

Mr. Chairman, Ranking Member Cummings, and members of the Subcommittee, thank you for this opportunity to present testimony on behalf of Americans United for Separation of Church and State on the status of the Administration's faith based initiative and the work of the federal agencies in this area. Americans United is a religious liberty organization based in Washington, D.C., with over 70,000 members. Founded in 1947, the organization educates Americans about the importance of church state separation in safeguarding religious liberty and freedom. I am both an ordained minister in the United Church of Christ and a member of the District of Columbia and U.S. Supreme Court bars.

Americans United, along with a large coalition of civil rights, religious, labor, education and other organizations, respects the important role religious groups have played in providing assistance to those in need. However, we believe that recent attempts by the federal government to increase funding of religion through the faith based initiative is both misguided and dangerous.

The faith based initiative represents a dramatic departure from past practices and American traditions. For more than 200 years, religious groups have relied on voluntary contributions for their support. Taxpayer supported religion always has been a controversial notion in America, engendering strong resistance. In fact, most state constitutions contain provisions explicitly barring tax funding of religious institutions.

The current Administration is well aware that government support for religious groups is controversial. Indeed, even as Congress conducts this hearing today on the work of the federal

agencies in promoting the faith based initiative, we are aware that Congress has failed to enact the Administration's efforts to pass a broad based faith based bill. Many Members of Congress have concerns over the serious effects the initiative would have on established civil rights and religious liberty principles. Unable to persuade both houses to pass the legislation, the Administration has chosen to promote the faith based initiative solely by executive fiat, subverting Congress' important role in ensuring that the initiative is lawful and founded on sound and productive policy.

President Bush has frequently bragged about his end run around Congress. In recent speeches in Los Angeles, New Orleans, and elsewhere, the President has noted his frustration that Congress has not passed the initiative, has "stalled" on its "progress," and he has therefore decided to "act" on his own. As a result, the federal agencies have proceeded, through regulatory action, to put into place sweeping policy changes in the areas of civil rights and church state separation that will have a dramatic effect on how the government's important social service delivery programs are conducted -- all without a mandate from Congress.

The Faith Based Initiative Is An Effort to Turn Back the Clock on Longstanding Civil Rights Protections and to Inject Government Funded Discrimination into Federal Policy

Nowhere are the Administration's actions by executive fiat more egregious than in the area of government funded employment discrimination. Congress has failed to enact any of the administration's proposals to roll back longstanding civil rights protections through its promotion of the faith based initiative, yet the effort to water down civil right protections goes on through a parade of executive orders and regulatory action.

The employment rules contained in the faith based initiative threaten a cornerstone principle of our nation's civil-rights laws -- that federal funds and support will not go to persons or organizations that discriminate against others. It is hard to overstate the importance of our shared national commitment to this principle. Not only should all of us be free from discrimination by the government itself, but we also should have the assurance that our government is not providing federal dollars to programs that engage in discrimination.

This principle is longstanding. Sixty years ago, despite the increase in employment as the nation prepared for World War II and provided defense materials to the rest of the free world, minorities were largely excluded from the nation's economy. The use of federal funds as the source of much of the new economic activity compounded the injustice of discrimination. Recognizing the special harm of federal dollars going to persons who discriminate, President Roosevelt signed a landmark executive order prohibiting federal defense contractors from discriminating based on race, religion, color, or national origin. Not only was the Roosevelt Executive Order the beginning of a long national commitment to barring federal funds to entities that discriminate against others, it also was the first national victory of the modern civil rights movement, which has proceeded to greatly expand the scope of antidiscrimination protections to include other minority groups and women.

In subsequent executive orders, Presidents Truman, Eisenhower, Kennedy, and Johnson expanded these protections. Indeed, President Johnson expanded the scope of the orders to cover all federal contracts, including non defense contracts. From 1965 until 2002, Executive Order 11246 governed in this area, banning discrimination in all federal government contracts. The

executive orders also spawned scores of nondiscrimination provisions that bar discrimination in specific federal programs, as well as influenced the development of agency rules that prohibit discrimination by federal contractors and grantees.

