

March 1, 2010

The President
The White House
Washington, DC 20510

Dear Mr. President:

As the time nears for the Advisory Council on Faith-Based and Neighborhood Partnerships to present its recommendations to you, we write to commend you for your commitment to the federal faith-based initiative and also to express several concerns.

This letter is prompted by the February 4, 2010, letter to you from the Coalition Against Religious Discrimination (CARD). CARD's letter is essentially a plea to turn back to a constricted framework for the federal government's interaction with faith-based organizations. We believe that would be a grave mistake.

You have rightly called for an "all hands on deck" approach to meeting the needs of the distressed and marginalized, an approach that welcomes the contributions of the many faith-based organizations that do so much to help those in need. Surely their contributions are even more needed today. But the approach advocated in the CARD letter would undermine that "all hands" effort. We call attention especially to three mistaken contentions in the letter.

First, in its effort to portray the federal faith-based initiative as a rash and mistaken innovation, the letter falsely claims that it was originated by the Bush administration. Yet collaboration between government and a wide variety of faith-based organizations goes back more than two centuries. Even if we limit the concept of "faith-based initiative" to a specific federal effort to ensure equal opportunity for every kind of faith-based organization, we have to look back further than the Bush administration. It was Congress and President Clinton who, on four separate occasions, enacted Charitable Choice provisions into federal law to ensure equal opportunity for faith-based providers. These enactments codified in federal law precisely key provisions that the CARD letter condemns. Further, many governors, including Democrats, have created their own faith-based initiatives and offices. Building strong and extensive federal partnerships with faith-based organizations has been a bipartisan effort.

Second, we strongly object to the letter's use of the words "to discriminate" and "discrimination." The letter implies that a faith-based organization, when it takes care to hire only people deeply committed to its religious identity and mission, is engaging in invidious and illegal job discrimination. But that is to confuse two quite distinct meanings of the concept "to discriminate." All employers discriminate in a benign and, indeed, necessary way when they make hiring decisions. Americans United for Separation of Church and State, we are sure, does not em-

ploy people who object to its strict-separationist interpretation of the First Amendment. Democratic Senators don't seek conservative Republicans to add to their policy staffs.

To engage in job “discrimination” in this sense means simply to hire in accordance with the mission of the organization, treating the conviction of applicants as relevant job qualifications, as they surely are. This is clearly a different practice than when an employer rejects an applicant simply out of prejudice, making an arbitrary and biased decision that is not related to furthering the organization's legitimate mission and goals. This latter practice constitutes invidious discrimination; it is wrong, and our civil rights laws protect against it. But not all hiring selectivity based on religion is invidious discrimination. That is why our premier civil rights employment law, Title VII of the 1964 Civil Rights Act, includes a religious exemption that leaves religious organizations free to consider religion when they assess the qualifications of job seekers.

But CARD's letter pretends that there is not a vast distance between these two forms of employment “discrimination,” in an effort to win an important policy argument by implying that their opponents—thousands of faith-based organizations—are committed to invidious discrimination. Not so. Rather, we understand, as does Title VII of the Civil Rights Act and a unanimous Supreme Court in upholding that Title's religious exemption (*Corporation of the Presiding Bishop v. Amos*, 1987), that it is appropriate and necessary for a faith-based organization to consider religion when making employment decisions. That way it can ensure that it has a staff that is qualified and committed to help it carry out its faith-shaped compassionate mission. The Bush administration did not create this religious hiring freedom, which rather was codified many decades ago. And while the statutes creating some programs would require a faith-based organization to give up this freedom as a condition of participation, many other federal programs do not contain that condition, and in the case of programs governed by Charitable Choice the statute explicitly affirms the hiring freedom. The federal government long has been in service partnerships with faith-based organizations that hire according to religion, serving everyone who is eligible without religious distinction.

Third, we are concerned with the CARD letter's effort to wrap itself and its extreme positions in the mantle of the Constitution, as if its signers are only asking you to do your constitutional duty and anyone who questions its positions is obviously out of tune with fundamental American values. Yet we, too, believe in the separation of church and state (though not of religion and public life); we uphold the Constitution; we support American laws and values. Indeed, we believe that our commitment to a level playing field in federal programs—to equal opportunity for faith-based organizations to compete for federal funding, whether the organizations are deeply religious or loosely affiliated with a church—better comports with the religion clauses of the First Amendment than does the CARD letter's stance that so-called “pervasively sectarian” organizations cannot be trusted to appropriately contribute to the common good. The courts have moved in the past few decades from the extreme separationist interpretation of those clauses to a “neutrality” or “equal treatment” perspective, and rightly so. CARD wishes to go backward. That

would not be constitutional nor good for social services nor helpful for those who are assisted by federally funded service providers—many of them faith-based.

We urge you to maintain the following seven basic principles as you receive the recommendations of the Advisory Council, charting a course of true partnership between faith-based organizations and government in meeting pressing needs in our nation and overseas:

- Both the separation of church and state—forbidding the privileging of a religion and also governmental control of religion—and the protection of free religious exercise are fundamental principles of American government and must be preserved.
- Faith-based organizations that accept government funds in support of service programs do not thereby lose the right to maintain their religious character.
- Faith-based organizations that accept government funds to operate programs do not, simply for that reason, forfeit their Title VII religious hiring freedom.
- Faith-based organizations may not use direct government funds to proselytize beneficiaries nor to conduct worship services or devotional activities. But religious activities can be offered separately from the government-funded programs, and faith-based organizations need not be turned into pristine religion-free zones, scrubbed even of non-sectarian references to God, a Higher Power, or the God-created dignity of every person.
- Beneficiaries who object to receiving services from faith-based organizations should have the right to an alternative provider, including a secular alternative, by extending to all federal programs a right that currently is limited to Charitable Choice programs.
- Faith-based organizations that operate programs using government funds must notify beneficiaries in those programs of their religious liberty rights.
- Whenever feasible your administration should preserve existing and create new voucher or voucher-like programs in order to maximize the opportunity for beneficiaries to choose from among a range of providers, including both secular and faith-based alternatives.

We very much appreciate all that you are doing on behalf of our nation and its people. Our prayers are with you and your family.

With very best wishes,

Stanley W. Carlson-Thies
President, Institutional Religious Freedom Alliance

cc: Joshua DuBois, Director, Office of Faith-Based and Neighborhood Partnerships

(organizations listed below for identification purposes only)

Dr. Stephen V. Monsma
Chairman of the Board, Institutional Religious Freedom Alliance
Fellow, Paul B. Henry Institute

Dr. Ronald J. Sider
President, Evangelicals for Social Action

Rev. Samuel Rodriguez
President, National Hispanic Christian Leadership Conference

Rabbi Abba Cohen
Washington Director and Counsel
Agudath Israel of America

Anthony Picarello, Esq.
Member, Advisory Council on Faith-Based and Neighborhood Partnerships

Dr. Arturo Chávez
President and CEO, The Mexican American Catholic College

Rev. Larry Snyder
President, Catholic Charities USA

Dr John M Perkins
Chair-Emeritus, Christian Community Development Association
President, John and Vera Mae Perkins Foundation

Dr Wayne Gordon
President, Christian Community Development Association
Pastor, Lawndale Community Church

Noel Castellanos
CEO, Christian Community Development Association
Member, Advisory Council on Faith-Based and Neighborhood Partnerships