



**FLORIDA TAXATION AND BUDGET REFORM COMMISSION**  
**PROPOSED CONSTITUTIONAL AMENDMENTS - CP0020 & CP0040**

- Two proposed constitutional amendments are under consideration by the Florida Taxation and Budget Reform Commission – CP0020 and CP0040 – which would undermine vital religious freedom and civil liberties protections provided by the Florida Constitution by fundamentally altering the relationship between church and state in Florida.
- CP0020 would rewrite the Constitution’s religion clause - Article I, Section 3 – to essentially require Florida taxpayers to (1) fund houses of worship and other religious institutions, (2) fund religious discrimination, and (3) fund religious beliefs.
- CP0040 would add a new section to the Declaration of Rights (Article I) which would do the same as CP0020. Disturbingly, CP0040 would explicitly prohibit the state from limiting funding to religious institutions for secular or non-religious purposes.
- The proposed amendments would create a constitutional mandate for a Florida faith-based initiative for all state social-service and other contracts and grants.
  - Such an initiative is unnecessary, constitutionally suspect, and indeed it could be harmful to Florida’s religious institutions.
  - Under current law there are longstanding and successful partnerships between Florida and the faith-based community through religiously-affiliated organizations such as Catholic Charities, Jewish Federations, and Lutheran Social Services, which do not raise these deeply troubling religious freedom or civil liberties issues.
- **Both proposals are on the agenda for the Commission’s March 26<sup>th</sup> meeting. A proposal receiving two-thirds of the Commission’s support will go on the November 2008 ballot.**

**The Taxation and Budget Reform Commission should reject CP0020 and CP0040 on the following policy and constitutional grounds:**

**The Proposed Amendments’ Revisions to the Florida Constitution**

CP0020 – “A Resolution Proposing an Amendment to Section 3 of Article I”

Florida’s Religion Clause, Article I, Section 3 states:

*There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof*

shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution. (emphasis added).

**The underlined sentence – the “No Aid Provision” – protects the religious freedom and conscience of all Floridians by guaranteeing that no taxpayer will be compelled to support a church, synagogue, mosque, or other religious institution or religious belief.**<sup>1</sup>

**CP0020 deletes the No Aid Provision and replaces it with the language -- *Individuals or entities may not be barred from participating in public programs because of their religion.***

CP0040 – “A Resolution Proposing the Creation of Section 27 of Article I”

CP0040 would add a Section 27 to the Florida Constitution’s Declaration of Rights, which according to the Taxation and Budget Reform Commission Staff Analysis and Economic Impact Statement for CP0040 (“CP0040 Staff Analysis”) **would implicitly repeal the No Aid Provision. Furthermore, it also would exempt funding to houses of worship or pervasively sectarian institutions from Florida’s Establishment Clause, contained in Article I, Section 3, which generally prohibits use of state dollars to advance or endorse religion.**

In relevant part, CP0040 states:

*The legislature is not limited from enacting and funding programs using public and private providers, without regard to the religious nature of any provider or participant, notwithstanding this Article, Article IX, section 1, or any other provision of this constitution.* (emphasis added).

### **The Proposed Amendments Would Require Florida Taxpayers to Fund Religious Institutions & Would Create a Mandate for a Constitutionally Suspect Florida Faith-Based Initiative**

**CP0020 would require the state and all its subdivisions to make houses of worship and other religious institutions eligible for millions of dollars in public social service and other contracts and grants.**<sup>2</sup>

**Similarly, CP0040 would supersede and implicitly repeal the No Aid Provision to authorize the legislature to fund houses of worship and other religious institutions for “... publicly-financed goods and services in every field, as permitted by law, including without limitation, health care, education, and elder care.” Furthermore, it would prohibit the state from limiting use of public funds to secular or non-religious purposes.**

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<sup>1</sup> Such state no-aid provisions have been found constitutional by the U.S. Supreme Court and Florida Courts under the Free Exercise Clause of the U.S. Constitution. See *Locke v. Davey*, 540 U.S. 712 (2004); *Bush v. Holmes*, 886 So.2d. 340, 351 (Fla. App. 1 Dist. 2004), *affirmed in part*, 919 So.2d. 392 (Fla. 2006) (In upholding the First District finding the Florida Opportunity Scholarship Program unconstitutional, Court declined to address First District’s treatment of the OSP under the No Aid Provision).