It is this fundamental principle of non discrimination, reflected first in these executive orders, and later, in the host of civil rights statutes, that ban discrimination by recipients of federal funds, that our broad coalition is committed to protecting. It is these same protections that the Administration -- under the guise of promoting “freedom of religion” -- has unsuccessfully attempted to roll back through congressional action and instead has proceeded on its own accord to roll back solely through executive action.

For example, in December 2002, President Bush signed Executive Order 13279, providing for the first time an exemption from Order 11246’s longstanding broad ban against religious discrimination for religious organizations contracting with the federal government, allowing them to explicitly engage in taxpayer funded religious discrimination. Moreover, the federal government has simultaneously proposed regulations (and already finalized certain ones) to allow religious organizations to engage in employment discrimination in federal programs involving substance abuse counseling, welfare reform, housing, veterans benefits, and many others administered by the Departments of Justice and Education. Among the most radical of these regulations is a final rule in substance abuse programs in which the Administration has instructed religious organizations that they may invoke the Religious Freedom Restoration Act to override our nation’s civil rights statutes. (Americans United and several other organizations submitted comments objecting to these proposed regulations on the civil rights and other

grounds, and copies of Americans United's comments are attached as exhibits to this testimony.) Thus, without any congressional approval, the Administration has acted on its own to substantially weaken our nation's fundamental commitment to the principle that federal funds should not go to organizations that discriminate in employment in carrying out federal programs.

There is little appetite for rolling back longstanding civil rights protections in the Senate. Although the House of Representatives has passed several bills to promote the faith based initiative that include language rolling back longstanding civil rights statutes, the Administration has had no success pursuing these objectives in the Senate. Indeed, after the House of Representatives passed the Administration backed bill (H.R. 7) on July 19, 2001, to promote the faith based initiative in a broad array of federal programs, the Senate refused to do so and passed its own version of the faith based initiative after stripping out any provisions that could have created any special advantages for federally funded religious organizations. The sponsors of the legislation realized that a majority of the Senate continued to support the eradication of religious discrimination in federally funded employment positions and did not want to roll back any existing civil rights protections. Thus, both the House and Senate have passed vastly narrowed versions of the CARE Act, which contain no provisions that would allow federal taxpayer support for religious discrimination.

Nevertheless, the Administration has come to realize that it cannot undo many of our country's key civil rights protections acting alone; several federal social services programs have, since their creation, ensured that there will be no discrimination based on religion as a statutory matter. As a result, the Administration has sought to undo these civil rights protections as

applied to religious organizations participating in particular federal government programs -- programs that clearly have secular goals and which, as a constitutional matter, must be run in a secular manner.

For example, on May 8, 2003, the House passed the Workforce Investment Act (WIA) reauthorization (H.R. 1261) by a vote of 220-204. Throughout its 21 year history, WIA has contained a civil rights provision barring discrimination based on religion, among other protected classes, in federal job training programs. The House passed bill rolled back that existing civil rights provision for religious organizations participating in WIA, allowing them to discriminate in employment based on religion. Thus, ironically, the Administration chose for the first time to back injecting employment discrimination into the primary federal job training program.

Until last year, the civil rights provision in WIA had never been controversial; indeed, it was included in the original federal job training legislation that then Senator Dan Quayle sponsored. Senator Quayle's legislation passed through a committee chaired by Senator Orrin Hatch, and was signed by President Ronald W. Reagan. This civil rights provision never served as an obstacle to the participation of religiously affiliated organizations in federal job training programs. Indeed, many religiously affiliated organizations participate in WIA programs and comply with the same civil rights provision that applies to all other participants.

The Senate passed version of the WIA authorization (S. 1627) contains no such civil rights rollback. The Senate has properly acted to ensure that our longstanding civil rights protections stay in place.

Likewise, the Administration attempted to drop longstanding civil rights protections in the reauthorization of the Head Start program. Like WIA, Head Start has contained a provision throughout its 22 year history preventing discrimination on the basis of religion in Head Start programs. That provision is non controversial and has never presented an obstacle to the participation of religiously affiliated organizations in the program. On July 25, 2003, the House passed a version of the Head Start bill (H.R. 2210) by a vote of 217-216 that would allow taxpayer dollars to fund religious organizations to discriminate against Head Start teachers and parent volunteers in federally funded Head Start classrooms.

