107TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 107–138 Part 1

COMMUNITY SOLUTIONS ACT OF 2001

JULY 12, 2001.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 7]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 7) to provide incentives for charitable contributions by individuals and businesses, to improve the effectiveness and efficiency of government program delivery to individuals and families in need, and to enhance the ability of low-income Americans to gain financial security by building assets, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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89–006

The amendments are as follows:

Strike section 104 and insert the following:

SEC. 104. CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS.

(a) DEFINITIONS.—For purposes of this section:

(1) AIRCRAFT.—The term "aircraft" has the meaning provided that term in section 40102(6) of title 49, United States Code.

(2) BUSINESS ENTITY.—The term "business entity" means a firm, corporation, association, partnership, consortium, joint venture, or other form of enterprise.

(3) EQUIPMENT.—The term "equipment" includes mechanical equipment, electronic equipment, and office equipment.

(4) FACILITY.—The term "facility" means any real property, including any building, improvement, or appurtenance.

(5) GROSS NEGLIGENCE.—The term "gross negligence" means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

(6) INTENTIONAL MISCONDUCT.—The term "intentional misconduct" means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(7) MOTOR VEHICLE.—The term "motor vehicle" has the meaning provided that term in section 30102(6) of title 49, United States Code.

(8) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means—

(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(9) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(b) LIABILITY.—

(1) LIABILITY OF BUSINESS ENTITIES THAT DONATE EQUIPMENT TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results

from the use of equipment donated by a business entity to a nonprofit organization.

(B) APPLICATION.—This paragraph shall apply with respect to civil liability under Federal and State law.

(2) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF FACILITIES TO NONPROFIT ORGANIZATIONS.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring at a facility of the business entity in connection with a use of such facility by a nonprofit organization, if—

(i) the use occurs outside of the scope of business of the business entity;

(ii) such injury or death occurs during a period that such facility is used by the nonprofit organization; and

(iii) the business entity authorized the use of such facility by the nonprofit organization.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of a facility.

(3) LIABILITY OF BUSINESS ENTITIES PROVIDING USE OF A MOTOR VEHICLE OR AIRCRAFT.—

(A) IN GENERAL.—Subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside of the scope of business of the business entity, if—

(i) such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization; and

(ii) the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

(B) APPLICATION.—This paragraph shall apply—

(i) with respect to civil liability under Federal and State law; and

(ii) regardless of whether a nonprofit organization pays for the use of the aircraft or motor vehicle.

(c) EXCEPTIONS.—Subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct.

(d) SUPERSEDING PROVISION.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (e), this title preempts the laws of any State to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply.

(2) LIMITATION.—Nothing in this title shall be construed to supersede any Federal or State health or safety law.

(e) ELECTION OF STATE REGARDING NONAPPLICABILITY.—A provision of this title shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute—

(1) citing the authority of this section;

(2) declaring the election of such State that such provision shall not apply to such civil action in the State; and

(3) containing no other provisions.

(f) EFFECTIVE DATE.—This section shall apply to injuries (and deaths resulting therefrom) occurring on or after the date of the enactment of this Act.

Strike title II and insert the following:

TITLE II—EXPANSION OF CHARITABLE CHOICE

SEC. 201. PROVISION OF ASSISTANCE UNDER GOVERNMENT PROGRAMS BY RELIGIOUS AND COMMUNITY ORGANIZATIONS.

Title XXIV of the Revised Statutes of the United States is amended by inserting after section 1990 (42 U.S.C. 1994) the following:

"SEC. 1991. CHARITABLE CHOICE.

"(a) SHORT TITLE.—This section may be cited as the 'Charitable Choice Act of 2001'.

"(b) PURPOSES.—The purposes of this section are—

"(1) to enable assistance to be provided to individuals and families in need in the most effective and efficient manner;

"(2) to supplement the Nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organizations in the administration and distribution of government assistance under the government programs described in subsection (c)(4);

"(3) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of government assistance under such programs;

"(4) to allow religious organizations to participate in the administration and distribution of such assistance without impairing the religious character and autonomy of such organizations; and

"(5) to protect the religious freedom of individuals and families in need who are eligible for government assistance, including expanding the possibility of their being able to choose to receive services from a religious organization providing such assistance.

"(c) RELIGIOUS ORGANIZATIONS INCLUDED AS PROVIDERS; DISCLAIMERS.—

"(1) IN GENERAL.—

"(A) INCLUSION.—For any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the establishment clause and the free exercise clause of the first amendment to the Constitution.

"(B) DISCRIMINATION PROHIBITED.—Neither the Federal Government, nor a State or local government receiving funds under a program described in paragraph (4), shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character.

"(2) FUNDS NOT AID TO RELIGION.—Federal, State, or local government funds or other assistance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not support for religion or the organization's religious beliefs or practices. Notwithstanding the provisions in this paragraph, title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.) shall apply to organizations receiving assistance funded under any program described in subsection (c)(4).

"(3) FUNDS NOT ENDORSEMENT OF RELIGION.—The receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not an endorsement by the government of religion or of the organization's religious beliefs or practices.

"(4) PROGRAMS.—For purposes of this section, a program is described in this paragraph—

"(A) if it involves activities carried out using Federal funds—

"(i) related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including

programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.);

"(ii) related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

"(iii) related to the provision of assistance under Federal housing statutes, including the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

"(iv) under subtitle B or D of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

"(v) under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.);

"(vi) related to the intervention in and prevention of domestic violence, including programs under the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

"(vii) related to hunger relief activities; or

"(viii) under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note); or

"(B)(i) if it involves activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to nonschool hours programs, including programs under—

"(I) chapter 3 of subtitle A of title II of the Workforce Investment Act of 1998 (Public Law 105–220); or

"(II) part I of title X of the Elementary and Secondary Education Act (20 U.S.C. 6301 et seq.); and

"(ii) except as provided in subparagraph (A) and clause (i), does not include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

"(d) ORGANIZATIONAL CHARACTER AND AUTONOMY.—

"(1) IN GENERAL.—A religious organization that provides assistance under a program described in subsection (c)(4) shall have the right to retain its autonomy from Federal, State, and local governments, including such organization's control over the definition,

development, practice, and expression of its religious beliefs.

"(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government, nor a State or local government with Federal funds, shall require a religious organization, in order to be eligible to provide assistance under a program described in subsection (c)(4), to—

"(A) alter its form of internal governance or provisions in its charter documents; or

"(B) remove religious art, icons, scripture, or other symbols, or to change its name, because such symbols or names are of a religious character.

"(e) EMPLOYMENT PRACTICES.—A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (c)(4), and any provision in such programs that is inconsistent with or would diminish the exercise of an organization's autonomy recognized in section 702 or in this section shall have no effect. Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described in subsection (c)(4).

"(f) EFFECT ON OTHER LAWS.—Nothing in this section shall alter the duty of a religious organization receiving assistance or providing services under any program described in subsection (c)(4) to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688) (prohibiting discrimination in education programs or activities on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age).

"(g) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

"(1) IN GENERAL.—If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any program described in subsection (c)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—

"(A) is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds; and

"(B) has a value that is not less than the value of the assistance that the individual would have received from such organization.

"(2) NOTICE.—The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals described in paragraph (3) of the rights of such individuals under this section.

"(3) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who receives or applies for assistance under a program described in subsection (c)(4).

"(h) NONDISCRIMINATION AGAINST BENEFICIARIES.—

"(1) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall not discriminate in carrying out the program against an individual described in subsection (g)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(2) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) shall not deny an individual described in subsection (g)(3) admission into such program on the basis of religion, a religious belief, or a refusal to hold a religious belief.

"(i) ACCOUNTABILITY.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a religious organization providing assistance under any program described in subsection (c)(4) shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of such programs.

"(2) LIMITED AUDIT.—

"(A) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall segregate government funds provided under such program into a separate account or accounts. Only the separate accounts consisting of funds from the government shall be subject to audit by the government.

"(B) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) may segregate government funds provided under such program into a separate account or accounts. If such funds are so segregated, then only the separate accounts consisting of funds from the government shall be subject to audit by the government.

"(3) SELF AUDIT.—A religious organization providing services under any program described in subsection (c)(4) shall conduct annually a self audit for compliance with its duties under this section and submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit.

"(j) LIMITATIONS ON USE OF FUNDS; VOLUNTARINESS.—No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4). A certificate shall be separately signed by religious organizations, and filed with the government agency that disburses the funds, certifying that the organization is aware of and will comply with this subsection.

"(k) EFFECT ON STATE AND LOCAL FUNDS.—If a State or local government contributes State or local funds to carry out a program described in subsection (c)(4), the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

"(l) INDIRECT ASSISTANCE.—When consistent with the purpose of a program described in subsection (c)(4), the Secretary of the department administering the program may direct the disbursement of some or all of the funds, if determined by the Secretary to be feasible and efficient, in the form of indirect assistance. For purposes of this section, 'indirect assistance' constitutes assistance in which an organization receiving funds through a voucher, certificate, or other form of disbursement under this section receives such funding only as a result of the private choices of individual beneficiaries and no government endorsement of any particular religion, or of religion generally, occurs.

"(m) TREATMENT OF INTERMEDIATE GRANTORS.—If a nongovernmental organization (referred to in this subsection as an 'intermediate grantor'), acting under a grant or other agreement with the Federal Government, or a State or local government with Federal funds, is given the authority under the agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (c)(4), the intermediate grantor shall have the same duties under this section as the government when selecting or otherwise dealing with subgrantors, but the intermediate grantor, if it is a religious organization,

shall retain all other rights of a religious organization under this section.

"(n) COMPLIANCE.—A party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action for injunctive relief pursuant to section 1979 against the State official or local government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for injunctive relief in Federal district court against the official or government agency that has allegedly committed such violation.

"(o) TRAINING AND TECHNICAL ASSISTANCE FOR SMALL NONGOVERNMENTAL ORGANIZATIONS.—

"(1) IN GENERAL.—From amounts made available to carry out the purposes of the Office of Justice Programs (including any component or unit thereof, including the Office of Community Oriented Policing Services), funds are authorized to provide training and technical assistance, directly or through grants or other arrangements, in procedures relating to potential application and participation in programs identified in subsection (c)(4) to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $50 million annually.

"(2) TYPES OF ASSISTANCE.—Such assistance may include—

"(A) assistance and information relative to creating an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 to operate identified programs;

"(B) granting writing assistance which may include workshops and reasonable guidance;

"(C) information and referrals to other nongovernmental organizations that provide expertise in accounting, legal issues, tax issues, program development, and a variety of other organizational areas; and

"(D) information and guidance on how to comply with Federal nondiscrimination provisions including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Fair Housing Act, as amended (42 U.S.C. 3601 et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 694), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107).

"(3) RESERVATION OF FUNDS.—An amount of no less than $5,000,000 shall be reserved under this section. Small nongovernmental organizations may apply for these funds to be used for assistance in providing

full and equal integrated access to individuals with disabilities in programs under this title.

"(4) PRIORITY.—In giving out the assistance described in this subsection, priority shall be given to small nongovernmental organizations serving urban and rural communities.".

PURPOSE AND SUMMARY

While the First Amendment to the Constitution provides that the Government shall not "establish" religion, or any particular religion, by directing governmental support to a particular religion, or to adherents of religion to the exclusion of adherents to no religion, the First Amendment also provides that the Government shall not prohibit the "free exercise" of religion.[1] Consequently, Government must ensure that members of organizations seeking to take part in Government programs designed to meet basic and universal human needs are not discriminated against because of their religious views.

With such constitutional concerns in mind, the rules for participation in programs of Government funding through grants and cooperative agreements,[2] and through indirect forms of assistance, for the provision of social services must assess eligibility to participate without regard to the religious character of an organization, and any religious beliefs that organization might hold, or the intensity of those beliefs, should not be a basis for rejecting their participation out-of-hand. Indeed, faith-based organizations often allow their beneficiaries greater and more flexible access to the social services they offer.[3]

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[1] The First Amendment to the Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

[2] H.R. 7 refers to "grants and cooperative agreements" to avoid confusion with "Government contracts." *See* 31 U.S.C. §§ 6304; 6305. Title 31 U.S.C. § 6305 states "Using cooperative agreements. An executive agency shall use a cooperative agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—(1) the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Title 31 U.S.C. § 6304 states: "Using grant agreements. An executive agency shall use a grant agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—(1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Insofar as documents governing the provision of social services by religious organizations under the programs covered by title II of H.R. 7 are labeled contracts, when in fact they more closely resemble grants rather than procurement contracts, such documents should be considered grants under H.R. 7 and they should be subject to its provisions.