<sup>2</sup> According to the Taxation and Budget Reform Commission Staff Analysis and Economic Impact Statement for CP0020 (“CP0020 Staff Analysis”), the proposed amendment will have the effect of preventing the state from excluding entities from “... a contract to provide government services on the basis of religion.”

Undoubtedly, under the proposed amendments houses of worship and other religious institutions would receive state funding. In fact, the state could be subject to legal challenge under CP0020 or CP0040 for denying funding to religious institutions. **Consequently, taxpayers – regardless of their religious beliefs and conscience – would be compelled to fund houses of worship and other religious institutions. And clearly, under CP0040 that funding could be used for religious worship, religious proselytizing, and other religious activity.**

Indeed, CP0020 and CP0040 would do the same as controversial and constitutionally suspect federal faith-based initiative legislation, which sought to make houses of worship and other pervasively sectarian institutions eligible for billions of taxpayer-funded social service dollars without adequate constitutional and anti-discrimination safeguards. Congress rejected this legislation in 2002.<sup>3 4</sup>

### **The Proposed Amendments Would Require Florida Taxpayers to Fund Religious Discrimination**

**CP0020 and CP0040 hand religious institutions the right to hire and fire based on religion using taxpayer money – meaning that a religious institution could post a wanted ad saying *Catholics, Jews, Muslims or Protestants need not apply* for a taxpayer funded job.**

Federal and Florida anti-discrimination laws (Title VII of the 1964 Civil Rights Act and The Florida Civil Rights Act) provide – and ADL supports – religious institutions with the right to use their own private funds to hire people of their own faiths to forward their religious missions. But that is very different from religious discrimination in hiring for government-funded programs, which CP0020 and CP0040 allow.

Under these federal and state anti-discrimination laws, which were written before religious institutions were eligible for public social services dollars, Florida religious institutions would retain the right to hire and fire based on religion for taxpayer-funded jobs.

**Allowing such state-subsidized discrimination by religious institutions constitutes unconstitutional government support for a particular religious mission. It is patently unfair and contrary to the spirit of religious freedom in our State and in America.<sup>5</sup>**

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<sup>3</sup> The federal faith-based initiative has been established by Presidential Executive Order, and its implementation is currently subject to legal challenge.

<sup>4</sup> The type of funding to religious institutions contemplated by the federal faith-based initiative, CP0020 and CP0040 has been found unconstitutional under the Establishment Clause of the U.S. Constitution. See *Teen Ranch v. Udow*, 479 F.3d 403 (6<sup>th</sup> Cir. 2007) (Summary judgment affirmed regarding state contract with sectarian provider of residential services for troubled youth), *cert. denied*, 128 S.Ct. 653 (U.S. 2007); *Americans United v. Prison Fellowship Ministries*, 509 F.3d 406 (8<sup>th</sup> Cir. 2007) (bench-trial verdict affirmed regarding state funding of sectarian inmate program); *Community House, Inc. v. City of Boise*, 490 F.3d 1041 (9<sup>th</sup> Cir. 2007) (Preliminary injunction granted regarding subsidized lease of city owned homeless shelter to sectarian organization).