The Administration's attempts to eviscerate longstanding civil rights protections in Head Start likely will meet a similar fate in the Senate, as did the attempts to gut WIA's important nondiscrimination requirements. Although Head Start reauthorization has not reached the Senate floor, the committee-passed version (S. 1940) contains no civil rights rollback for religious organizations.

Proponents of allowing religious organizations to use federal funds to discriminate against their employees argue that their position is consistent with a provision in Title VII of the Civil Rights Act of 1964 that generally permits religious organizations to grant preference to members of their own religion, and to exclude those who do not agree with their religion, when making employment decisions. Yet the Administration's actions in attempting to expand the scope of this limited exemption to be used for federally funded positions could further undermine the nation's civil rights protections by allowing federally funded religious organizations to

require employees to adhere to the religious practices of their organization. For example, several courts have interpreted the religious organization exemption in Title VII to allow a religious employer to require employees to adhere to the teachings and tenets of that religion. The “religious practices” requirement could create a conflict with the enforcement of civil rights laws protecting persons against discrimination on the basis of characteristics such as race, gender, pregnancy status, sexual orientation, or marital status.

These are conflicts that the country can and should avoid. Our nation already went through over a decade of litigation to determine whether Bob Jones University’s claim that it had a religious right to discriminate against persons on the basis of race overrode the federal government’s interest in denying preferred tax status to groups that discriminate based on race. Bob Jones Univ. v. United States, 461 U.S. 574, 604 (1983). Although Bob Jones University lost that case, we know from experience that other religious institutions have claimed a religious basis for discriminating against others based on gender and pregnancy status, see Boyd v. Harding Academy of Memphis, Inc., 88 F.3d 410 (6th Cir. 1996) (a religiously-affiliated school could dismiss an unmarried, pregnant teacher because premarital sex was against the church’s teachings); marital status, see Little v. Wuerl, 929 F.2d 944, 951 (3rd Cir. 1991) (a religiously-affiliated school could fire a teacher who did not have her marriage annulled in accordance with the religion’s practices); and sexual orientation, see Hall v. Baptist Memorial Health Care Corp., 215 F.3d 618, 625 (6th Cir. 2000) (a religiously-affiliated school could fire a school counselor after she attained a leadership position in a church that accepted gay and lesbian members). In addition, we should not risk reopening the possibility that groups that discriminate based on race will now renew their requests to receive government funding.

In any event, we believe that, as a statutory matter, the Title VII exemption on its face does not apply to religious organizations running government programs. Put another way, this provision does not on its face allow *federally funded* religious groups to discriminate with federal taxpayer dollars. Moreover, the legislative history of Title VII does not support a conclusion that religious organizations may discriminate with taxpayer money.

Although the Supreme Court upheld the constitutionality of the religious organization exemption in Title VII, Corp. of Presiding Bishop v. Amos, 483 U.S. 327, 336-39 (1987), the Court has never considered whether it is unconstitutional for a religious organization to discriminate based on religion when making employment decisions in programs that the government finances to provide governmental services. Several courts have considered whether a religious organization can retain its Title VII exemption after receipt of *indirect* federal funds, e.g., Siegel v. Truett-McConnell College, Inc., 13 F. Supp.2d 1335, 1344 (N.D. Ga. 1994) (clarifying that its decision permitting a religious university to invoke the Title VII exemption is because the government aid is directed to the students rather than the employer), but only one federal court has decided the constitutionality of retaining the Title VII exemption after receipt of *direct* federal funds, Dodge v. Salvation Army, 1989 WL 53857 (S.D. Miss. 1989). In that decision, the court held that the religious employer'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 should apply with equal force to all federal programs that would provide direct federal funds to religious organizations.

Congress must hold the federal agencies accountable for these radical changes to our longstanding civil rights laws, done through executive fiat and in the absence of any final congressional approval. Congress should exercise its oversight responsibilities to ensure that federal agencies are not engaging in any unconstitutional conduct and are continuing the nation's historical commitment to eradicating discrimination paid for by taxpayer dollars.