[3] For example, Charles Clingman, executive director of the Jireh Development Corporation in Cincinnati, Ohio, testifying before the House Subcommittee on the Constitution, stated that, "Unlike secular organizations, faith-based organizations develop immediate relationships with the clients and the people that they serve . . . They are neighborhood residents who we see on a daily basis at the grocery store, at the market and the bank, whatever . . . One thing we bring to the table is, at the grass roots level, we really do not close. If someone gets in trouble at midnight we allow them to call, based on the crisis they have. Other programs close at 5 o'clock. The Government closes at 5 o'clock. Faith-based organizations, i.e., churches, synagogues, mosques, they don't close. They are available to serve clients 24/7." Transcript of Hearings on "State and Local Implementation of Existing Charitable Choice Programs" before the House

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The so-called "charitable choice" principles, embodied in H.R. 7, allow for the public funding of faith-based organizations on the same basis as other nongovernmental organizations[4] and permit them to maintain their religious character by choosing their staff, board members, and methods. The principles also protect the rights of conscience of their clients and ensure that alternative providers that are unobjectionable to them on religious grounds are available.[5]

"Charitable choice" is not new. Examples of existing laws that include "charitable choice" provisions are the Substance Abuse and Mental Health Services Administration, Pub. L. No. 106–310, 42 U.S.C. § 300x–65; the Community Services Block Grant Act of 1998, Pub. L. No. 105–285, 42 U.S.C. § 9920; the Welfare Reform Act of 1996, Pub. L. No. 104–193, 42 U.S.C. § 604a; and the Community Renewal Tax Relief Act of 2000, Pub. L. No. 106–554, 42 U.S.C. § 290kk-1. Each was signed into law by President Clinton.

H.R. 7 simply seeks to apply the tested principles of charitable choice, which in the case of welfare services have been Federal law for 5 years, to cover additional Federal programs, bringing greater clarity and constitutional adherence to a wider scope of Federal funding programs. The charitable choice language in H.R. 7 has been carefully tailored to respond to discussions of earlier versions of the provision. New language emphasizes that Government funding of a religious service provider is not intended to endorse religion but rather to purchase effective assistance; makes it clearer that beneficiaries may not be coerced into religious observance, but instead inherently religious activities such as worship and proselytization must be privately funded, voluntary, and offered separately from the Government-funded services; requires religious organizations to sign a certificate acknowledging this duty of non-coercion and seperation; clearly obligates Government to inform clients of their religious liberty rights; emphasizes that the civil rights exemption that allows religious organizations to take religion into account in hiring decisions does not remove their obligation to respect the other non-discrimination requirements in Federal law from which they are not already exempt; requires religious organizations to keep direct Government funds separate from other funds to enable Government to audit the books of a religious orga-

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Subcommittee on the Constitution (107th Cong. 1st Sess.) (April 24, 2001) at 38, 60. The Reverend Donna Jones of the Cookman United Methodist Church in north Philadelphia, who runs a charitable choice welfare-to-work program also testified that, "We also found that we were offering something that was unique to our community ... We also found that we got greater information about family situations, about domestic violence, about other barriers to employment that were happening in the house than other agencies were receiving. We also were—because we were a church, there was an expectation that was different than what they would have expected to have seen in a local agency ... People expected us to go the extra mile. Also, because we were a church, we were more flexible in our ability to deliver services." *Id.* at 22–23.

[4] Subsection (c)(1) of the Charitable Choice Act of 2001 provides that "for any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the establishment clause and the free exercise clause of the first amendment to the Constitution." The requirement that religious organizations shall be considered "on the same basis as other nongovernmental organizations" does not impart to religious organizations any preferential treatment in the program application and administration process. Subsection (c)(1) further provides that, "Neither the Federal Government, nor a State or local government receiving funds under a program described in paragraph (4), shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character."

[5] *See* subsection (g) of the Charitable Choice Act of 2001.

nization without entangling itself in strictly religious matters; emphasizes that religious organizations that receive Federal funds are held to the same performance standards as well as the same accounting standards as other grantees; requires religious organizations to conduct an annual self audit to ensure compliance and corrective action; provides for $50 million in new Federal funding for technical assistance to novice and small nongovernmental organizations to help ensure that they have the knowledge and administrative capacity to comply with these and other Federal requirements; and clarifies how charitable choice principles apply when an organization that receives Federal funds in turn subgrants funds to other organizations.

Title II of H.R. 7, the "Charitable Choice Act of 2001," provides that its purposes are "(1) to enable assistance to be provided to individuals and families in need in the most effective and efficient manner; (2) to supplement the nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organizations in the administration and distribution of Government assistance under the Government programs described in subsection (c)(4); (3) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of Government assistance under such programs; (4) to allow religious organizations to participate in the administration and distribution of such assistance without impairing the religious character and autonomy of such organizations; and (5) to protect the religious freedom of individuals and families in need who are eligible for Government assistance, including expanding the possibility of their being able to choose to receive services from a religious organization providing such assistance."[6]

Under H.R. 7, religious organizations receiving grants under covered programs may not use the provided funds for "sectarian instruction, worship, or proselytization,"[7] and a beneficiary's taking

[6] H.R. 7 would expand Federal programs governed by charitable choice to include programs related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974; related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968; related to the provision of assistance under Federal housing statutes, including the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974; under subtitle B or D of title I of the Workforce Investment Act of 1998; under the Older Americans Act of 1965; related to the intervention in and prevention of domestic violence, including programs under the Child Abuse and Prevention and Treatment Act or the Family Violence Prevention and Services Act; related to hunger relief activities; under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998; or involving activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to nonschool hours programs, including programs under chapter 3 of subtitle A of title II of the Workforce Investment Act of 1998 or part I of title X of the Elementary and Secondary Education Act but not including activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965. The intent of H.R. 7 is to apply charitable choice principles to all Federal social service programs that further Federal goals in the listed subject areas, including, for example, programs to strengthen responsible fatherhood and to reduce youth risk behaviors.

[7] In addition to the sectarian practices listed in subsection (j), the Supreme Court has found the following practices to be inherently religious. The Supreme Court has found that prayer; *see Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); devotional Bible reading; *see School District of Abington Township*, 374 U.S. at 203; veneration of the Ten Commandments, *see Stone v. Graham*, 449 U.S. 39 (1980) (per curiam); classes in confessional religion; see *McCollum v. Board of Education of School District No. 71*, 333 U.S. 203 (1948); and teaching

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advantage of a social service program cannot be conditioned on taking part in such activities.[8] Existing charitable choice law, part of the Welfare Reform Act of 1996, contains an explicit protection of a beneficiary's right to "refus[e] to actively participate in a religious practice," thereby insuring a beneficiary's right to avoid any unwanted religious practices,[9] and a similar provision in H.R. 7 makes clear that participation, if any, in sectarian instruction, worship, or proselytization must be voluntary and noncompulsory.

Such a provision is consistent with Supreme Court precedent. Supreme Court Justices O'Connor and Breyer require that no Government funds be diverted to "religious indoctrination." Therefore, under H.R. 7, religious organizations receiving direct funding will have to separate their social service program from any sectarian instruction, worship, or indoctrination.[10] If the Federal assistance is utilized for social service functions without attendant sectarian instruction, worship, or proselytization, then no constitutional problems are raised. If the aid flows into the entirety of a social service program and some "religious indoctrination [is] taking place therein," then the indoctrination "would be directly attributable to the Government."[11] The Supreme Court in *Bowen v. Kendrick*,[12] in upholding a Federal program allowing funds to be distributed to faith-based organizations for teen family counseling programs, also made clear when remanding the case to the District Court, that "[t]he District Court should ... consider on remand whether in particular cases [the federal] aid has been used to fund specifically religious activities in an otherwise substantially secular setting ... Here it would be relevant to determine, for example, whether the Secretary [of Health and Human Services] has permitted [federal] grantees to use materials that have an explicitly religious content or are designed to inculcate the views of a particular religious faith." Therefore, if any part of a faith-based organization's activities involve "religious indoctrination," such activities must be set apart from the Government-funded program and, hence, privately funded.[13]

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the biblical creation story as science; *see Edwards v. Aguillard*, 482 U.S. 578 (1987); *Epperson v. Arkansas*, 393 U.S. 97 (1968); are all forms of inherently religious speech by the Government. These practices should not be part of a Government-funded program.

[8] Subsection (j) of the Charitable Choice Act of 2001 also provides that, "No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any [covered] program ... shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4). A certificate shall be separately signed by religious organizations and filed with the Government agency that disburses the funds, certifying that the organization is aware of and will comply with this subsection."

[9] 42 U.S.C. § 604a(g) (faith-based organizations may not discriminate or otherwise turn away a beneficiary from the organization's program because the beneficiary "refus[es] to actively participate in a religious practice").

[10] *Mitchell v. Helms*, 120 S.Ct. 2530, 2568 (2000) (O'Connor, J., concurring in the judgment).

[11] *Id.*

[12] 487 U.S. 589, 621 (1988).

[13] For example, a welfare-to-work program operated by a church in Philadelphia illustrates how this can be done. Teachers in the program conduct readiness-to-work classes in the church basement weekdays pursuant to a Government grant. During a free-time period the pastor of the church holds a voluntary Bible study in her office up on the ground floor. The sectarian instruction is privately funded and separated in both time and location from the welfare-to-work classes.

On October 17, 2000, President Clinton stated his constitutional concerns regarding the implementation of the charitable choice provisions in Substance Abuse and Mental Health Services Administration ("SAMHSA") programs as follows: "This bill includes a provision making clear that religious organizations may qualify for SAMHSA's substance abuse prevention and treatment grants on the same basis as other nonprofit organizations. The Department of Justice advises, however, that this provision would be unconstitutional to the extent that it were con-

H.R. 7 also requires a religious organization receiving funds under a covered program to sign a certificate of compliance that certifies that the organization is aware of and will comply with the provisions against the use of Government funds for inherently religious activities. This certificate, which has the purpose of impressing upon both the Government grantor and the faith-based organization the importance of both voluntariness and the need to separate sectarian instruction, worship, and proselytization, must be filed with the Government agency disbursing the funds.

Subsection (g) of the Charitable Choice Act of 2001 also protects beneficiaries of charitable choice programs by requiring the presence of an alternative that is unobjectionable to beneficiaries on religious grounds when a religious organization is providing social services.[14] Such an alternative need not be secular.[15] If, of course, a beneficiary objects to being served by any faith-based organization, such a beneficiary would be guaranteed a secular alternative. The alternative need not be a completely separate program. It also may be purchased on the open social services market. Subsection

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strued to permit governmental funding of organizations that do not or cannot separate their religious activities from their substance abuse treatment and prevention activities that are supported by SAMHSA aid. Accordingly, I construe the act as forbidding the funding of such organizations and as permitting Federal, State, and local governments involved in disbursing SAMHSA funds to take into account the structure and operations of a religious organization in determining whether such an organization is constitutionally and statutorily eligible to receive funding." *Weekly Compilation of Presidential Documents* (Oct. 23, 2000) (Statement on Signing the Children's Health Act of 2000), p. 2504. He made an identical statement regarding the charitable choice provisions in the Community Renewal Tax Relief Act when he signed that measure into law on December 15, 2000. See White House Office of the Press Secretary, "Statement of the President Upon Signing H.R. 4577, the Consolidated Appropriations Act, FY 2001" (December 22, 2000), at 8. These concerns are the same as those addressed by the provision in subsection (j) of the Charitable Choice Act of 2001, which provides that, "No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any [covered] program ... shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4)." The required separation would not be met where the Government-funded program entails worship, sectarian instruction, or proselytizing. Under subsection (j), there are to be no practices constituting "religious indoctrination" performed by an employee while working in a Government-funded program. The same is true for volunteers. However, to say that the Government-funded program is to be devoid of sectarian practices is different from saying that the program must be entirely secular. Indeed, subsection (d) specifically guarantees that faith-based organizations may retain religious symbols, a religious name, specifically religious language in its chartering documents, and the selection of its governing board along religious lines. And, under subsection (e), the faith-based organization may staff on a religious basis and thereby retain is religious character. Most importantly, faith-based organization employees and volunteers can do their good works out of religious motive. While the task of helping the poor and needy is "secular" from the perspective of the Government, from the viewpoint of the faith-based organization and its workers it is a ministry of mercy driven by faith and guided by faith regarding how best to meet basic human needs.