<sup>5</sup> In generally discussing so-called 19<sup>th</sup> century state Blaine Amendments, the CP0020 Staff Analysis and CP0040 Staff Analysis suggest that when adopted in 1868 the No Aid Provision was based on anti-Catholic animus. However, in *Bush v. Holmes* the First District stated that “... there is no evidence of religious bigotry relating to Florida’s no-aid provision. Even if the no-aid provisions were ‘born of bigotry,’ (*citation omitted*), such a history does not render the final sentence of article I, section 3 superfluous. Significantly, nothing in the proceedings of the

## **The Proposed Amendments Would Open the Door to Proselytizing of Social Services Beneficiaries**

**Without strict constitutional safeguards and intrusive government oversight of our religious institutions, CP0020 and CP0040 would allow religious institutions to subject social service beneficiaries – our state’s most vulnerable citizens, the homeless, hungry and addicted – to unwanted proselytizing and religious activity while delivering taxpayer-funded social services. Indeed, CP0040 would prohibit Florida from implementing constitutional safeguards against proselytizing and religious activity.**

Such constitutional safeguards should:

- Ensure that no program beneficiary is subjected to unwanted and unconstitutional proselytizing when he or she receives government-funded social services,
- Ensure that taxpayer money does not fund religious discrimination in the hiring and firing of people who will deliver the services,
- Ensure that secular alternatives to religiously provided services are readily available, and that those who prefer secular alternatives are made aware of them and have realistic and convenient access to them,
- Ensure the development of proper firewalls between government-funded services and the core religious activities of a religious organization, so that taxpayer dollars are not channeled into other religious activities of sectarian organizations (as a practical matter, this can best be implemented through religious organizations’ establishment of a separate corporate structure which would distinguish a sectarian religious entity from its government-funded social welfare organization),
- Ensure that program recipients comply with all requirements and restrictions imposed upon all government-funded activity by Article I, Section 3 of the Florida Constitution, and the Religion Clauses of the First Amendment to the United States Constitution, and
- Ensure that extremist, terrorist or hatemongering groups are not able to receive government money.

## **Existing Partnerships with the Faith-Based Community Make the Proposed Amendments Unnecessary**

**Under current law there are longstanding and successful partnerships between Florida and the faith-based community through religiously-affiliated organizations such as Catholic Charities, Lutheran Social Services and Jewish Federations.<sup>6</sup>**

Federal and state laws generally prohibit religiously-affiliated organizations from hiring and firing based on religion.<sup>7</sup> Furthermore, these organizations ensure that they do not proselytize or

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CRC or Florida Legislature indicates any bigoted purpose in retaining the no-aid provision in the 1968 general Revision of the Florida Constitution.” See 886 So.2d. at 351.

<sup>6</sup> Nothing in the No Aid Provision bars the state from aiding or funding not-for-profit, religiously-affiliated organizations. See *Bush v. Holmes*, 886 So.2d. at 362.

<sup>7</sup> Any employer may hire or fire on the basis of sex, national origin, or religion for a particular position where such personal characteristic is a bona fide occupational qualification reasonably necessary to the normal operation of that

force religious activity on the beneficiaries they serve. **Consequently, for decades religiously-affiliated organizations have used public funds to help combat poverty and provided housing, education, and health care services for those in need largely unburdened by concerns over discrimination or entanglement between government and religion.**

### **The Proposed Amendments Could Be Harmful to Florida's Religious Institutions**

**Beyond compelling taxpayers to fund religious institutions, religious discrimination and religious beliefs, the proposed amendments could be harmful to religious institutions.**

By seeking to treat religious and non-religious entities as equals, CP0020 and CP0040 fail to recognize the unique place that religion has in our society and in our constitutional scheme. **Religion should be above the fray of government funding, government regulation, and government auditing, not entangled in it.**

Furthermore, the idea of government monitoring taxpayer-funded programs within houses of worship is disturbing. It raises serious concerns about possible government entanglement with religious practices. Religion has thrived in our state and in America because the government is prohibited from endorsing or burdening religious practice. **But religious institutions accepting taxpayer dollars would be subject to intrusive government regulations, including audits, reporting requirements and compliance reviews.**

**The proposed amendments also could result in divisive competition among religious groups seeking limited government funds.** This competition may compromise religion's historic and extremely important role as an independent critic on social issues — including government policy.

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