The Faith Based Initiative Subsidizes Proselytization and Other Sectarian Activities with Tax Funds

It has long been official policy of the United States that the government does not pay for proselytization and the spread of sectarian views. The faith based initiative threatens and undermines this wise and longstanding policy.

When the Administration first announced the faith based initiative in 2001, it took the position that, although public funds could not go towards proselytization, the federal government could still fund programs where faith was inextricably intertwined with the provision of public services. The Administration offered no coherent explanation for how this policy would work in real life.

The *Washington Post* reported on January 31, 2001, "The social service programs funded by President Bush's 'faith-based initiative' could include religious content -- such as Bible reading -- as long as taxpayers' money was used only for lights, chairs or other nonreligious expenses, administration officials said yesterday as they released details of the plan they will send to Congress." Yet the same article also observed, "But the administration's

acknowledgement that clients of faith-based programs may be encouraged to convert to a particular faith, even though no federal dollars would go to buy Bibles or crosses, could add to the concern of critics that the plan could breach the constitutionally ordained separation of church and state.”

After much criticism for such a policy, the Administration took the position in formulating the President’s faith based legislation in the 107th Congress that the Constitution mandates the separation of religious activities, regardless of the source of funding, from the provision of public services. See H.R. 7, Title II, Section 1991(j). Further, in his testimony before both the Senate and House Judiciary Committees in the 107th Congress, a Department of Justice official argued, “Justice O’Connor requires that no government funds be diverted to ‘religious indoctrination,’ thus religious organizations receiving direct funding will have to separate their social service program from their sectarian practices.”

The Administration seemed to be telling Congress that it recognized and would abide by the constitutional requirement for religious organizations to separate their religious activities from the provision of social services. However, it soon came to light that the Administration was counseling religious groups and conservative allies on how to get around this requirement.

An article by Marvin Olasky in the evangelical magazine *World* discussed this issue in explicit terms. *World* observed, “But wait, say TeamBush sources: Carl Esbeck, senior counsel in the Department of Justice, drafted that ‘giveaway’ and many other provisions of H.R. 7, and Mr. Esbeck does not give away anything lightly. The Traditional Values Coalition’s Mr. [Lou]

Sheldon argues that H.R. 7's provisions will work: 'All it takes is a little bit of creativity.' One executive close to the White House said, 'Esbeck is a master at writing vague language that he knows how to get around.'" ("Rolling the Dice," World Magazine, August 4, 2001)

"The executive said that a homeless shelter that had, say, a short sermon after dinner could still have it by offering those who came a choice between writing a paper after dinner or listening to the message. 'They'll come to the sermon but it's been voluntary, because you've given them an option,' he said. Asked about H.R. 7's mandate to separate the 'religious' and 'nonreligious' parts of programs, a TeamBush insider said that biblical and secular teaching could be interwoven, 'as long as you do it right and keep separate books.'"

Thus, it is clear that the Administration never has abandoned its original position and has instead sought to fund programs that include a generous mix of religion into the content of public social service programs without regard for the current constitutional standards that govern such aid. A year after the House of Representatives passed H.R. 7 with language recommended by the Bush administration's own Department of Justice that purportedly prohibited the intermingling of religious activities in publicly funded programs, a prominent HHS official was still touting the original, pre H.R. 7 policy.

A September 3, 2002, Associated Press dispatch reported, "HHS officials say there's no problem using tax dollars for a program in which prayer is central, a point that is hotly disputed among Americans and that Congress has refused to endorse. The Bush administration has the power to change regulations on its own, although these moves are subject to legal challenge . . .