[14] Subsection (g)(1) provides that, "If an individual ... has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any program described in subsection (c)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—(A) is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds; and (B) has a value that is not less than the value of the assistance that the individual would have received from such organization." Subsection (g)(2) also provides that, "The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals [taking part in charitable choice programs] of the rights of such individuals under this section."

[15] 42 U.S.C. § 604a(e), part of the 1996 Welfare Reform Act, also does not require a secular alternative unless a secular alternative is the only alternative acceptable to the beneficiary: "If an individual ... has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program described in subsection (a)(2) of this section, the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider that is accessible to the individual and the value of which is not less than the value of the assistance which the individual would have received from such organization."

(g) also requires the appropriate Federal, State, or local governmental agency to give notice to beneficiaries receiving services under the covered programs of their right to an alternative that is unobjectionable to them on religious grounds.

Further, charitable choice principles prohibit faith-based organizations taking part in programs covered by title II of H.R. 7 from discriminating on the basis of religion against those who seek to be beneficiaries of such programs.[16] Subsection (m) of the Charitable Choice Act of 2001 also provides that intermediaries authorized to act under a grant or other agreement to select nongovernmental organizations to provide assistance under any program covered by title II of H.R. 7 have the same duties under title II as the Government when selecting or otherwise dealing with subgrantors, but the intermediary grantor, if it is a religious organization, shall retain all other rights of a religious organization under title II.

Misguided understandings of the Constitution have for too long deterred Federal, State, and local governments from even inviting religious organizations to participate in informational meetings designed for those willing to compete for social service funds. H.R. 7 simply makes clear to the Federal Government, states, and localities, that if they provide a grant, to or enter into a cooperative agreement with, religious organizations under charitable choice principles, they need not fear that their actions are unconstitutional.[17]

BACKGROUND AND NEED FOR THE LEGISLATION

The pervasive role of Government in providing social services, necessitating higher and higher taxes on its citizens, requires a fresh evaluation of the ways in which religious and other community organizations can best be made part of social welfare programs.

Today, because Government controls most of the resources available for the provision of social services, private funding for private sector welfare services is increasingly not a practical alternative. In 2000, for example, approximately 45 percent of the average American's income will go to pay federal, state, and local taxes, and the average American will have worked a full 167 days in order to pay

[16] Subsection (h) of the Charitable Choice Act of 2001, for example, prohibits discrimination against beneficiaries of charitable choice programs by providing that a religious organization providing assistance through a grant or cooperative agreement, "shall not discriminate, in carrying out the program, against an individual ... on the basis of religion, a religious belief, or a refusal to hold a religious belief." Beneficiaries of charitable choice programs funded through indirect forms of assistance "shall not deny an individual ... admission into [a covered] program on the basis of religion, a religious belief, or a refusal to hold a religious belief." H.R. 7 does not preempt any Federal, State, or local nondiscrimination laws pertaining to the serving of beneficiaries.

[17] H.R. 7, by prohibiting discrimination against organizations based on religion, is Congress' attempt to make clear to grant and program distributors what the rules are for allowing faith-based organizations to compete on an equal basis with nonreligious organizations for Federal social service funds. What a religious organization believes should have no bearing on its eligibility to receive a grant. Insofar as there are statutory rights in H.R. 7 that inure to the benefit of religious social service providers, and also statutory duties on the part of such religious organizations, in the rare case a definition of "religious organization" may be required. Such a definition should be articulated by the courts on a case-by-case basis, just as the courts have done under title VII and the applicability of its § 702 exempting religious organizations. *See Hall v. Baptist Memorial Health Care Corporation*, 215 F.3d 618, 624–25 (6th Cir. 2000) (hospital was religious organization); *Killinger v. Samford University*, 113 F.3d 196, 199 (11th Cir. 1997) (university was religious organization); *EEOC v. Presbyterian Ministries, Inc.* 788 F. Supp. 1154, 1156 (W.D. Wash. 1992) (retirement home was religious organization); *Fike v. United Methodist Children's Home*, 547 F. Supp. 286, 290 (E.D. Va. 1982) (residential care home for youth was no longer a religious organization).

those taxes (until June 16).[18] The current situation leaves little left for citizens to contribute to non-governmental social service providers, as a family with two earners today pays more to the Government in taxes than the average family spends on their own food, clothing, and housing combined.[19] In contrast, in 1957, a family with two earners only paid approximately a quarter of their budget in taxes.[20]

Despite an increase in the total amount citizens give to charity, there has been a substantial decline in the percentage of both the citizenry and the portion of their income devoted to philanthropy and charity since the rise of dramatically expanded Government welfare programs in the 1960's and the Government's taking a greater share of the average American's income. This phenomenon is startling. As Robert D. Putnam reveals in his book, *Bowling Alone: The Collapse and Revival of American Community*:

> Beginning in 1961, however, philanthropy's share of Americans' income has fallen steadily for nearly four decades . . . This array of evidence on declining generosity is reinforced by what Americans from all walks of life have told Roper and Yankelovich pollsters in the two longest-running surveys on philanthropy. *As recently as the first half of the 1980's [,] nearly half of all American adults reported that they had made a contribution to charity in the previous month, and more than half said that they contributed to religious groups at least "occasionally." However, both these barometers of self-reported generosity fell steadily over the next two decades. By the prosperous mid-1990's barely one American in three reported any charitable contribution in the previous month, and fewer than two in five claimed even occasional religious giving . . . If we were giving, at century's end, the same fraction of our income as our parents gave in 1960 [,] U.S. religious congregations would have $20 billion more annually [to invest in good works].*[21]

The following chart compares total Federal outlays as a percentage of national income with total charitable giving by individuals as a percentage of national income between the years 1940 and 2000. The chart shows that, since the expansion of Federal welfare programs in the 1960's, total Federal outlays have increased approximately 20 percent as a percentage of national income, while charitable giving by individuals has decreased approximately 25 percent as a percentage of national income.

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[18] *See* Americans for Tax Reform Foundation, "Cost of Government Day Report: 2000" (8th ed. 2000) at 10.

[19] *See* Amity Shlaes, *The Greedy Hand: How Taxes Drive Americans Crazy and What To Do About It* (Random House, 1999) at 14.

[20] *Id.*

[21] Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster 2000) at 123, 126 (emphasis added).

COMPARISON OF TOTAL FEDERAL OUTLAYS AND TOTAL CHARITABLE GIVING BY INDIVIDUALS AS A PERCENTAGE OF NATIONAL INCOME (1940-2000)

Federal Outlays as a percentage of National Income	Charitable Giving as a percentage of National Income	1940	1950	1960	1970	1980	1990	2000
30	0.030							
29	0.029							
28	0.028							
27	0.027						○	
26	0.026					○		
25	0.025							○
24	0.024				○			
23	0.023							
22	0.022			○●				
21	0.021							
20	0.020				●			
19	0.019		●					
18	0.018					●	●	
17	0.017		○					
16	0.016	●						●
15	0.015							
14	0.014							
13	0.013							
12	0.012	○						
11	0.011							
10	0.010							

●—● = Charitable Giving by Individuals
○--○ = Federal Outlays

Sources for Federal Outlays Figures: Bureau of the Census, *Historical Statistics of the United States: Colonial Times to 1970* (Washington: Government Printing Office, 1975), Series F-7, at 224; Office of Management and Budget, *Historical Tables, Budget of the United States Government, Fiscal Year 2001* (Washington, Government Printing Office, 2000), Table 1.1, at 19; Sources for Charitable Giving Figures: Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster, 2000), Chapter 7, at 123 and n.25 (listing various sources).

Starting around 1960, an ever-widening "charity gap" has developed as Federal outlays have increased and charitable giving by individuals has decreased. As reported in a recent article in the American Sociological Review, "In a society . . . in which the median congregation has only 75 regular participants and an annual budget of only $55,000, the substantially increased delivery of social services by congregations can occur only via increases in Government funding to congregations."[22] While the Federal Government leaves, after taxes, so little for most average citizens to contribute to charity, it too often excludes faith-based organizations from the receipt of Government funds even when such organizations can meet basic human needs most effectively and when faith-based or-

[22] Mark Chaves, "Religious Congregations and Welfare Reform: Who Will Take Advantage of 'Charitable Choice'?" 64 *American Sociological Review* 836, 844 (1999).

ganizations can carry on their programs in accordance with both the free exercise of religion and the Establishment Clause.

The lack of neutral Government funding of both nonreligious and religious social service providers hurts the needy by denying them the ability to choose the provider that will best meet their needs.

THE FIRST AMENDMENT'S RELIGION CLAUSES PROTECT INDIVIDUALS FROM AN ESTABLISHMENT OF RELIGION WHILE ALSO PROTECTING THEIR FREEDOM TO EXERCISE RELIGION

Commentators have described the First Amendment as erecting a "wall of separation between church and state." However, the phrase "wall of separation" is taken from a reply Thomas Jefferson wrote a letter by a committee of the Danbury Baptist Association dated January 1, 1802, and the Supreme Court has made clear that the phrase "wall of separation between church and state" is only a metaphor and that "[t]he metaphor itself is not a wholly accurate description of the practical aspects of the relationship that in fact exists between church and state."[23] It was James Madison, not Thomas Jefferson, who was the principal drafter of the First Amendment, and in the debates concerning the wording of the First Amendment, Madison stated that he "apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience."[24] Madison further stated that he "believed that the people feared one sect might obtain a preeminence, or two combine together, and establish a religion to which they would compel others to conform."[25] Charitable choice principles are in accordance with Madison's understanding of the First Amendment: charitable choice principles do not prefer religion over non-religion, or any particular religion over any other particular religion, they protect beneficiaries' rights of conscience by allowing them non-religious alternatives, and they prevent discrimination against beneficiaries on the basis of religion.

Unfortunately, too often faith-based organizations have been subject to blanket exclusionary rules applied by Government grant distributors. As described by the Congressional Research Service, "interpretations and applications of the establishment of religion clause of the First Amendment as well as of the sometimes more strict provisions of state constitutions have in the past generally required programs operated by religious organizations that receive public funding in the form of grants or contracts to be essentially secular in nature. Religious symbols and art have had to be removed from the premises . . . Charitable choice attempts to move beyond these restrictions and allow faith-based organizations to participate in publicly funded social services programs while retaining their religious character." CRS Report to Congress, RS20809: *Public Aid and Faith-Based Organizations (Charitable Choice): An Overview* (updated April 18, 2001) at 2.[26] The exclusion

[23] *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984).
[24] 1 Annals of Congress 730 (1984) (August 15, 1789).
[25] *Id.* at 731.
[26] *See, e.g.*, 24 C.F.R. § 570.200 ("Constitutional prohibition. In accordance with First Amendment Church/State Principles, as a general rule, CDBG [Community Development Block Grant] assistance may not be used for religious activities or provided to primarily religious entities for

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of certain faith-based social service providers from program eligibility simply because of what they believe, or because of how they practice and express what they believe, is discriminatory on the bases of religious speech and religious exercise. The charitable choice principles embodied in H.R. 7 eliminates restrictions on religious organizations that the Supreme Court no longer requires or considers constitutionally legitimate. Dr. Amy Sherman has written, "Charitable Choice's most important effect thus far is that it has made collaboration plausible for those within Government and the faith community who had previously assumed such partnering was somehow outside the bounds of constitutionality under their (misguided) interpretation of the First Amendment."[27]

EMPIRICAL AND ATTITUDINAL SURVEYS SHOW THAT EXISTING CHARITABLE CHOICE PROGRAMS HAVE BEEN SUCCESSFUL AND POPULAR

Support for increased Government aid for faith-based organizations that can best meet social service needs is strong, and particularly strong among African-Americans. Perhaps the most comprehensive survey of public attitudes toward charitable choice programs was conducted by researcher Mark Chaves and reported in the *American Sociological Review*. The study used a nationally representative sample of 1,456 religious congregations and gathered data via a 60-minute interview with one key informant—a minister, priest, rabbi, or other leader—from 1,236 congregations.[28] According to Chaves' survey, 30 percent of congregation attendees were aware of "charitable choice" legislation, and 45 percent would apply for Government funds to support social service projects.[29] Chaves concluded that

> Apparently there is room for more public education about charitable-choice opportunities, [and there is only] a small subset of congregations that will not be interested in these opportunities ... 36 percent of congregations, representing 45 percent of religious-service attenders, would be interested in applying for Government money to support human services programs. Thus, the "market" for charitable-choice implementation in American religion apparently is fairly sizable.[30]

Chaves also reported that "Informants from 64 percent of predominantly African American congregations expressed a willingness to apply for Government funds ... Controlling for other congregational features, predominantly black congregations are *five times* more likely than other congregations to seek public support for social service activities." *Id.* at 841 (emphasis in original).

