs that their respective organizations deem central to their missions.

3.4 AFBO's member organizations include one or more non-profit organizations meeting all eligibility requirements of the Iowa "One Gift" campaign with the exceptions that they engage in religious activities, promote their religious viewpoints, and limit employment to persons who agree with certain religious beliefs central to the organizations' mission.

3.5 AFBO's membership includes, for example, one religious charitable organization based in Iowa that provides substantial and needed social services, including shelter, food and clothing to the homeless and poor. It provides these services without regard to the religious beliefs of those it serves. However, this organization also practices and shares the Christian faith through prayer and evangelism, offering opportunities for prayer and worship to those it serves.

3.6 The above-mentioned AFBO member believes that it cannot protect its own religious message and effectively serve its clients' spiritual needs if its employees do not share the religious commitments that are at the core of the organization's purpose. For this reason, this AFBO member exercises its constitutional and statutory right to limit its employment to persons who agree with its religious beliefs.

THE IOWA ONE GIFT CAMPAIGN

4.1 The Iowa One Gift campaign is authorized by IOWA CODE ANN. § 8A.432 and governed by IOWA ADMIN. CODE § 11-71.1(8A), *et. seq.* The One Gift campaign provides an opportunity for state employees to voluntarily authorize payroll deductions for charitable organizations approved to participate in the campaign. IOWA ADMIN. CODE § 11-71.1 (8A).

4.2 Only charitable organizations that are approved by Defendants are eligible to participate in the Iowa One Gift campaign. The 2008 One Gift Campaign included more than four hundred organizations, and state employees voluntarily donated over \$500,000 through the campaign to these charities.

4.3 Charitable organizations are expressly prohibited from soliciting contributions from state employees in the workplace outside of the One Gift campaign. IOWA ADMIN. CODE § 11-71.3 (1).

4.4 Defendants' approval of a charity to participate in the One Gift campaign does not constitute endorsement by Defendants or the State of Iowa of the charity or its policies or practices. IOWA ADMIN. CODE § 11-71.1 (8A).

4.5 IOWA ADMIN. CODE § 11-71.6 (1) sets out the criteria for participation in the Iowa One Gift campaign. Only charities meeting these criteria may participate in the campaign.

4.6 IOWA ADMIN. CODE § 11-71.6 (1)(f) states that an organization must

Be providing or supporting services or [sic] in the state of Iowa that are readily accessible to residents of the state of Iowa, ***except that agencies or federations of agencies engaged in any way in sectarian activities, including activities aimed at promoting the adoption or defeat of any one or more religious viewpoints, shall not be eligible to participate.***

(emphasis added).

4.7 IOWA ADMIN. CODE § 11-71.6 (1)(h) states that an organization must

Operate without discrimination – religious, racial, or otherwise, both in employment and the delivery of services, as well as the distribution of funds.

The provision does not expressly exempt religious charities from the prohibition on religious discrimination in employment.

4.8 Charitable organizations seeking to participate in the Iowa One Gift program must certify that they meet all criteria for participation in the program, including the provisions quoted above. Exhibit A, State of Iowa One Gift Agency Application.

4.9 Defendants have approved for participation in the One Gift campaign organizations which espouse a broad range of social, political, and other views. However, the Defendants single out only organizations engaging “in any way” in religious activities or advocating for or against “religious viewpoints” for exclusion from the campaign. Exhibit A, State of Iowa One Gift Agency Application.

4.10 Organizations may also participate in the campaign while restricting employment to persons who share the organization’s views unless those views are religious. For example, while an organization committed to abortion rights may participate in the Iowa One Gift campaign while restricting employment to persons who share the organization’s views about reproductive rights, and an organization devoted to environmental causes may participate in the One Gift campaign while restricting employment to persons who share the organization’s environmental views, AFBO’s member religious organizations must abandon their requirements

that employees share their religious views as a condition of participation in the One Gift campaign.

4.11 All acts of the Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction herein alleged, were done and are continuing to be done under the color of state law, including the statutes, regulations, customs, policies and usages of the State of Iowa, and pursuant to policies and/or customs established by the State of Iowa through Defendants.