If tax dollars are used for secular elements of the program -- like a computer or van -- the rest can have a religious base, said Robert Polito, director of the HHS Center for Faith Based and Community Initiatives. ‘We wouldn't be called the faith-based office if we weren't trying to see how we can partner with the faith community,’ he said. ‘We don't have to take the temperature of the religiosity of the program.’” (“Bush Administration Rewriting Charity Rules,” Associated Press, Laura Meckler)

A careful review of the Administration’s final regulations across a spectrum of federal programs reveals that the rules that are supposed to prohibit the inclusion of religious activity in publicly funded programs are in fact a wink and a nod to encourage such activity. To say that they do not meet the current constitutional standard that is required for religious organizations operating publicly funded programs is an understatement. An independent, nonpartisan legal analysis on the final regulations by the Roundtable on Religion and Social Policy put it succinctly when it stated, “On the most important legal question – the extent to which government may directly finance religious activity – the rules perpetuate a fundamental misunderstanding of the law of the Establishment Clause.”

The Administration cannot have it both ways. The President and James Towey, Director of the White House Office of Faith-Based and Community Initiatives, often assert that public funds will not be used to promote religion. Then they highlight examples of clearly sectarian organizations that include religion in all of their activities and point to them as good candidates for taxpayer funding. In a March 3, 2004 speech, President Bush explained why The Fishing School in Washington, D.C. should inspire other faith based groups to apply for federal funds:

"It is based upon God's love. As one of the teachers told me, kids need prayer. Faith teaches them that God can do anything. That's kind of the motto for the program in a way. It's their operating credo. And they're now a recipient of federal money." Is it any wonder that those of us who educate on the importance of church state separation to preserve religious liberty are skeptical when the Administration claims it will respect the separation of church and state?

Let me be clear: I believe that the current Administration is intent on evading constitutional requirements. I do not believe this Administration intends to enforce any alleged "no proselytizing" rules. Indeed, the President has stated repeatedly his belief that it is the overt religious component that makes faith based groups effective. Why, then, would he wish to hamstring these groups with regulations designed to force them to water down their religiosity? The answer is simple: No such regulations or oversight are intended. Claims that church state separation will be respected and that the faith based initiative is not intended to amount to state supported religion are mere verbiage designed to placate advocates of church state separation.

We have not been persuaded; we know that actions speak louder than words. When I hear the President stating that "[w]e want to fund programs that save Americans, one soul at a time" at a church in New Orleans (January 15, 2004), I know that maintaining the separation of church and state is simply not a priority for this Administration -- assertions to the contrary notwithstanding.

As a result, it is critical that Congress make clear to the Administration that appropriate constitutional standards must be established and respected as it acts on its own to finance its faith

based initiative. To do otherwise does a disservice to our Constitution and violates the religious liberty rights of beneficiaries. It also raises serious questions about how government officials can pick and choose among programs sponsored by faith based organizations when religious activity is intertwined in those programs.

The Faith Based Initiative Forces the Government to Play Favorites among Religions

Some have suggested that critics of faith based funding are needlessly causing controversy over a non issue about which religious groups will get funding. Nothing could be further from the truth. This is a compelling issue that raises a host of thorny constitutional and legal issues.

The Administration repeatedly has stated that the government will disburse funds according to programmatic requirements and the merit of the application. Yet there are a number of statements by Administration officials, including the President, that imply that certain faith groups will be excluded wholesale from the process. For instance, when President Bush was campaigning in 2000, he said that groups “preach[ing] hate,” such as the Nation of Islam (NOI), would not be eligible for tax funding under the initiative.

Stephen Goldsmith, Special Advisor to President Bush on faith based and not for profit initiatives, has said that Wiccans are not eligible because they are not “humane” enough to provide childcare services. Mr. Towey also recently criticized Wiccans, implying that they are “fringe” group whose members lack “loving hearts.”

I am deeply troubled by such statements. The United States enjoys complete religious liberty. This nation does not have a two tiered system of religious groups consisting of “real” religions (which can be showered with tax funds) and “fringe” ones (which can be ridiculed and denied all funding). In fact, under our Constitution, all religions are equal in the eyes of the law, even those with unusual doctrines. Today’s “heresy” can easily become tomorrow’s established doctrine. It is worth remembering that, well into the 19th century, Roman Catholics in this nation were considered by some to be a dangerous fringe group and in many cases were denied civil protections available to members of the Protestant majority. Groups once viewed as highly controversial -- Mormons, Seventh-day Adventists and Jehovah’s Witnesses, to name a few -- are now seen as mainstream.

