

Coalition Against Religious Discrimination

February 4, 2010

The President
The White House
Washington, DC 20510

Dear Mr. President:

On the one year anniversary of your Executive Order establishing the new White House Office of Faith-Based and Neighborhood Partnerships, the undersigned religious, education, civil rights, labor, and health organizations write to urge that you take additional actions to prevent government-funded religious discrimination and protect social service beneficiaries from unwelcome proselytizing.

Your Administration inherited a Faith-Based Initiative created by the Bush Administration that was deeply flawed – and a dramatic departure from the way government had, for decades, provided social welfare services for our nation's most needy citizens. When Congress refused to support proposals to eliminate existing constitutional and anti-discrimination safeguards, President Bush acted unilaterally – advancing his initiative through a series of Executive Orders and the adoption of new grant making and contracting rules that apply to virtually every federal agency. These independent actions allowed religious organizations – including, for the first time, houses of worship – to participate directly in federal grant programs without the traditional legal safeguards that protect their autonomy and the civil rights and religious liberty rights of program beneficiaries and staff.

During your presidential campaign, you stated that your vision of government partnerships with religiously-affiliated institutions would be different. On July 1, 2008, in Zanesville, Ohio, you outlined fundamental operating principles for your faith-based initiative:

First, if you get a federal grant, you can't use that grant money to proselytize to the people you help and you can't discriminate against them – or against the people you hire – on the basis of their religion. Second, federal dollars that go directly to churches, temples, and mosques can only be used on secular programs.

We understand that your February 5, 2009, Executive Order created an Advisory Council in order to make recommendations “for changes in policies, programs, and practices” of the Faith-Based Initiative. Nonetheless, we are disappointed that now, one year after your Executive Order, almost every aspect of the Bush Administration Faith-Based Initiative remains in place – the White House and all the federal agencies are still operating under all the inadequate rules and insufficient safeguards imposed by the previous Administration.

We applaud the extraordinary efforts that many Council members have made to identify ways to strengthen the constitutional protections against unwelcome proselytizing of program beneficiaries, to promote grantee and contractor transparency and understanding of church-state separation parameters, and to implement safeguards against excessive government entanglement with religious institutions. We do, however, deeply regret that the Council *was not permitted* to make recommendations on the issue of religion-based employment decisions. Despite your straightforward, clear statement in Zanesville in 2008, we have seen no progress at all toward resolving this important issue that taints the faith-based initiative.

Mr. President, when you issued your Executive Order last year, you pledged that the activities of this White House Office would be carried out “in a way that upholds the Constitution – by ensuring that both existing programs and new proposals are consistent with American laws and values.” You underlined your support for the separation of church and state, asserting that it “protects our democracy” and “protects the plurality of America's religious and civic life.”

We urge you to act now to restore the constitutionally-required safeguards and civil rights protections governing partnerships between government and religiously-affiliated institutions – standard operating procedures that had been largely in place for decades prior to the creation of the Faith-Based Initiative.

We strongly recommend that the following steps be taken:

- 1) The Administration should prohibit religious organizations from discriminating in hiring on the basis of religion within federally-funded social welfare projects.**
 - a. **The White House should direct the Justice Department's Office of Legal Counsel (OLC) to review and withdraw its June 29, 2007 Memorandum interpreting the Religious Freedom Restoration Act of 1993 (RFRA).** The OLC Memo's interpretation that RFRA provides for a broad override of statutory religious nondiscrimination provisions is erroneous and threatens core civil rights and religious freedom protections. Last September, 58 leading national religious and civil rights organizations wrote to Attorney General Eric H. Holder, Jr., asserting that the guidance in the Memo "is not justified under applicable legal standards and threatens to tilt policy toward an unwarranted end that would damage civil rights and religious liberty."
 - b. **The White House should establish new standards by which the Justice Department can judge whether an organization is entitled to an exemption to the religious nondiscrimination laws.** Your Administration's "case-by-case" approach raises the problem of religious selectivity and provides scant opportunity for transparency or accountability. Following this approach indefinitely while leaving the Bush-era rules in place forestalls a critical opportunity for prophylactic guidance and presidential leadership against employment discrimination within federally-funded social welfare projects by faith-based grant recipients.
- 2) The Administration should adopt in full the recommendations of the Reform of the Office of Faith-Based and Neighborhood Partnerships Taskforce on which a consensus was reached.** Adoption of these Reform of the Office Taskforce recommendations would address the majority of concerns about transparency, accountability, beneficiary rights, and the integrity and independence of religious institutions.
- 3) Whether the Council ultimately adopts the most vitally-needed Reform of the Office recommendations or not, the Administration should amend existing Executive Orders, rules and regulations and make uniform guidance resources for federal agencies to ensure that:**
 - a. Program beneficiaries are not subject to unwanted proselytizing or religious activities.
 - b. Program providers give proper notice to beneficiaries of their religious liberty rights and access to alternative, secular providers.
 - c. Houses of worship and other religious institutions, in which religion is so integrally infused that it cannot be separated out, be required to create separate corporations for the purpose of providing secular, government-funded social services. This requirement protects the integrity of the religious institutions and provides accountability for government funds.

- d. Secular alternatives to social services provided by houses of worship and other religious institutions are readily available to beneficiaries. All beneficiaries should be made aware of secular alternatives, and have realistic and convenient access to them.
- e. Uniform guidance and training materials be developed for all federal agencies to ensure that government-funded providers understand constitutionally-required religious liberty safeguards. The guidance should be incorporated into contracts and grant agreements. Furthermore, providers should be required to certify their adherence to the safeguards – and government agencies should engage in oversight to ensure compliance.

We very much appreciate your consideration of our views.

Respectfully,

African American Ministers in Action
American Association of University Women
American Civil Liberties Union
American Humanist Association
American Jewish Committee
Americans United for Separation of Church and State
Anti-Defamation League
Baptist Joint Committee for Religious Liberty
B'nai B'rith International
Human Rights Campaign
Interfaith Alliance
Jewish Council for Public Affairs
National Association for the Advancement of Colored People (NAACP)
National Gay and Lesbian Task Force
OMB Watch
People For the American Way
Secular Coalition for America
Texas Faith Network
Texas Freedom Network
The Lawyers' Committee for Civil Rights Under Law
Union for Reform Judaism
Unitarian Universalist Association of Congregations
United Methodist Church, General Board of Church and Society
United Sikhs
Women of Reform Judaism