Anticipating increased involvement of faith-based organizations in Federal social service programs, and in order to facilitate small

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any activities, including secular activities."); 24 C.F.R. § 92.257 ("HOME funds [Home Investment Partnership Funds] may not be provided to primarily religious organizations, such as churches, for any activity including secular activities."). *See also* Carl H. Esbeck, *The Regulation of Religious Organizations as Recipients of Governmental Assistance* (Center for Public Justice 1996), at 12–19.

[27] Dr. Amy S. Sherman, "The Growing Impact of Charitable Choice: A Catalogue of New Collaborations Between Government and Faith-Based Organizations in Nine States" ("Growing Impact"), The Center for Public Justice Charitable Choice Tracking Project (March 2000) at 9 (emphasis in original).

[28] Mark Chaves, "Religious Congregations and Welfare Reform: Who Will Take Advantage of 'Charitable Choice'?" 64 *American Sociological Review* 836, 838 (1999).

[29] *Id.* at 838.

[30] *Id.* at 839 (emphasis added).

nongovernmental organizations' participation in the programs covered by title II of H.R. 7 generally, subsection (o) of the bill authorizes, from amounts made available to carry out the purposes of the Office of Justice Programs, funds to provide training and technical assistance, in procedures relating to potential application and participation in programs covered by title II of H.R. 7 to small nongovernmental organizations, as including religious organizations, in an amount not to exceed $50 million. Subsection (o) states that such aid may include assistance in creating a 501(c)(3) organization, grant writing workshops, and informational assistance regarding accounting, legal, and tax issues, informational assistance regarding how to comply with Federal nondiscrimination provisions. Subsection (o) also provides that, in providing such assistance, priority shall be given to small nongovernmental organizations serving rural and urban communities.

EXISTING CHARITABLE CHOICE PROGRAMS HAVE MET WITH MUCH SUCCESS AND FEW LAWSUITS AND OTHER PROBLEMS

Existing charitable choice programs have had a significant impact on social welfare delivery. Dr. Amy Sherman of the Hudson Institute has conducted the most extensive survey of existing charitable choice programs. Dr. Sherman concluded that, currently, "All together, thousands of welfare recipients are benefitting from services now offered through FBOs [faith-based organizations] and congregations working in tandem with local and state welfare agencies."[31]

Dr. Sherman also found that fears of aggressive evangelism by publicly funded faith-based organizations have little basis in fact. According to Dr. Sherman:

> *[O]ut of the thousands of beneficiaries engaged in programs offered by FBOs [faith-based organizations] collaborating with Government, interviewees reported only two complaints by clients who felt uncomfortable with the religious organization from which they received help.* In both cases—in accordance with Charitable Choice guidelines—the client simply opted out of the faith-based program and enrolled in a similar program operated by a secular provider. *In summary, in nearly all the examples of collaboration studied, what Charitable Choice seeks to accomplish is in fact being accomplished: the religious integrity of the FBOs working with Government is being protected and the civil liberties of program beneficiaries enrolled in faith-based programs are being respected.*[32]

Religious groups in the nine states Dr. Sherman surveyed also registered few complaints about their Government partners. According to Dr. Sherman, "The vast majority reported that the church-state question was a 'non-issue,' and that they enjoyed the trust of their Government partners and that they had been straightforward about their religious identity."[33]

The success of existing charitable choice programs has led the National Conference of State Legislatures ("NCSL") to support their expansion. According to Sheri Steisel, director of NCSL's

[31] Sherman, "Growing Impact," at 8.
[32] *Id.* at 11 (emphasis added).
[33] *Id.*

Human Services Committee, "In many communities, the only institutions that are in a position to provide human services are faith-based organizations. Providing grants to or entering into cooperative agreements with faith-based and other community organizations to provide Government services is something that has proven effective in the states over the past 5 years. As welfare reform continues to evolve, it is important that Government at all levels continues to explore innovative ways to provide services to its constituents. We are extremely pleased that the President is joining the states in exploring these new opportunities."[34]

Only two challenges to the constitutional application and implementation of charitable choice programs have been filed. Both suits are "as applied," rather than "facial" challenges, to 42 U.S.C. § 604a. Each of these lawsuits was filed after Presidential candidate George W. Bush officially entered the race on June 12, 1999, and after then-Governor Bush delivered his first major policy address on faith-based organizations in Indianapolis, Indiana, on July 22, 1999.[35]

Charitable choice provisions provide for a variety of safeguards to prevent their unconstitutional application. In order to obtain any Government funds, faith-based organizations must demonstrate that they can effectively deliver the services they are promising, respect clients' civil liberties, and account for all public monies spent.

Subsection (i) of the Charitable Choice Act of 2001 also provides that a religious organization providing assistance under any covered program shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of the programs. Also, under subsection (i)(2)(A), religious organizations taking part in a covered program through a grant or cooperative agreement must segregate Government funds provided under such program into a separate account or accounts, and only the Government funds in the separate accounts will be subject to audit by the Government for purposes of monitoring their use in the covered Federal program. This is done, in part, to limit the scope of audits to funds from Government sources and thereby shield other accounts from Government monitoring.[36] Under subsection (i)(2)(B), religious organizations taking part in a covered program through indirect forms of assistance may, at their discretion, segregate Government funds provided under such program into a separate account or accounts. If they do so, only the Govern-

[34] News Release, "Faith Based Initiatives Nothing New to Nation's State Lawmakers" (January 30, 2001).

[35] While litigation challenging elements of charitable choice programs has been minimal, H.R. 7, in subsection (n), contains a compliance provision that provides that a party alleging that their rights under section 1994A of H.R. 7 have been violated by a State or local government may bring a civil action for injunctive relief pursuant to 42 U.S.C. § 1983 (section 1979 of the Revised Statutes) against the State official or local government agency that has allegedly committed such violation. A party alleging that the rights of the party under section 1994A have been violated by the Federal Government may bring a civil action for injunctive relief in Federal district court against the official or Government agency that has allegedly committed such violation. This subsection limits parties alleging that their rights under section 1994A have been violated to injunctive relief, just as the 1996 Welfare Reform Act's charitable choice limited liability for violations of its provisions to injunctive relief.

[36] The separate accounts are for purposes of segregating the funds used during the course of a Federal program described in subsection (c)(4), and isolating them in the event of a Government audit of their use in a covered program, and for no other purpose.

ment funds in the separate accounts will be subject to audit by the Government.[37]

Further, it is not uncommon for program policies to require of providers periodic compliance self-audits in which any discrepancies uncovered in such a self-audit must be promptly reported to the Government along with a plan to timely correct any deficiencies. H.R. 7, in subsection (i)(3), requires such a self-audit for faith-based organizations receiving Federal funds. This is done to further meet the monitoring requirements required by *Mitchell v. Helms* to prevent diversion of funds to religious indoctrination.[38]

A CONSTITUTIONAL ANALYSIS OF CHARITABLE CHOICE PRINCIPLES BEGINS WITH AN ASSESSMENT OF THEIR NEUTRALITY TOWARD RELIGION

In order to minimize governmental influence over individual religious choices, governmental programs should be neutral regarding the individual choices, whether religious or nonreligious, of the needy who are served by these programs. Recently, a majority of the Justices of the Supreme Court emphasized the importance of this neutrality principle in deciding cases under the Establishment Clause in *Mitchell v. Helms*.[39] The plurality opinion stated that, "In distinguishing between indoctrination that is attributable to the State and indoctrination that is not, we have consistently turned to the principle of neutrality, upholding aid that is offered to a broad range of groups or persons without regard to their religion ... [I]f the Government, seeking to further some legitimate secular purpose, offers aid on the same terms, without regard to religion, to all who adequately further that purpose [,] then it is fair to say that any aid going to a religious recipient only has the effect of furthering that secular purpose."[40] Justice O'Connor, in her concurring opinion in *Helms*, in which she was joined by Justice Breyer, also acknowledged that "neutrality is an important reason for upholding Government-aid programs," a reason which the Supreme Court's recent cases have "emphasized ... repeatedly."[41]

From Justice O'Connor's opinion, when combined with the numbers comprising the plurality, it can be said that: neutral, indirect aid to a religious organization does not violate the Establishment Clause,[42] and neutral, direct aid to a religious organization does not, without more, violate the Establishment Clause.[43]

Other cases decided by the Supreme Court also make clear that neutrally administered Government programs, open to all, are con-

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[37] Because indirect aid to a faith-based organization is "akin to the Government issuing a paycheck to an employee who, in turn, donates a portion of that check to a religious institution," *Mitchell v. Helms*, 530 U.S. 793, 841 (O'Connor, J., concurring in the judgment) (2000), such aid is permissible under the Establishment Clause and need not be segregated into a separate account for monitoring purposes.

[38] 120 S.Ct. 2530, 2541 (2000) (upholding constitutionality of school aid program known as chapter 2, in which the Federal Government distributes funds to State and local governmental agencies, which in turn lend educational materials and equipment to public and private schools, including religious schools, with the enrollment of each participating school determining the amount of aid that it receives).

[39] *Id.* at 2541 (2000).

[40] *Mitchell v. Helms*, 120 S.Ct. 2530, 2541 (2000) (plurality opinion).

[41] *Mitchell v. Helms*, 120 S.Ct. 2530, 2557 (2000) (O'Connor, J., concurring in the judgment).

[42] *Id.* at 2558–59 (concurring opinion).

[43] *Id.* at 2557 (concurring opinion).

stitutional.[44] The Committee also notes that the Supreme Court has never struck down a governmental funding program—state or Federal—as violative of the Establishment Clause where the program was directed to the needs of social services or health care.[45]

DIRECT FUNDING OF FAITH-BASED ORGANIZATIONS TO HELP MEET BASIC HUMAN NEEDS, THROUGH GRANTS AND COOPERATIVE AGREEMENTS, IS CONSTITUTIONAL

Direct payments may be made to faith-based organizations for public purposes without violating the establishment clause. The Supreme Court has held that faith-based organizations providing services that meet social service needs may be federally funded. In *Bowen v. Kendrick*,[46] the Supreme Court upheld the direct Federal funding of faith-based counseling centers addressing teenage sexuality under the Adolescent Family Life Act ("AFLA"), which was passed by Congress in 1981 in response to the "severe adverse health, social, and economic consequences" that often follow pregnancy and childbirth among unmarried adolescents. The AFLA established a program for providing direct monetary grants to public or nonprofit private organizations or agencies "for services and research in the area of premarital adolescent sexual relations and pregnancy."[47]

In Bowen, the Court found that Congress had expressly recognized that Government alone could not solve the problems of adolescent premarital sexual relations, and that it intended through its legislation to encourage greater involvement from faith-based

[44] *See Agostini v. Felton*, 521 U.S. 203, 231–32 (1997) ("[I]t is clear that title I [educational] services are allocated on the basis of criteria that neither favor nor disfavor religion ... The services are available to all children who meet the act's eligibility requirements, no matter what their religious beliefs or where they go to school ... The Board's program does not, therefore, give aid recipients any incentive to modify their religious beliefs or practices in order to obtain those services."); *Zobrest v. Catalina Foothills School District*, 509 U.S. 1, 8 (1993) (sustaining section of Federal statute providing all "disabled" children with necessary aid, stating "We have never said that religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs [f]or if the Establishment Clause did bar religious groups from receiving general Government benefits, then a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair."); *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481, 487–88 (1986) (sustaining Washington law granting all eligible blind persons vocational assistance, including assistance at religious institutions); *Mueller v. Allen*, 463 U.S. 388, 398–99 (1983) (sustaining Minnesota statute allowing all parents to deduct actual costs of school, including religious school, tuition, textbooks, and transportation, from State tax returns); *Board of Ed. of Central School Dist. No. 1 v. Allen*, 392 U.S. 236, 243–244 (1968) (sustaining New York law loaning secular textbooks to all children, including those at religious schools); *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 16–18 (1947) (sustaining local ordinance authorizing all parents to deduct from their State tax returns the costs of transporting their children to schools, including religious schools, on public buses).