There is nothing theoretical about this issue. In fact, it presents a series of difficult questions that Administration officials have been reluctant to answer: Who gets the money? Who decides who gets the money? What criteria do decision makers employ? Will the government assemble a non public list of acceptable and unacceptable religions based on their theological positions? Some people troubled by the theology or religious practices of specific groups, such as those of the Unification Church or the Scientologists, must remember that they too would legitimately qualify for government funding under the faith based initiative.

We are repeatedly told that the government should not discriminate against faith based providers because of their faith. Yet it is clear from some of the Administration officials’ own statements that they are doing exactly that; they are making judgments about which faiths should

be eligible for funding and which should be excluded, based on personal biases or fears of negative reactions from the public.

It also would be naïve to believe that this process will remain untainted by politics. In 1995, several members of Congress protested when media reports surfaced about the Nation of Islam (NOI) receiving contracts with the Department of Housing and Urban Development to provide security at public housing complexes in several cities. There had been no complaints about NOI's performance by the residents. Indeed, some of them praised the group for scaring off drug dealers. Yet demands surfaced for HUD to cancel the contracts and legislation was introduced in the House of Representatives to do so. Some in Congress insisted that the Nation of Islam was too controversial to receive government funds. Others exhibited a clear political animus towards the group. Ultimately, the NOI lost its contract.

In addition, some legitimate concerns raised about NOI receiving government funding were totally ignored. There was evidence that the NOI discriminated against women and engaged in wide scale proselytization. As I discussed above, these two factors suggest that NOI should not have received government funds, if the right rules were in place.

President Bush and Mr. Towey have stated repeatedly that all that matters is results. As the NOI flap indicates, however, this is naïve view. Political considerations always will come into play in funding decisions. Well connected, well thought of religious groups likely will have a better shot at federal funds over marginalized groups with poor public images. If taxpayer

support is extended to unpopular religious groups, there likely will be great public pressure to cut it off.

Such political decisions also will have serious legal ramifications. Religious groups that are denied funding or whose funding is cut off due to adverse publicity are not likely to go away quietly. They will seek redress in the courts. It is a well established principle of law that government may not play favorites among religions. “The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” County of Allegheny v. ACLU Greater Pittsburgh Chapter, 492 U.S. 573, 605 (quoting Larson v. Valente, 456 U.S. 228, 244 (1982)). In those cases in which benefits are made available, they must be made available on an evenhanded basis. Is the federal government ready to fund hundreds of religious groups that might demand a slice of the tax pie?

The faith based initiative not only forces the government to play favorites among religions, it also forces secular groups into unhealthy competition with religious groups. Groups that seek federal contracts are very quickly getting the message from this Administration that being faith based is a big plus in the competition for funding. The Administration claims that all it wants is a level playing field, yet evidence indicates that what is really sought is a playing field dramatically tilted toward faith based providers.

We have already seen examples of preferential treatment for faith based organizations. The Department of Health and Human Services awarded \$30 million in grants through the Compassion Capital Fund in 2002. One large grant went to Pat Robertson’s Operation Blessing,

which than distributed some of the public money to other religious groups of its choice to provide social services. (It is also worth noting that this grant was awarded to Operation Blessing after Robertson publicly criticized the faith-based initiative on his television program. He has not uttered another word of protest since.) Out of 500 applications for this one set of grants, not a single non Christian religious organization received funds.

In 2003, HHS awarded an additional \$8.1 million to 60 organizations and once again, not a single grant went to a non Christian religious organization.

A January 13, 2003, *Boston Globe* article reported that a well established homeless shelter for military veterans in a suburb just west of Boston was notified that its federal grant was going to be cut for next year, necessitating the closure of about half of their beds. The Veterans Administration told the paper that the money would be used in some faith based shelters in North Carolina and Utah. The Boston area shelter got the message. It changed its identification to be faith based and received a full grant the following year

Not only is there the specter of favoritism in handing out federal funds as part of this initiative, there is also the concern that many of our religious leaders are being misled in regard to what is involved in operating government programs. At a January 15, 2004, appearance at Union Bethel AME Church in New Orleans, President Bush lamented to the audience that “The problem is, faith based programs only conform to one set of rules, and it’s bigger than the government rules.” In that same speech when talking about a child care program, he held up a Bible and said, “The handbook of this particular child care is a universal handbook, it’s been

around for a long time . . . This handbook is a good book, it's a good go by.” As Members of this Committee are well aware, however, the reality is that no matter what the good intentions of a faith based provider might be, at the end of the day it will find out that it must meet and comply with the standards set forth by the federal program and the accompanying regulations that comes with running a government funded social services program.