COUNT I

FREE SPEECH
UNITED STATES CONST. AMEND. I

5.1 AFBO restates and realleges each allegation set forth in paragraphs 1.1 through 4.11 as if set forth verbatim herein.

5.2 By excluding religious charitable organizations from the One Gift campaign on the basis of their expression of and/or advocacy for religious viewpoints, and by requiring them to open their employment to persons who disagree with the organizations' religious beliefs, Defendants have violated and will continue to violate the right to free speech guaranteed to AFBO's members by the First Amendment to the United States Constitution.

COUNT II

FREEDOM OF EXPRESSIVE ASSOCIATION
UNITED STATES CONST. AMEND. I

6.1 AFBO restates and realleges each allegation set forth in paragraphs 1.1 through 5.2 as if set forth verbatim herein.

6.2 By excluding religious charitable organizations from the One Gift campaign

because they limit their employment to persons who agree with the organization's religious beliefs, Defendants have violated and will continue to violate the right to freedom of expressive association guaranteed to AFBO's members by the First Amendment to the United States Constitution.

COUNT III

FREE EXERCISE CLAUSE
UNITED STATES CONST. AMEND. I

7.1 AFBO restates and realleges each allegation set forth in paragraphs 1.1 through 6.2 as if set forth verbatim herein.

7.2 By prohibiting religious charitable organizations participating in the Iowa One Gift program from exercising or advocating their religious beliefs or limiting their employment to those who agree with their religious beliefs, Defendants have violated and will continue to violate the right to free exercise of religion guaranteed to AFBO's members by the First Amendment to the United States Constitution.

COUNT IV

DUE PROCESS CLAUSE
UNITED STATES CONST. AMEND. XIV

8.1 AFBO restates and realleges each allegation set forth in paragraphs 1.1 through 7.2 as if set forth verbatim herein.

8.2 By imposing upon charitable organizations applying to participate in the One Gift campaign a requirement that they certify compliance with IOWA ADMIN. CODE § 11-71.6 (1)(h), a provision that fails to provide to a charitable organization fair notice as to what constitutes impermissible employment discrimination for participating charities, Defendants have violated

and will continue to violate the right of due process guaranteed to AFBO's members by the Fourteenth Amendment to the United States Constitution.

COUNT V

INTERFERENCE WITH INTERNAL AFFAIRS OF RELIGIOUS ORGANIZATIONS
ESTABLISHMENT AND FREE EXERCISE CLAUSES
UNITED STATES CONST. AMEND I

9.1 AFBO restates and realleges each allegation set forth in paragraphs 1.1 through 8.2 as if set forth verbatim herein.

9.2 By requiring religious charitable organizations to agree to employ persons who reject their religious beliefs and commitments in order to participate in the Iowa One Gift campaign, the Defendants interfere with the internal affairs of religious organizations in violation of the Establishment and Free Exercise Clauses of the First Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff AFBO respectfully requests that this Court order the following relief:

- (1) A declaration that the portion of IOWA ADMIN. CODE § 11-71.6 (1)(f) excluding from participation in the Iowa One Gift campaign charities engaged in any way in sectarian activities or advocating for or against religious viewpoints violates the United States Constitution;
- (2) A declaration that the requirement that religious charitable organizations certify that they do not discriminate on the basis of religious belief in

employment in order to participate in the Iowa One Gift campaign violates the United States Constitution;

- (3) A declaration that IOWA ADMIN. CODE § 11-71.6 (1)(h) violates the Due Process Clause of the United States Constitution in that it does not provide fair notice of its requirements;
- (4) A permanent injunction enjoining Defendants from excluding religious charitable organizations from the One Gift campaign on the basis that they engage in sectarian activities, advocate for or against any religious viewpoints, or limit employment to persons who agree with the religious beliefs of the religious charities,
- (5) An award of reasonable costs and attorneys' fees incurred by Plaintiff in prosecuting this action pursuant to 42 U.S.C. § 1988;
- (6) That this Court retain jurisdiction over this case for the purposes of enforcement of any order; and
- (7) Such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted this 19th day of March 2008.

/s/Kenneth L. Butters
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