[45] *See Bowen v. Kendrick*, 487 U.S. 589 (1988) (upholding the direct Federal funding of faith-based counseling centers addressing teenage sexuality under the Adolescent Family Life Act); *Bradfield v. Roberts,* 175 U.S. 291 (1899) (upholding an agreement between the Commissioners of the District of Columbia and a religiously affiliated hospital whereby the Federal Government would pay for the construction of a new building on the grounds of the hospital). *Bradfield v. Roberts* was cited by the Supreme Court in Bowen, 487 U.S. at 609 ("We note in addition that this Court has never held that religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs. To the contrary, in *Bradfield v. Roberts*, the Court upheld an agreement between the Commissioners of the District of Columbia and a religiously affiliated hospital whereby the Federal Government would pay for the construction of a new building on the grounds of the hospital. In effect, the Court refused to hold that the mere fact that the hospital was 'conducted under the auspices of the Roman Catholic Church' was sufficient to alter the purely secular legal character of the corporation, particularly in the absence of any allegation that the hospital discriminated on the basis of religion or operated in any way inconsistent with its secular charter. In the Court's view, the giving of Federal aid to the hospital was entirely consistent with the Establishment Clause, and the fact that the hospital was religiously affiliated was 'wholly immaterial.'") (citations omitted).

[46] 487 U.S. 589 (1988).

[47] S.Rep. No. 97–161, at 1 (1981).

organizations in addressing these issues.[48] The Court was satisfied that encouraging such involvement by faith-based organizations served a clear secular purpose.[49] The Court also found that there was nothing inherently religious about services funded under the AFLA.[50] The Court saw nothing troubling in the congressional recognition that religion and religious organizations play an important part in solving social ills.[51] Finally, the Court refused to countenance the notion that a faith-based organization could not receive direct Federal funds for the provision of public welfare services without impermissibly lending the imprimatur of Government on religious activity.[52]

Further, in *Committee for Public Education and Religious Liberty v. Regan*,[53] the Supreme Court explained that, "We decline to embrace a formalistic dichotomy that bears so little relationship either to common sense or the realities of school finance. None of our cases requires us to invalidate these reimbursements simply because they involve payments in cash. The Court 'has not accepted the recurrent argument that all aid is forbidden because aid to one aspect of an institution frees it to spend its other resources on religious ends.'").

THE SUPREME COURT HAS REJECTED OBJECTIONS TO FUNDING FAITH-BASED ORGANIZATIONS THAT ARE PREMISED ON THE DISCRIMINATORY NOTION THAT THEIR EMPLOYEES CANNOT BE TRUSTED TO FOLLOW GUIDELINES

Arguments that employees of faith-based organizations simply cannot be trusted to follow guidelines preventing the use of Government funds for proselytizing activities have been decisively rejected by the Supreme Court. Both the plurality opinion and the opinion of Justice O'Connor in *Mitchell v. Helms* stand for the prop-

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[48] *See Bowen v. Kendrick*, 487 U.S. 589, 595–96 (1988) ("Indeed, Congress expressly recognized that legislative or governmental action alone would be insufficient ... Accordingly, the AFLA expressly states that federally provided services in this area should promote the involvement of parents, and should "emphasize the provision of support by other family members, religious and charitable organizations, voluntary associations, and other groups." [42 U.S.C. § 300z(a)(10)(C)].") (emphasis added).

[49] *See id.*, at 602 ("As we see it, it is clear from the face of the statute that the AFLA was motivated primarily, if not entirely, by a legitimate secular purpose—the elimination or reduction of social and economic problems caused by teenage sexuality, pregnancy, and parenthood. [42 U.S.C. §§ 300z(a), (b)].").

[50] *See id.*, at 594, 605 (1988) ("[T]he statute contains a listing of 'necessary services' that may be funded. These services include pregnancy testing and maternity counseling, adoption counseling and referral services, prenatal and postnatal health care, nutritional information, counseling, child care, mental health services, and perhaps most importantly for present purposes, 'educational services relating to family life and problems associated with adolescent premarital sexual relations' ... Certainly it is true that a substantial part of the services listed as "necessary services" under the act involve some sort of education or counseling, but there is nothing inherently religious about these activities and appellees do not contend that, by themselves, the AFLA's 'necessary services' somehow have the primary effect of advancing religion.").

[51] *See id.*, at 606–07 (1988) ("Putting aside for the moment the possible role of religious organizations as grantees, these provisions of the statute reflect at most Congress' considered judgment that religious organizations can help solve the problems to which the AFLA is addressed ... Nothing in our previous cases prevents Congress from making such a judgment or from recognizing the important part that religion or religious organizations may play in resolving certain secular problems.").

[52] *See id.*, at 613–14 (1988) ("The facially neutral projects authorized by the AFLA—including pregnancy testing, adoption counseling and referral services, prenatal and postnatal care, educational services, residential care, child care, consumer education, etc.—are not themselves 'specifically religious activities,' and they are not converted into such activities by the fact that they are carried out by organizations with religious affiliations.").

[53] 444 U.S. 646, 658 (1980) (upholding reimbursements to religious K-12 schools for State-required testing and rejecting a rule that direct cash payment was never permitted). The Supreme Court has been especially sensitive to Establishment Clause issues in the context of K-12 schools.

osition that members of religious organizations should be presumed to be acting in good faith.[54]

Some critics claim that it is unconstitutional for direct grants to be awarded to "pervasively sectarian" organizations which would risk "an excessive entanglement [of Government] with religion." The so-called "pervasively sectarian" test was first articulated in *Lemon v. Kurtzman*.[55] The last case in which the Court struck down governmental aid using the "pervasively sectarian" test was *Grand Rapids School District v. Ball*,[56] but *Ball* was recently discredited and partly overruled in *Agostini v. Felton*.[57] Even Justice Blackmun, in a dissenting opinion joined by Justices Brennan, Marshall, and Stevens, described the phrase "pervasively sectarian" as "a vaguely defined term of art." *Bowen v. Kendrick*, 487 U.S. 589, 631 (1988) (Blackmun, J., dissenting). In *Mitchell v. Helms*,[58] the majority of Justices reversed an appeals court holding that providing educational materials and equipment to pervasively sectarian schools was unconstitutional. As the Congressional Research Service concluded in its December 27, 2000, Report to Congress on Charitable Choice, "In its most recent decisions [,] the Court appears to have abandoned the presumption that some religious institutions, such as sectarian elementary and secondary schools, are so pervasively sectarian that they are constitutionally ineligible to participate in direct public aid programs ... It also seems clear that for a different majority [of six] Justices (those joining in the Thomas and O'Connor opinions), the question of whether a recipient institution is pervasively sectarian is no longer a constitutionally determinative factor." CRS Report, *Charitable Choice: Constitutional Issues and Developments Through the 106th Congress* (December 27, 2000) at 29, 32. Recently, the Fourth Circuit Court of Appeals in *Columbia Union College v. Oliver*, 2001 WL 716726 (4th Cir.) (June 26, 2001), held that the Constitution allows the Government to provide direct aid to a religious organiza-

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[54] *See Mitchell v. Helms*, 120 S.Ct. 2530, 2547 (2000) (plurality opinion) ("So long as the governmental aid is not itself unsuitable for use in the public schools because of religious content, ... and eligibility for aid is determined in a constitutionally permissible manner, any use of that aid to indoctrinate cannot be attributed to the Government and is thus not of constitutional concern.") (quotations omitted); *id.*, at 2570 (O'Connor, J., concurring in the judgment) ("[T]he Court's willingness to assume that religious school instructors will inculcate religion has not caused us to presume also that such instructors will be unable to follow secular restrictions on the use of textbooks ... [I]t is entirely proper to presume that these school officials will act in good faith.").

[55] 403 U.S. 602, 613 (1971). *See also Hunt v. McNair*, 413 U.S. 734, 743 (1973) ("Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting.").

[56] 473 U.S. 373 (1985).

[57] 521 U.S. 203, 219–23 (1997) ("Our more recent cases have undermined the assumptions upon which Ball [] relied ... What has changed since we decided Ball ... is our understanding of the criteria used to assess whether aid to religion has an impermissible effect."). That understanding today rejects the notion that members of faith-based organizations simply cannot be trusted to follow guidelines preventing the use of Government funds for proselytizing. Both the plurality opinion and the opinion of Justice O'Connor in *Mitchell v. Helms* stand for the proposition that members of religious organizations should always be presumed to be acting in good faith. *See Mitchell v. Helms*, 120 S.Ct. 2530, 2547 (2000) (plurality opinion) ("So long as the governmental aid is not itself unsuitable for use in the public schools because of religious content, ... and eligibility for aid is determined in a constitutionally permissible manner, any use of that aid to indoctrinate cannot be attributed to the Government and is thus not of constitutional concern.") (quotations omitted); *id.*, at 2570 (O'Connor, J., concurring) ("[T]he Court's willingness to assume that religious school instructors will inculcate religion has not caused us to presume also that such instructors will be unable to follow secular restrictions on the use of textbooks ... [I]t is entirely proper to presume that these school officials will act in good faith.").

[58] 120 S.Ct. 2530 (2000).

tion "without resort to [a court's] examining" its "pervasively sectarian status," as long as there are protections in place prohibiting Federal funds from being used for proselytizing activities. *Id.* at * 7.[59]

Despite the abandonment of the "pervasively sectarian" test by the courts, it continues to lead to the exclusion of faith-based organizations from equal participation in application processes for Federal social service funds.[60]

INDIRECTLY FUNDED CHARITABLE CHOICE PROGRAMS ARE CONSTITUTIONAL

Subsection (l) of title II of H.R. 7 authorizes the Secretary of the department administering a covered program to direct the disbursement of some or all of the funds, if determined by the Secretary to be feasible and efficient, in the form of indirect assistance. H.R. 7 defines "indirect assistance" as that in which assistance funds find their way to an organization "only as a result of the private choices of individual beneficiaries," in accordance with Supreme Court precedent, drawing on language from *Witters v. Washington Department of Services for the Blind*,[61] and *Mueller v.*

[59] When President Clinton signed the re-authorization measure for the Community Services Block Grants Program ("CSBG") into law on October 27, 1998, his accompanying statement regarding its charitable choice provisions relied on the "pervasively sectarian" standard that the courts have since abandoned. That statement stated that "The Department of Justice advises, however, that the provision that allows religiously affiliated organizations to be providers under CSBG would be unconstitutional if and to the extent it were construed to permit governmental funding of 'pervasively sectarian' organizations, as that term has been defined by the courts. Accordingly, I construe the act as forbidding the funding of pervasively sectarian organizations and as permitting Federal, State, and local governments involved in disbursing CSBG funds to take into account the structure and operations of a religious organization in determining whether such an organization is pervasively sectarian." 134 Weekly Compilation of Presidential Documents 2148 (Nov. 2, 1998) (Statement on Signing the Community Opportunities, Accountability, and Training and Educational Services Act of 1998). President Clinton's later statements on charitable choice provisions in October and December 2000, do not rely on the pervasively sectarian test. *See supra,* note 13.

[60] *See* CRS Report to Congress, RL30388, *Charitable Choice: Constitutional Issues and Developments Through the 106th Congress* (updated December 27, 2000) at 1 ("[T]he establishment clause has in the past generally been interpreted to bar Government from providing direct assistance to organizations that are 'pervasively sectarian.' As a consequence, Government funding agencies have often required religious social services providers, as conditions of receiving public funds, to be incorporated separately from their sponsoring religious institutions ... and to remove religious symbols from the premises in which the services are provided."); *see also* Congressional Research Service, RS20809: *Public Aid and Faith-Based Organizations (Charitable Choice): An Overview* (updated April 18, 2001) at 2–3 ("[I]nterpretations and applications of the establishment of religion clause of the First Amendment as well as of the sometimes more strict provisions of State constitutions have in the past generally required programs operated by religious organizations that receive public funding in the form of grants or contracts to be essentially secular in nature ... Moreover, religious entities that have been found to be 'pervasively sectarian,' i.e., entities in which religion is a pervasive element of all that they do, have generally been constitutionally ineligible to participate in direct funding programs, because they have been deemed unable to separate their secular functions from their religious functions so that public aid can be confined to the former. Charitable choice attempts to move beyond these restrictions and allow faith-based organizations to participate in publicly funded social services programs while retaining their religious character."). Although the courts have now abandoned the "pervasively sectarian" test, this rule to exclude certain religious organizations is still present in Federal statutes and regulations, and too often guides decisions by federal, State, and local grant managers.