The idea that the President is downplaying the restrictions that accompany government programs is particularly disturbing when one considers that the Administration insists on permitting direct aid to houses of worship without requiring them to set up separate tax exempt institutions. Without now discussing in depth the constitutional requirements that prevent government directly aiding sectarian institutions, it is important to note that by advancing its faith based policy, the Administration is doing a grave disservice to our religious leaders and our houses of worship. A separately incorporated entity provides a house of worship with a legal firewall between itself and the government, ensuring that the regulations, audits and any liability fall squarely on the separate entity and not the house of worship itself. Yet the Administration, by not fully informing religious institutions of the downsides in participating in the faith based initiative so that they can make informed choices, will leave houses of worship exposed in the end to auditing as well as lawsuits and potential liability for a variety of injuries or errors that such organizations might commit in running government programs.

Religious leaders are also being misled about the scope of this initiative. During a time of budget crisis and rising deficit, the Administration has been hosting seminars across the country specifically targeting faith based organizations for federal funds. The Administration

has spent millions of public dollars teaching faith based organizations about how they can use these funds in their religious programs.

What most people do not understand is that the faith based initiative has not created an additional pool of funds to run social service programs. It is taking money from established programs that rely upon government grants and shifting it to religious organizations, forcing established programs to cut back on their services or to close their doors. Thus, the government is just cutting up an old pie in a new way, instead of baking a new, larger pie.

The Faith-Based Initiative Is Based on Faulty Assumptions About the Effectiveness of Religious Providers

Taking money away from proven social service providers and directing it to untested faith based organizations is a radical step indeed. The very lives of the people who rely on these services may be at stake. Due to the fragile nature of the client population, due deliberation should be undertaken before funding is fundamentally shifted in this way.

Has that occurred? It would appear not. The President, Mr. Towey and other initiative backers repeatedly state that the faith based providers offer services more efficiently and more cost effectively than do government or secular providers. They have advanced these claims even though there is no empirical evidence to support them.

The few studies that are available have not supported the Bush/Towey assertion. Last year, Prison Fellowship issued a study purporting to show that former prison inmates who went through its fundamentalist Christian conversion program has a lower recidivism rate than those

who did not. The study attracted headlines in the papers, but a few months later it was debunked by a University of California-Los Angeles professor who examined the data and concluded that it did not hold up. Inmates who had participated in the Prison Fellowship program had, in fact, a slightly higher recidivism rate. There is a lesson here if we care to learn it: Major changes in social policy should not be made on the basis of “junk science.”

There have, in fact, been no federal studies of the effectiveness of faith based groups compared with community based and secular nonprofits. There is precious little data from the states as well, but what is available shows cause for concern. When President Bush was governor of Texas, he instituted his faith based initiative statewide. A statewide study from Texas, conducted by the Texas Freedom Network -- an alliance of 7,500 religious and community leaders -- and covering the period of President Bush’s tenure as governor, shows that the faith based initiative he spearheaded there suffers serious problems. This study produced conclusions that we can expect at the national level five years from now. Here are a few examples:

1. Religious childcare providers were exempt from state regulation. As a result, the rates of confirmed abuse and neglect at religious facilities are 25 percent higher than at state licensed facilities.
2. At Teen Challenge, a Christian residential drug treatment program favored by President Bush, state officials uncovered a 49-page list of violations of applicable state regulations. Furthermore, the program has had no credentialed drug

treatment counselors, no chemical dependency services, and was found to be illegally handling medication. Teen Challenge believes its mission is to evangelize people and to teach its residents to function as Christians, applying spiritual principles. This apparently was the only “drug treatment” program it offered to those in need.

