



# NYCLU

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January 14, 2004

VIA FACSIMILE and 1<sup>st</sup> Class Mail

Alan G. Hevesi, Comptroller, State of New York  
Gov. A.E. Smith State Office Building  
Albany, New York 12236

*Re Employment Practices of The Salvation Army*

Dear Mr. Hevesi:

We are writing to urge that your office conduct an audit of The Salvation Army to determine whether The Salvation Army is applying religious tests in the employment of individuals who work in child welfare and other social services programs funded by the State of New York and whether if such discrimination exists the Salvation Army is violating conditions of funding imposed by the State or is otherwise in violation of the law.

In November 2003, we wrote to the Salvation Army about what we believed to be recently instituted changes in The Salvation Army's Human Resources Guidelines and Practices that were being applied to the Social Services for Children division of the Greater New York Division of The Salvation Army. We were specifically concerned that recently developed job descriptions as well as job application forms can be, and will be, read as requiring employees who engage in the provision of social services to "preach the Gospel of Jesus Christ" and to thereby profess their belief in Christianity.

The Salvation Army responded to our letter, through their counsel, Cadwalader Wickersham & Taft LLP, on December 29, 2003. In their letter, The Salvation Army invoked its status as a "church" and asserted its exemption from the anti-discrimination provisions of federal and State law applicable to religious organizations as employers. The Salvation Army, therefore, asserted its right to "consider its religious beliefs in making employment decisions in programs funded by the City." The letter was, however, less than clear on whether The Salvation Army does, in fact, engage in religiously-based employment discrimination.<sup>1</sup>

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<sup>1</sup> It states at one point that "The Salvation Army does not require all employees 'to profess their belief in Jesus Christ'" and that "employees of The Salvation Army in Social Services for Children are not required to profess any specific Christian beliefs. However, The Salvation Army may condition employment in other positions, particularly in positions that involve the dissemination of its religious beliefs, on specific Christian beliefs." The letter also asserts that it merely uses the "Statement of Applicant for Employment Involving Work With Children" to screen

It is our position that when The Salvation Army provides child welfare and other social services in partnership with New York City and New York State and does so with State and City funding, it is obligated to adhere to non-discrimination principles and may not apply religious tests in the provision of such services or in the hiring of secular employees to provide the government funded child welfare and other social services. In our view, religious discrimination in a social services program which is funded by the government and which amounts to a joint enterprise between the agency and the government would violate the Equal Protection Clause of the Fourteenth Amendment as well as the Establishment Clause of the First Amendment. Although religious organizations are currently granted an exemption from the prohibition on religious discrimination in hiring in Title VII of the federal civil rights law, this exemption cannot, consistent with Equal Protection and Establishment Clause principles, extend to employees who are hired to work on, and are paid through, government grants or contracts.<sup>2</sup>

We are supported in this view by a District Court decision in *Dodge v. Salvation Army*, 1989 WL 53857 (S.D. Miss. 1989). In that unreported decision, the court held that The Salvation Army's claim of its Title VII exemption for a position "substantially, if not exclusively" funded with government money was unconstitutional because it had "a primary effect of advancing religion and creating excessive government entanglement." *Id.* The analysis applied by the court in *Dodge v. Salvation Army* applies with equal force here.

We understand that the Social Services for Children division ("SSC") of The Salvation Army, as well as the Social Services for Families and Adults division, are active partners with

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current and prospective employees against possible child abusers. For your convenience, we attach a copy of the statement. The "Statement of Applicant for Employment Involving Work with Children," also referred to as a "Work with Minor's Form," requires that an employee or applicant for employment identify, among other things, "Present Church, Minister of Church, Other Churches attended regularly during the past ten years." But, this information has little, if any, probative value in ascertaining whether an employee is a child abuser.

Beyond the matters set forth in the December 29 letter, we have further reasons for concern that The Salvation Army may, in fact, be applying religious tests in the hiring of secular employees to provide the funded child welfare and other social services in the Social Services for Children division. We are aware that in September 2003, The Salvation Army revoked a June 4, 2003 Equal Employment Opportunity memorandum "supplement[ing] the EEO policy statement in the Employee Manual" that had specifically indicated that "The Salvation Army, Social Services for Children, treats all employees and applicants for employment without unlawful discrimination as to ... creed ... in all employment decisions, including but not limited to recruitment, hiring, compensation, training, and apprenticeship, promotion, upgrading, demotions, downgrading, transfer, lay-off and termination, and all other terms and conditions of employment." We are also aware that The Salvation Army is in the process of implementing a "reorganization plan" with respect to the Greater New York Division that is intended to narrow "the widening gap between the ecclesiastical Salvation Army and the Social Service component of The Salvation Army" and to ensure that "as a Christian agency [...] a reasonable number of Salvationists along with other Christians [will be employed]" because The Salvation Army is "not a Social Service Agency [but] a Christian Movement with a Social Service program." See *The Greater New York Reorganization Plan*" authored by Colonels Paul M. and Jean A. Kelly.