[61] 474 U.S. 481, 488 (1985) (opinion written by Justice Marshall) ("Certain aspects of Washington's program are central to our inquiry. As far as the record shows, vocational assistance provided under the Washington program is paid directly to the student, who transmits it to the educational institution of his or her choice. Any aid provided under Washington's program that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients.").

Allen.[62] "Indirect" means of funding are flexible, and include more than vouchers and certificates.

Charitable choice programs administered through the use of vouchers or certificates to individuals, who may then choose to give them to nonreligious or religious organizations in return for social services, enjoy the widest constitutional berth. When voucher programs are created, and individuals are allowed to redeem their vouchers at approved sites, the latitude for religious expression and practice at those sites can be far greater. Where the design of the charitable choice program has not predetermined where the Government funding should go but has given a free choice to the immediate beneficiaries of the programs—for example, the voucher recipients—the Supreme Court has held such programs constitutional even though institutions presumed to be pervasively religious have benefitted.[63] So long as the initial beneficiaries have a choice about where to redeem the vouchers or certificates, and a range of choices are available including religious and nonreligious social service organizations, such programs do not violate the First Amendment.

In *Mueller v. Allen*,[64] the Supreme Court upheld a Minnesota statute allowing state taxpayers, in computing their state income tax, to deduct expenses incurred in providing "tuition, textbooks and transportation" for their children attending elementary or secondary school, either nonreligious or religious. The Court stated that

> by channeling whatever assistance it may provide to parochial schools through individual parents, Minnesota has reduced the Establishment Clause objections to which its action is subject ... It is true, of course, that financial assistance provided to parents ultimately has an economic effect comparable to that of aid given directly to the schools attended by their children. It is also true, however, that under Minnesota's arrangement public funds become available only as a result of numerous, private choices of individual parents of school-age children ... Where, as here, aid to parochial schools is available only as a result of decisions of individual parents no imprimatur of State approval can be deemed to have been conferred on any particular religion, or on religion generally.[65]

In *Witters v. Washington Department of Services for the Blind*,[66] the Supreme Court upheld a program allowing a student who was pursuing a biblical studies degree at a Christian college to receive financial vocational assistance. The Court stated

> Certain aspects of Washington's program are central to our inquiry. As far as the record shows, vocational assistance provided under the Washington program is paid directly *to the student*, who transmits it to the educational institution of his

[62] 463 U.S. 388, 399 (1983) ("Where, as here, aid to parochial schools is available only as a result of decisions of individual parents no imprimatur of State approval can be deemed to have been conferred on any particular religion, or on religion generally.").

[63] *See Mueller v. Allen*, 463 U.S. 388, 399 (1983); *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481, 487 (1986); *Zobrest v. Catalina Foothills School District*, 509 U.S. 1, 10 (1993).

[64] 463 U.S. 388 (1983).

[65] *Id.* at 399.

[66] 474 U.S. 481 (1985).

> or her choice. Any aid provided under Washington's program that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients. Washington's program is made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefitted, and is in no way skewed towards religion . . . It creates no financial incentive for students to undertake sectarian education. It does not tend to provide greater or broader benefits for recipients who apply their aid to religious education, nor are the full benefits of the program limited, in large part or in whole, to students at sectarian institutions. On the contrary, aid recipients have full opportunity to expend vocational rehabilitation aid on wholly secular education, and as a practical matter have rather greater prospects to do so . . . In this case, the fact that aid goes to individuals means that the decision to support religious education is made by the individual, not by the State . . . On the facts we have set out, it does not seem appropriate to view any aid ultimately flowing to the Inland Empire School of the Bible as resulting from a state action sponsoring or subsidizing religion."[67]

In *Zobrest v. Catalina Foothills School District*,[68] the Supreme Court upheld a program allowing parents of a deaf student attending Catholic high school to require the public school district to provide interpreter for the student that would interpret classes that included religious instruction. The Court upheld the program, citing *Mueller*, as follows: "We also pointed out that under Minnesota's scheme, public funds become available to sectarian schools only as a result of numerous private choices of individual parents of school-age children, thus distinguishing Mueller from our other cases involving the direct transmission of assistance from the State to the schools themselves."[69]

H.R. 7 CONTAINS CONSTITUTIONALLY ADEQUATE SAFEGUARDS

When Government appropriates tax monies, it has a duty to reasonably account for how such funds are utilized. Regulatory controls that keep track of funds appropriated under neutral social service programs via grants or in-kind services—such as those appropriately attaching to organizations receiving support under programs following charitable choice principles—are proper to help ensure that the monies actually benefit the poor and the needy as intended.

Such controls are incorporated in H.R. 7. Subsection (i) of the Charitable Choice Act of 2001 provides that, "a religious organization providing assistance under any [specified program] shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of such program." H.R. 7 also makes the creation of separate accounts, con-

[67] *Id.* at 488 (emphasis added).
[68] 509 U.S. 1 (1993).
[69] *Id.* at 9.

taining only Federal funds received, mandatory for programs covered by title II of H.R. 7 that are directly funded.[70]

The required accounting should be evenhanded for all providers, whether religious or nonreligious. In her concurring opinion in *Mitchell v. Helms*, Justice O'Connor made clear that as long as there are safeguards for preventing and detecting diversion of funds, it is not a constitutional problem if occasional mistakes are made.[71]

In the final part of her opinion, Justice O'Connor explained why safeguards in the Federal educational program at issue in *Mitchell* reassured her that the program, as applied, was not violative of the Establishment Clause. According to Justice O'Connor, a program of aid need not be failsafe, nor does every program require pervasive monitoring.[72] The statute limited aid to "secular, neutral, and nonideological" assistance, required that the aid supplement rather than supplant private-source funds, and expressly prohibited use of the aid for "religious worship or instruction."[73] State educational authorities required religious schools to sign assurances of compliance with the above-quoted statutory spending prohibition made a term of the contract.[74] The state conducted monitoring visits, however infrequently, and did a random review of Government-purchased library books for their religious content.[75] There was also monitoring of religious schools by local public school districts, including review of required project proposals submitted by the religious schools and annual program-review visits to each recipient school.[76] The monitoring did catch instances of actual diversion, although not a substantial number, and Justice O'Connor was encouraged that when problems were detected they were corrected.[77]

The charitable choice principles embodied in H.R. 7 address Justice O'Connor's concerns. Subsection (i) of title II of H.R. 7 provides that a religious organization providing assistance under any covered program shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of such programs. In addition, a religious organization providing assistance through a grant or cooperative agreement under a covered program shall segregate Government funds provided under such program into a separate account or accounts, and the separate accounts consisting of funds from the Government, but

[70] Subsection (k) also provides that, "If a State or local government contributes State or local funds to carry out a [specified program], the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds."

[71] *See Mitchell v. Helms*, 120 S.Ct. 2530, 2558 (2000) (O'Connor, J., concurring in the judgment). *See also Bowen v. Kendrick*, 487 U.S. 589, 615 (1988) (upholding program allowing Federal funds be given to faith-based organizations for family counseling) ("We note in addition that the [Adolescent Family Life Act] requires each grantee to undergo evaluations of the services it provides, and also requires grantees to 'make such reports concerning its use of Federal funds as the [Government] may require.' The application requirements of the act, as well, require potential grantees to disclose in detail exactly what services they intend to provide and how they will be provided. These provisions, taken together, create a mechanism whereby the [Government] can police the grants that are given out under the act to ensure that Federal funds are not used for impermissible purposes.").

[72] *Id.*, 120 S.Ct. at 2569 (O'Connor, J., concurring in the judgment).

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.* at 2569–70.

[77] *Id.* at 2571–72.

only such separate accounts, shall be subject to audit by the Government regarding the administration of the covered program. H.R. 7 further requires a religious organization providing services under any covered program to conduct annually a self audit for compliance with its duties under this subsection and to submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit. H.R. 7 also requires that such a religious organization sign a certificate of compliance that certifies it is aware of and will comply with its duties under H.R. 7.

H.R. 7 PRESERVES EXISTING GUARANTEES OF INSTITUTIONAL AUTONOMY FOR RELIGIOUS ORGANIZATIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

One of the most important charitable choice principles is the guarantee of institutional autonomy that allows faith-based organizations to select staff on a religious basis. Faith-based organizations cannot be expected to sustain their religious drive without the ability to employ individuals who share the tenets and practices of their faith.[78] In order to preserve the religious character of faith-based organizations, subsection (d) of the Charitable Choice Act of 2001 provides that

> (1) IN GENERAL. A religious organization that provides assistance under [the specified programs] shall have the right to retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.
>
> (2) ADDITIONAL SAFEGUARDS. Neither the Federal Government nor a State or local government with Federal funds shall require a religious organization in order to be eligible to provide assistance under [the specified programs] to—(A) alter its form of internal governance or provisions in its charter documents; or (B) remove religious art, icons, scripture, or other symbols, or to change its name, because such symbols or names are of a religious character.

Many faith-based organizations believe that they cannot maintain their religious vision over a sustained time period without the ability to replenish their staff with individuals who share the tenets and doctrines of the association. They prefer working with those of the same faith, not out of animus toward others, but out of a desire to surround themselves with those who reinforce their faith. This guaranteed ability is central to each organization's freedom to define its own mission according to the dictates of its faith. It was for this reason that Congress wrote an exemption from religious discrimination by religious employers into title VII of the

[78] Many faith-based organizations do not staff on a religious basis, nor do they desire to do so. However, many others do and believe it is essential to their continued vitality that they be able to continue to do so. Further, many faith-based organizations that staff on a religious basis do so with respect to some jobs but not others. Finally, many faith-based organizations do not staff on the basis of religion in any affirmative sense, but they do require that employees not be in open defiance of the organization's creed or teachings.

Civil Rights Act of 1964.[79] Charitable choice laws specifically provide that faith-based organizations receiving Government funds retain this limited exemption from Federal employment nondiscrimination laws. H.R. 7 does this as well, using the same language from the 1996 Welfare Reform Act,[80] with an additional clause making clear that contrary provisions in the Federal programs covered by title II of H.R. 7 have no force and effect[81] and that the duties of religious organizations not to discriminate based on race, color, sex, and national origin—from which religious organizations are not exempt under title VII—are retained.[82] While it is essential that faith-based organizations be permitted to make employment decisions based on religious considerations, along with all other providers, faith-based organizations must obey Federal civil rights laws prohibiting discrimination on the basis of race, color, national origin, gender, age, and disability. Subsection (e) makes clear that religious organizations retain their duty to follow the title VII nondiscrimination provisions regarding race, color, sex, and national origin, from which religious organizations are not exempt under title VII.[83] H.R. 7 maintains the status quo regarding the § 702(a) exemption in title VII. Courts have held that a reli-

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[79] Section 702 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-1(a)) states, "This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

[80] *See* 42 U.S.C. § 604a ("(f) Employment practices.—A religious organization's exemption provided under section 2000e-1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a)(2) of this section.").

[81] This additional clause was not necessary in the 1996 Welfare Reform Act because it codified charitable choice rules for a new program, whereas H.R. 7 covers already-existing programs that may have conflicting provisions. The 1996 Welfare Reform Act replaced the Aid to Families with Dependent Children program ("AFDC") with the Temporary Assistance to Needy Families ("TANF") program, shifting welfare responsibilities from the Federal Government to the states.

[82] Subsection (e) of the Charitable Choice Act of 2001 states: "A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (c)(4), and any provision in such programs that is inconsistent with or would diminish the exercise of an organization's autonomy recognized in section 702 or in this section shall have no effect. Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described in subsection (c)(4)." The latter sentence, like the provisions in subsection (f), are simply truisms, but they are included to avoid doubt about the continued applicability of these civil rights laws.