3. A group called Jobs Partnership stated that its mission was to help clients “find employment through a relationship with Jesus Christ.” \$8,000 in taxpayer money went to purchase Bibles.

4. The Institute for Responsible Fatherhood and Family Revitalization was granted \$1.5 million in state funds to run a religious sponsored job training program that required “total surrender to Christ.” This program beat out a University of Texas job placement program with a 300 times higher success rate.

Texas is slowly learning from its mistakes. In 2001, the Texas state legislature chose not to renew alternative accreditation programs for religious child care providers -- one step in the right direction. But the President refuses to learn from his mistakes. Motivated by adherence to a particular ideology, he continues to insist that faith based providers are always more successful, always more cost effective and always better. No matter how many times the President makes this claim and no matter how forcefully he says it, the empirical evidence is not there to support him.

The Harm To Religion

As a minister and congregant involved with congregations all my life, I would be remiss not to discuss the harm the faith based initiative presents to houses of worship. I have lectured as a guest in hundreds of churches, synagogues and temples all over America. Just about every house of worship I have been in does something to help those in need. It may be as simple as a special collection for the homeless once a year or it could be more involved, such as running full blown soup kitchens, homeless shelters and other services.

Churches do not do these things because the government has asked them or told them to do so. They do them because of a religious impulse that transcends the commands of the state. Religious leaders do not feed the hungry, house the homeless and clothe the naked because someone at HUD is dangling a check.

Social service ministries bring congregants more deeply into the life of a church. When a person is asked by the pastor to dig a little deeper or to go the extra mile to help those in need, that very act of giving and sacrifice builds bonds between the member in the pew and the house of worship that may endure for decades. That spirit of charity and service, underscored by the voluntary impulse, has no government counterpart. It cannot be replaced with a contract from a federal agency or a voucher from a government office.

Yet consider what happens to that impulse when we subsidize religious groups through faith based initiatives. Why should the average man or woman in the pew continue to dig deeper

or even walk the first few steps of that extra mile? After all, there's always a government grant right around the corner. In effect, everyone gave at the office, so why give on Sunday?

We do not have to blow the dust off of old history books to see what government support and tax funding do to religion. Many European nations have what must be one of the greatest of all paradoxes: state established religions enjoy official sanction, but the pews are sparsely filled. That is what "faith based" initiatives have done to religion in Western Europe.

At the end of the day, most of us who oppose faith based initiatives are showing concern to protect the integrity of religion. Far from demonstrating hostility towards religion, we are demonstrating our respect for it. The first step to ensuring that religion preserves its vitality and strength is through ensuring that religious groups stand or fall on their own and never become dependant on the government for any endeavor they seek to undertake.

Conclusion

James Madison, the fourth president of the United States and the father of our Constitution, was a brilliant thinker and architect of government. His accomplishment is no minor one: he shaped the system of government that we take for granted every day.

Madison was a fierce advocate for religious liberty. He was absolutely convinced that religion should stand on its own, unaided by the prop of civil government. In his home state of

Virginia, he worked with Thomas Jefferson to do away with state established religion and to pass a religious freedom law that many scholars consider the precursor to the First Amendment.

As president, Madison was careful to respect the separation of church and state. Indeed, he helped draft the First Amendment and did not want to see any portion of it violated.

In February 1811, Congress sent a bill to Madison's desk. The proposed legislation would have officially incorporated an Episcopal church in the District of Columbia and charged it with the task of caring for the poor and needy. It allocated no public money for this purpose, but Madison nevertheless saw the measure as a threat and vetoed it.

Churches, Madison said in his February 21, 1811, veto message to Congress, did not need to be reminded by the government of their duty to care for those in need. The bill, he asserted, violated the First Amendment and could "be a precedent for giving to religious societies as such a legal agency in carrying into effect a public and civil duty."

If it does nothing else, we know the faith based initiative does this: it gives religious societies a legal agency in carrying into effect a public and civil duty. Madison, the author of our Constitution and our First Amendment would have grave qualms about faith based funding. In fact, he would veto it. From the pages of history, Madison, the author of our Constitution, is speaking to us. What he has to say is important. It is time we began to listen.