<sup>2</sup> In upholding the constitutionality of the religious organization exemption in Title VII, the Supreme Court did not consider whether a religious organization could discriminate based on religion when making employment decisions in programs that the government finances to provide governmental services. See *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327, 336-39 (1987). See also New York State Executive Law § 296(1)(a), New York City Admin. Code § 8-107(a)(1) and New York City Executive Order 50 (1980) all afford exemptions to religious organizations that are similar to that afforded under Title VII.

New York City and New York State in the provision of child welfare and other social services. SSC alone, for example, administers approximately \$50 million of funding under its contracts with New York City and New York State in a wide variety of programs and services for children, families and adults.<sup>3</sup>

The Salvation Army is engaged in a variety of joint enterprises with both the City of New York and the State of New York in the provision of social services. The City of New York contracts concern programs administered under the auspices of the Administration for Children's Services (ACS), the Agency for Child Development (ACD), the Department of Juvenile Justice (DJJ) and the Medical and Health Research Association (AIDS Institute, Ryan White Title I). The State of New York contracts concern programs administered under the auspices of the Office of Mental Retardation and Developmental Disabilities (OMRDD). SSC programs serve approximately 2300 clients or client-families on a daily basis for New York City and New York State in the following contracted programs:

- Foster Boarding Home and Adoption Services, 390 children in foster care in 225 boarding homes (ACS funded);
- Therapeutic Foster Boarding Home Program, 90 children in therapeutic foster care in Nassau and Suffolk counties (ACS funded);
- Group Homes Program, 95 children in 8 group homes (ACS funded);
- East Village Residential Treatment Program, 32 older adolescent boys (ACS funded);
- General Prevention Programs/Family Rehabilitations programs, 280 families in Morris Heights, Bronx, Bushwick, Williamsburg (ACS funded);
- Lenox House, 12 boys in non-secure detention (DJJ funded);
- HIV services, 252 HIV services clients in Belmont, Morris Heights, Lower Manhattan (AIDS Institute/Ryan White funded);
- Group Day Care, 1062 children in 11 day care programs, employees members of Local 205, AFSCME, DC 1707 (ACS funded);
- Developmental Disabilities Services/Group Homes, including 58 consumers in 6 Intermediate Care Facilities, 16 consumers in 4 Individual Residential Alternatives, 13 consumers in family care settings (OMRDD funded).

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<sup>3</sup> We understand that Social Services for Adults and Families division receives some \$40 million under New York City and State contracts. We also understand that The Salvation Army applies religious tests both in the provision of such services and in the hiring of secular employees to provide the funded child welfare and other social services in that division.

We also understand that the New York City and New York State contracts contain clauses obligating The Salvation Army to abide by the provisions of Article I., § 3 of the New York State Constitution, New York State Executive Law § 296(1)(a), New York City Admin. Code § 8-107(a)(1) and Executive Order 50 (1980) and not to engage in employment discrimination. We also understand that the Collective Bargaining Agreements between Local 205, Community and Social Agency Employees Union, District Council 1707, AFSCME, AFL-CIO and Day Care Council of New York and between Day Care Council of New York and Council of Supervisors and Administrators of the City of New York, Local 1, American Federal of School Administrators, AFL-CIO, to which The Salvation Army is also subject in connection with its City-funded day care programs, prohibit employment discrimination on the basis of creed.

We are available to meet with you to discuss these matters further. We thank you for your consideration of this matter and look forward to hearing from you.

Very truly yours,

Donna Lieberman  
Executive Director

Arthur Eisenberg  
Legal Director

Beth Haroules  
Staff Attorney

cc: Thomas A. Maul, Commissioner, New York State of Mental Retardation  
and Developmental Disabilities  
Guthrie S. Birkhead, M.D., M.P.H., Director, New York State Department  
of Health AIDS Institute  
William C. Bell, Commissioner, New York City Administration  
For Children's Services  
Neil Hernandez, New York City Division of Juvenile Justice