[83] Subsection (f) of the Charitable Choice Act of 2001 makes clear that, "Nothing in this section shall alter the duty of a religious organization receiving assistance or providing services under any [covered program] to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1686) (prohibiting discrimination in educational institutions on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age)." title VI of the Civil Rights Act of 1964 prohibits racial discrimination by those administering a social service program with Government aid. See 42 U.S.C. § 2000d ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."). Further, section 504 of the Rehabilitation Act provides that, "No otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ." 29 U.S.C. § 794. Section 504 affords disabled individuals the opportunity to participate in and benefit from programs offered by the recipient of Federal financial assistance by providing them "meaningful access to the benefit that the grantee offers." *Alexander v. Choate*, 469 U.S. 287, 301, 304 (1985). Federal grantees need not make "'fundamental'" or "'substantial'" changes in their programs to accommodate the disabled, *id.* at 300, but "reasonable accommodations in the grantee's program or benefit may have to be made," to assure meaningful access by those with a disability. *Id.* at 301.

gious organization does not forfeit the § 702(a) exemption just because the organization is a recipient of Government funds.[84]

Occasionally, the charge is made that charitable choice is Government-funded job discrimination. This is untrue. The purpose of charitable choice funding is not to create jobs, or to fill the coffers of faith-based organizations, but to fund social services for those in need. It is the faith-based organization, of course, that is making staffing decision on the basis of religion, not the Government.[85] Section 702(a) of the Civil Rights Act of 1964 has for decades exempted nonprofit private religious organizations, engaged in both religious and nonreligious nonprofit activities, from title VII's prohibition on discrimination in employment on the basis of religion.[86] As enacted in 1964, the section 702 exemption permitted religious employers to discriminate on religious grounds in employment only with regard to "religious activities."[87] The 1972 amendment to section 702 expanded the exemption to permit religious employment discrimination with regard to all activities conducted by the religious employer regardless of whether they were religious or nonreligious in nature.[88] The Supreme Court, including Justices Brennan and Marshall, upheld this expanded exemption in *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*.[89]

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[84] *See Hall v. Baptist Memorial Health Care Corp.*, 215 F.3d 618, 625 (6th Cir. 2000) (dismissing religious discrimination claim filed by employee against religious organization because organization was exempt from title VII and the receipt of substantial Government funding did not bring about a waiver of the exemption); *Siegel v. Truett-McConnell* College, 13 F. Supp.2d 1335, 1343–45 (N.D. Ga. 1994), *aff'd*, 73 F.3d 1108 (11th Cir. 1995) (table) (dismissing religious discrimination claim filed by faculty member against religious college because college was exempt from title VII and the receipt of substantial Government funding did not bring about a waiver of the exemption or violate the Establishment Clause); *Young v. Shawnee Mission Medical Center*, 1988 U.S. Dist. LEXIS 12248 (D. Kan. Oct. 21, 1988) (holding that religious hospital did not lose title VII exemption merely because it received Federal Medicare payments); *see Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991) (holding that exemption to title VII for religious staffing by a religious organization is not waivable); Ward v. Hengle, 706 N.E.2d 392, 395 (Ohio App.1997), app'l denied, 692 N.E.2d 617 (Ohio 1998) (holding that exemption to title VII for religious staffing by a religious organization is not waivable); *Arriaga v. Loma Linda University*, 13 Cal. Rptr.2d 619 (Cal. App. 1992) (holding that religious exemption in state employment nondiscrimination law was not lost merely because religious college received state funding); *Saucier v. Employment Security Dept.*, 954 P.2d 285 (Wash. App. 1998) (holding that Salvation Army's religious exemption from state unemployment compensation tax does not violate Establishment Clause merely because the job of a former employee in question, a drug abuse counselor, was funded by Federal and state grants).

[85] *See Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 337 n.15 (1987) ("Undoubtedly, [the complainant's] freedom of choice in religious matters was impinged upon, but it was the Church .., and not the Government, who put him to the choice of changing his religious practices or losing his job.").

[86] Title VII exempts "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." 42 U.S.C. § 2000e-1(a).

[87] The original section 702 exemption, as enacted in 1964, read, in pertinent part: "This title shall not apply to . . . a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution." Pub. L. No. 88–352, 78 Stat. 255, 42 U.S.C. § 2000e-1 (1964).

[88] *See* Pub. L. No. 92–261, 86 Stat. 103 (1972) (amending 42 U.S.C. 2000e (1964)).

[89] 483 U.S. 327 (1987). The section 702 exemption for religious organizations in title VII should not be confused with the so-called "ministerial exception," which is a legal doctrine developed by the courts, not Congress. The Free Exercise Clause, as interpreted by the courts, exempts hiring of clergy from title VII and other similar statutes and, as a consequence, precludes civil courts from adjudicating a broader range of employment discrimination suits by ministers against the church or religious institution employing them. *See, e.g., Equal Employment Opportunity Commission v. Catholic University of America*, 83 F.3d 455, 461 (D.C.Cir. 1996). However, persons are not covered by the so-called "ministerial exception" unless they perform ministerial functions. See id. at 464; *see also EEOC v. Southwestern Baptist Theological Seminary*, 651 F.2d 277, 283 (5th Cir.1981) (for purposes of exception, "ministers" includes non-ordained faculty at

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Section 702(a) is not waived or forfeited when a religious organization receives Federal funding. When it enacted title VII in 1964, Congress was aware that religious institutions of higher education eligible for exemption in section 703(e)(2) of title VII were receiving funds under Federal programs in the form of grants and student aid. Under the GI Bill, established in 1944, military veterans were able to attend the college or university of their choice—public or private, sectarian or non-sectarian—and the tuition costs were either offset or covered in full through a voucher payment sent to the selected school.[90] When the title VII exemption for religious organizations allowing their hiring to be based on religion was expanded to include even non-ministerial positions in 1972, "Pell" grants for students enrolling in undergraduate studies, including studies at religiously affiliated colleges, were under active discussion and became law that same year.[91] Not only does no provision in § 702(a) state that its exemption of nonprofit private religious organizations from title VII's prohibition on discrimination in employment is forfeited when a faith-based organization receives a Federal grant, but the Federal circuits that have faced the issue have also held that the protections of § 702(a) cannot be waived.[92] Further, private organizations, including faith-based organizations, do not become "state actors" and thereby lose the status they enjoy as private organizations simply because they receive Government funds.[93] This

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Baptist seminary where no course has "a strictly secular purpose "). For example, in *Weissman v. Congregation Shaare Emeth*, 38 F.3d 1038 (8th Cir.1994), the court found that the plaintiff was able to bring an age discrimination action against his temple without violating the First Amendment because he "was responsible for logistical support of activities including supervision of administrative, clerical, building maintenance, and custodial personnel. He also managed property and equipment and maintained financial records. He was not a member of the clergy and played no role in decisions relating to spiritual matters." *Id.* at 1040. *See also EEOC v. Roman Catholic Diocese of Raleigh*, 213 F.3d 795, 801 (4th Cir. 2000) ("Where no spiritual function is involved, the First Amendment does not stay the application of a generally applicable law such as title VII to the religious employer unless Congress so provides."); *Geary v. Visitation of the Blessed Virgin Mary Parish School*, 7 F.3d 324, at 331 (3d Cir. 1993) (lay teacher in elementary parochial school not covered by ministerial exemption); *DeMarco v. Holy Cross High School*, 4 F.3d 166, 171–72 (2d.Cir. 1993) (lay math teacher not covered by ministerial exemption). Consequently, volunteers and other personnel at faith-based organizations performing secular, clerical, custodial, or administrative functions would not be covered by the ministerial exception.

[90] *See* Servicemen's Readjustment Act of 1944, Pub. L. No. 78–346, 58 Stat. 284, 288–89 (1944) ("[A qualifying veteran] shall be eligible for and entitled to such course of education or training as he may elect, and at any approved educational or training institution at which he chooses to enroll . . . "). The current program provides for payment to be made to the eligible serviceman directly. *See* 38 U.S.C. § 3014.

[91] Pell Grants were established by the Education Amendments of 1972, 20 U.S.C. § 1070, for the purpose of subsidizing tuition, fees, and certain costs of attendance for people pursuing an undergraduate degree.

[92] *See Hill v. Baptist Memorial Health Care Corp.*, 215 F.3d 618, 625 (6th Cir. 2000) ("[T]he statutory exemptions from religious discrimination claims under title VII cannot be waived . . . The exemptions reflect a decision by Congress that religious organizations have a constitutional right to be free from Government intervention."); *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991) (holding argument that religious organization can waive title VII exemption "incorrectly views [the exemption] as a privilege or interest granted to those organizations. Instead, those exemptions reflect a decision by Congress that the Government interest in eliminating religious discrimination by religious organizations is outweighed by the rights of those organizations to be free from Government intervention."); *Siegel v. Truett-McConnell College*, 13 F. Supp.2d 1335, 1343–45 (N.D. Ga. 1994), *aff'd*, 73 F.3d 1108 (11th Cir. 1995) (table) (dismissing religious discrimination claim filed by faculty member against religious college because college was exempt from title VII and the receipt of substantial Government funding did not bring about a waiver of the exemption or violate the Establishment Clause).

[93] *See Rendell-Baker v. Kohn*, 457 U.S. 830 (1982) (holding that nonprofit, privately operated school's receipt of public funds did not make its discharge decisions "state actions" subject to suit under Federal statute authorizing suits for deprivations of constitutional rights, notwithstanding that virtually all of school's income was derived from Government funding and that even though the private entity performed a function which served public such did not make its acts "state action "); *Blum v. Yaretsky*, 457 U.S. 991 (1982) (holding that even though the State subsidized the cost of private nursing home facilities, paid the expenses of the patients, and li-

means that the § 702(a) exemption does not violate any nondiscrimination norms in the Constitution.

Nor is staffing on a religious basis invidious discrimination based on an immutable trait, or for a purpose other than preserving the religious character of an organization. Indeed, a religious organization favoring the employment of those of like-minded faith is comparable to an environmental organization favoring employees devoted to environmentalism or a teacher's union hiring only those opposed to school voucher initiatives.

Indeed, prohibiting religious organizations from maintaining their religious character through hiring practices would endanger Federal funding for child services and education. One survey found that 51 percent of nonprofit organizations delivering child services were religiously affiliated, and of those 82 percent received public funds. A majority of these religiously affiliated nonprofit organizations received over 40 percent of their budgets from Government sources. The survey also found that 70 percent of nonprofit colleges and universities were religiously affiliated, and of those 97 percent received public funds.[94] The same survey found that 44 percent of the religiously affiliated nonprofit organizations delivering child services only hired staff who agreed with their religious orientation, or gave preference to them, and that 56 percent of the religiously affiliated nonprofit colleges and universities only hired staff who agreed with their religious orientation, or gave preference to them.[95] In sum, roughly half of the religiously affiliated child care services and colleges and universities surveyed receive large amounts of public funds and maintain their religious character through hiring practices. A rule prohibiting Government funds from finding their way to religious organizations that make staffing decisions based on religion would pull public funding from these child care services and colleges and universities.[96]

The Supreme Court has repeatedly held that the Establishment Clause is not violated when Government refrains from imposing a burden on religion, even though that same burden is imposed on the nonreligious who are otherwise similarly situated. In *Corporation of the Presiding Bishop v. Amos*,[97] the Supreme Court upheld an exemption permitting religious organizations to discriminate on a religious basis in matters concerning employment. Finding that the exemption did not violate the Establishment Clause, the Supreme Court has made clear that "it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions."[98] Justice Brennan, in his concurring opinion in *Amos*, recognized that many religious organizations and associations engage in extensive social welfare and charitable activities, such as operating soup kitchens and day care centers or providing

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censed the facilities, the action of the nursing homes is not thereby converted into "state action.").

[94] *See* Stephen V. Monsma, *When Sacred and Secular Mix: Religious Nonprofit Organizations and Public Money* (Rowman & Littlefield Publishers, Inc. 1996) at 68, Table 3.

[95] *See id.* at 74–75, Tables 6 and 7.

[96] Religiously motivated schools often consider religion in their hiring practices and remain viable because their students receive Federal funds. Students may use Federal veterans' benefits, Federal Pell Grants, and other Federal educational grants and loans at any accredited institution of higher learning, including religious schools and seminaries that discriminate in hiring faculty and staff based on religion.

[97] 483 U.S. 327 (1987).

