



**STATEMENT OF  
THE ANTI-DEFAMATION LEAGUE**

**ON**

**CP0020**

**“A RESOLUTION PROPOSING AN AMENDMENT TO SECTION 3 OF  
ARTICLE I OF THE STATE CONSTITUTION”**

**BEFORE**

**FLORIDA TAXATION AND BUDGET REFORM COMMISSION**

**MARCH 26, 2008**



Organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races and to combat racial, ethnic, and religious prejudice in the United States, the Anti-Defamation League (“ADL”) is today one of the world's leading organizations fighting hatred, bigotry, discrimination, and anti-Semitism.

ADL maintains one of its largest Regional Offices in Boca Raton, Florida. Its constituents are the numerous Floridians who sit on our boards across the state and who participate in the thousands of hours of community programming we provide in Florida.

ADL believes that its stated goals, as well as the general stability of our democracy, are best served through strict separation of church and state and commensurately strict enforcement of the free exercise of religion, as required by Section 3, Article I of the Florida Constitution.

ADL emphatically rejects the notion that the separation principle is inimical to religion, and holds, to the contrary, that a high wall of separation is essential to the continued flourishing of religious practice and beliefs in Florida and America, and to the protection of minority religions and their adherents. From day-to-day experience serving its constituents, ADL can testify that the more government and religion become entangled, the more threatening the environment becomes for each. In the familiar words of Justice Black, “A union of government and religion tends to destroy government and degrade religion.” *Engel v. Vitale*, 370 U.S. 421, 431 (1962).

Through the “No Aid Provision” of Section 3, Article I, the Florida Constitution provides greater religious freedom protections than the U.S. Constitution by specifically guaranteeing that no Florida taxpayer will be compelled to fund a church, synagogue, mosque or other religious institution.

CP0020 (“The Proposed Amendment”) would fundamentally and detrimentally alter the relationship between church and state in Florida by striking the vital religious freedom protections provided by the No Aid Provision and by requiring that houses of worship and other religious institutions be eligible for all state social-service and other contracts and grants. The result being that CP0020 would essentially require Florida taxpayers – regardless of their religious beliefs and conscience – to fund houses of worship, to fund religious discrimination, and to fund religious missions. Furthermore, the Proposed Amendment would open the door to religious proselytizing and religious activity within taxpayer-funded programs.

In essence, CP0020 creates 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.

Consequently, we urge the Taxation and Budget Reform Commission to vote against CP0020 on the following policy and constitutional grounds:

**CP0020 Would Essentially Require  
Florida Taxpayers to Fund Religious Institutions &  
Would Mandate a Constitutionally Suspect Florida Faith-Based Initiative**

Florida’s Religion Clause, Section 3, Article I, 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 repeals 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.* This language 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>

It is highly likely that houses of worship and other religious institutions would receive state funding under CP0020. In fact, the state could be subject to legal challenge under CP0020 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.

The Proposed Amendment would essentially create a constitutional mandate for a Florida faith-based initiative similar to controversial and constitutionally suspect federal faith-based initiative legislation. This federal legislation sought to make houses of worship and other religious 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</sup>

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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.”

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

Direct government funding to houses of worship and other religious institutions, which CP0020 would authorize, raises serious questions of constitutionality under the Establishment Clause of the U.S. Constitution's First Amendment. See *Bowen v. Kendrick*, 487 U.S. 589, 610-12, 621 (1988); *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 755 (1976); *Hunt v. McNair*, 413 U.S. 743 (1973). And indeed the type of funding contemplated by CP0020 has been found unconstitutional under the Establishment Clause. 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).

### **CP0020 Would Require Florida Taxpayers to Fund Religious Discrimination**

CP0020 hands 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 taxpayer-funded programs, which CP0020 allows.

Under these federal and state anti-discrimination laws, which were written before religious institutions were eligible for public 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>4</sup>

### **CP0020 Would Open the Door to Proselytizing of Social Services Beneficiaries**

Without strict constitutional safeguards and intrusive government oversight of our religious institutions, CP0020 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.

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<sup>4</sup> In generally discussing so-called 19<sup>th</sup> century state Blaine Amendments, the CP0020 Staff Analysis suggests 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 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.

Such constitutional safeguards should:

- Ensure that no program beneficiary is subjected to unwanted and unconstitutional proselytizing when he or she receives taxpayer-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 taxpayer-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 taxpayer-funded social welfare organization),
- Ensure that program recipients comply with all requirements and restrictions imposed upon all taxpayer-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 taxpayer money.

### **The Existing Model for Partnerships Between Florida and the Faith-Based Community Makes CP0020 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>5</sup>

Federal and state laws generally prohibit religiously-affiliated organizations from hiring and firing based on religion.<sup>6</sup> The separate accounting and corporate structure of religiously-affiliated institutions ensures that state funds are not directed to the religious activities of their affiliated religious institutions. Furthermore, by adhering to stringent constitutional safeguards, religiously-affiliated organizations also ensure that they do not proselytize or force religious activity on the beneficiaries they serve. Consequently, for decades religiously-affiliated organizations have used public funds to help combat poverty and provide housing, education, and health care services for those in need largely unburdened by concerns over discrimination or entanglement between government and religion.

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<sup>5</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>6</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 particular business or enterprise. See 42 U.S.C. 2000e-2(e) (Section 703(e) of Title VII of the 1964 Civil Rights Act); F.S.A. 760.10(8)(a) (Title XLIV, Chapter 760, Florida Civil Rights Act).

## **CP0020 Could Be Harmful to Florida's Religious Institutions**

Beyond compelling taxpayers to fund religious institutions, religious discrimination and religious missions, the Proposed Amendment could be harmful to religious institutions.

By seeking to treat religious and non-religious entities as equals, CP0020 fails 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 Amendment 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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In light of CP0020's deeply troubling implications for Floridians' religious freedom, civil liberties and religious institutions, we urge the Commission to vote against the Proposed Amendment.