[98] *Id.* at 335.

aid to the poor and the homeless. Even where the content of such activities is nonreligious, in the sense that it does not include sectarian teaching, proselytizing, prayer or ritual, Justice Brennan recognized that the religious organization's performance of such functions is likely to be "infused with a religious purpose."[99] He also recognized that churches and other religious entities "often regard the provision of such services as a means of fulfilling religious duty and of providing an example of the way of life a church seeks to foster."[100] Consequently, Justice Brennan concluded that the "substantial potential for chilling religious activity makes inappropriate a case-by-case determination of the character of a nonprofit organization, and justifies a categorical exemption for nonprofit activities ... While not every nonprofit activity may be operated for religious purposes, the likelihood that many are makes a categorical rule a suitable means to avoid chilling the exercise of religion."[101]

A religious organization may have good reason for preferring that individuals similarly committed to its religiously motivated mission operate such secular programs, for such collective activity can be "a means by which a religious community defines itself."[102] Indeed, such collective activity not only can advance the organization's own religious objectives, but also can further the religious mission of the individuals that constitute the religious community:

> For many individuals, religious activity derives meaning in large measure from participation in a larger religious community. Such a community represents an ongoing tradition of shared beliefs, an organic entity not reducible to a mere aggregation of individuals.[103]

Accordingly, the selection of coreligionists in particular social service programs will ordinarily advance a religious organization's religious mission, facilitate the religiously motivated calling and conduct of the individuals who are the constituents of that organization, and fortify the organization's religious tradition. Where an organization makes such a showing, the title VII prohibition on religious discrimination would impose "significant governmental interference" with the ability of that organization "to define and carry out [its] religious mission[]," [104] even as applied to employees who are engaged in work that is secular in content. Where that is the case, the section 702(a) exemption would be a permissible religious accommodation that "alleviat[es] special burdens."[105] The title VII exemption, as applied to employees of faith-based organizations in programs that are direct recipients of Government funding, is constitutionally sound.

When the Court permits a legislature to exempt religion from regulatory burdens, it enables private religious choice. To establish a religion connotes that a Government must take some affirmative step to achieve the prohibited result. On the other hand, for Gov-

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[99] *Id.* at 342 (Brennan, J., concurring).
[100] *Id.* at 344.
[101] *Id.* at 345.
[102] *Id.* at 342.
[103] *Id.*
[104] *Id.*, at 335.
[105] *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687, 705 (1994).

ernment to passively leave religion where it found it cannot be an act establishing a religion. Pointing out that it had previously upheld laws that helped religious groups advance their purposes, the Supreme Court explained, "A law is not unconstitutional simply because it allows churches to advance religion, which is their very purpose ... [T]he Court ... has never indicated that statutes that give special consideration to religious groups are per se invalid."[106] In other words, the state does not support or establish religion by leaving it alone.[107]

Charitable choice principles simply allow religious groups to retain their religious character while allowing them to compete for more social service funds with which to help people in need. H.R. 7 preserves religious organizations' exemption from the religion nondiscrimination provisions of title VII, and it also makes clear that religious organizations retain their duty to follow the title VII nondiscrimination provisions regarding race, color, sex, and national origin.[108]

Because H.R. 7 expands charitable choice principles to cover many new Federal programs, one uniform rule should apply to all programs and allow religious organizations to retain their autonomy over the definition, development, practice, and expression of their religious beliefs, including through hiring staff. This is so even when State or local laws provide otherwise, but only when Federal funds are used and only when such religious beliefs are sincerely held. *See* subsections (d)(1) and (k) of the Charitable Choice Act of 2001; *see also United States v. Ballard*, 322 U.S. 78 (1944) (while truth of religious beliefs may not be subjected to examination by trier of fact, the sincerity of religious claimant may to tested). This statutory right is enforceable, if need be, by the Compliance subsection. Subsection (n) gives a faith-based organization a private right of action for injunctive relief. This statutory right is very narrow in scope, and the experience to date is encouraging. Such a right has been present in existing charitable choice laws for five years and there are no known or reported instances in which faith-based organizations have asserted this narrow statutory right. Wherever federal funds go, this statutory right of religious organizations to staff on a religious basis should follow, as should, of course, their duty of nondiscrimination under federal civil rights laws, including those applicable duties to which they

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[106] *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 338 (1987).

[107] *See Walz v. Tax Commission*, 397 U.S. 664, 673 (1970) ("We cannot read [a statute exempting religious organizations from taxes] as attempting to establish religion; it is simply sparing the exercise of religion from the burden of property taxation levied on private profit institutions.").

[108] Title VII applies to employers with "fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or proceeding calendar year." 42 U.S.C. § 2000e(b). Under title VII, employees of certain small organizations are not protected by title VII, and their protections against discrimination are found in state or local antidiscrimination statutes, or section 1981. *See* 42 U.S.C. § 1981 ("(a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. (b) 'Make and enforce contracts' defined. For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship. (c) Protection against impairment. The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law."). INSERT E

are the subject under title VII and the civil rights statutes listed in subsection (f). And, of course, subsection (h) does not permit religious discrimination against social service beneficiaries.

There is considerable benefit in having one Federal rule for all Federal funds nationwide. However, where State or local governments do not use Federal funds, or where they segregate their own funds from Federal funds, these governments are not subject to the provisions of H.R. 7. Accordingly, they may apply their own civil rights laws to their own State or local funds.

THERE IS NO CONSTITUTIONAL REQUIREMENT THAT RELIGIOUS ORGANIZATIONS FORM SEPARATE 501(C)(3) ORGANIZATIONS IN ORDER TO COMPETE FOR AND ADMINISTER FUNDS UNDER H.R. 7

There are also those who have expressed the notion that religious organizations incorporated under § 501(c)(3) of the Internal Revenue Code cannot be intensely or significantly religious, and hence should be able to receive Federal funds, while a non-501(c)(3) religious organization should not be able to do so. The notion seems to be premised on an incorrect assumption that such an organization, being separate from the "pervasively sectarian" parent, must be secular and thus constitutionally authorized to accept Government funds. However, the constitution does not bar "pervasively sectarian" organizations from accepting Government funds, under appropriate conditions, as the Supreme Court has recently emphasized. There is also nothing inherent in 501(c)(3) status that requires an organization not to be pervasively sectarian, and intensely or significantly religious organizations, including churches, can be 501(c)(3) organizations if they so choose. Under § 508(c)(1)(A), "churches" and "their integrated auxiliaries" may take advantage of tax-exempt status without filing an application for tax-exemption under § 501(c)(3), but many elect to do so anyway in order to create a separately funded organization. In any case, nothing about § 501(c)(3) status means the organization has to, for example, take down religious symbols or refrain from staffing on a religious basis, just because it receives a Federal grant. Section 501(c)(3) only imposes two restrictions on nonprofit, tax-exempt public charities, including religious social service ministries: first, a blanket prohibition on the organization's involvement in political campaigns; and second, a requirement that no substantial part of its activities be devoted to lobbying. *See* 26 U.S.C. § 501(c)(3). In sum, the provisions of § 501(c)(3) allow a church or other religious organization to create an entity that is organized, governed, and funded separately, but they do not restrict a 501(c)(3) organization's involvement in religion. Charitable choice principles, not the provisions of § 501(c)(3), define what a religious organization can and cannot do in order to lawfully compete for and administer funds under a Federal social service program, and there is no constitutional reason why a religious organization should not be able to use its existing rooms and buildings for training centers and office space. To impose such a requirement of separate incorporation by a religious organization seeking to take part in a Federal social service program would impose an unnecessary barrier to entry on the smallest faith-based organizations when H.R. 7 seeks to remove such unnecessary barriers. Under subsection (i)(2)(A) of title II of H.R. 7, a religious organization receiving funds directly through a

grant or cooperative agreement need only create a separate account to receive the Government funds out of which charitable choice programs draw, rather than form a separate § 501(c)(3) organization. This is done, in part, to limit the scope of audits to funds from Government sources and thereby shield other accounts from Government monitoring.

H.R. 7 ALSO INCLUDES PROVISIONS TO ENCOURAGE BUSINESSES TO MAKE IN-KIND CHARITABLE DONATIONS BY PROTECTING THEM FROM LIABILITY, WITH CERTAIN EXCEPTIONS FOR GROSS NEGLIGENCE AND INTENTIONAL MISCONDUCT, WHEN DONATED ITEMS CAUSE INJURY OR DEATH

Section 104 of title I of H.R. 7 includes liability reform provisions covering charitable in-kind donations by businesses. Section 104 is intended to encourage businesses to make in-kind charitable contributions of equipment, motor vehicles, and aircraft by protecting them from liability, under Federal and state law with certain exceptions for gross negligence and intentional misconduct, in the event the donated items cause injury. Subsection (b) of section 104 provides that, subject to exceptions in subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by that business entity to a nonprofit organization. Businesses donating facilities to nonprofit organizations shall not be subject to civil liability relating to any injury or death occurring at the facility if the use occurs outside of the scope of business of the business entity, such injury or death occurs during a period that such facility is used by the nonprofit organization, and the business entity authorized the use of such facility by the nonprofit organization. Businesses shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside the scope of business of the business entity, if such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization, and the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

Subsection (c) provides that the protections of subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct.

Subsection (d) provides that, subject to subsection (e), the laws of any State are preempted to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply. Subsection (d) also provides that nothing in this title shall be construed to supersede any Federal or State health or safety law. Subsection (e) provides that a provision of this title shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute citing the authority of this section, declaring the election of such State that such provision shall not apply to such civil action in the State, and containing no other provisions.

SUMMARY

While the First Amendment to the Constitution provides that the Government shall not "establish" religion, or any particular religion by directing governmental support to a particular religion or to adherents of religion to the exclusion of adherents to no religion, the First Amendment also provides that the Government shall not prohibit the "free exercise" of religion. Consequently, Government must ensure that members of organizations seeking to take part in Government programs designed to meet basic and universal human needs are not discriminated against because of their religious views. These "charitable choice" principles, part of H.R. 7, allow for the public funding of faith-based organizations with demonstrated abilities to meet basic needs, and they allow such organizations to choose their staff, board members, and methods, thus preserving their religious character. These principles also protect the rights of conscience of their clients by prohibiting the use of Government funds for sectarian instruction, worship, or proselytization and by ensuring that alternatives, not objectionable for religious reasons are available.

Existing charitable choice programs have benefitted thousands of persons in need without raising significant constitutional concerns in their implementation. An expansion of such principles to cover even more Federal programs likewise raise no serious constitutional concerns, while preserving citizens' rights to freely exercise their religion without being dismissed out-of-hand in their attempts to take part in cooperative efforts with the Federal Government designed to reduce poverty and fulfill basic human needs.

HEARINGS

The Committee's Subcommittee on the Constitution held 2 days of oversight hearings on charitable choice, the first of which was held on April 24, 2001. That hearing explored how States and localities have successfully implemented existing "charitable choice" provisions, governing certain Federal programs, and benefitted those in need. Testimony was received from the following witnesses: Dr. Amy Sherman, Senior Fellow, Welfare Policy Center, Hudson Institute; Reverend Donna Lawrence Jones, Cookman United Methodist Church, Philadelphia, PA; Charles Clingman, Executive Director, Jireh Development Corporation, Cincinnati, OH; and Reverend J. Brent Walker, Executive Director, Baptist Joint Committee on Public Affairs.

The second oversight hearing was held on June 7, 2001. That hearing focused on the constitutional role of faith-based organizations in competing for Federal social service funds. Testimony was received from the following witnesses: Carl Esbeck, Senior Counsel to the Deputy Attorney General, United States Department of Justice; Douglas Laycock, Associate Dean for Research and Alice McKean Young Regents Chair in Law, The University of Texas School of Law; David N. Saperstein, Adjunct Professor of Law; Director, Religious Action, Center of Reform Judaism, Georgetown University Law Center; and Ira C. Lupu, Louis Harkey Mayo Research Professor of Law, The George Washington University School of Law.

COMMITTEE CONSIDERATION

On June 28, 2001, the Committee met in open session and ordered favorably reported the bill, H.R. 7, with amendment, by a recorded vote of 20 to 5, a quorum being present.

VOTE OF THE COMMITTEE

1. An amendment was offered by Mr. Scott (for himself, Mr. Conyers, Mr. Nadler, Mr. Frank, Ms. Jackson Lee, Ms. Waters, Ms. Balwin, and Mr. Watt) to strike from the amendment offered by Mr. Sensenbrenner its provisions preserving religious organizations' exemption from the religion nondiscrimination provisions of title VII of the Civil Rights Act of 1964. The amendment was defeated by rollcall vote of 11 to 19.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus		X	
Mr. Scarborough		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	11	19	

2. An amendment was offered by Mr. Watt to strike language in the amendment offered by Mr. Sensenbrenner overriding any provisions in programs covered under subsection (c)(4) of the Charitable Choice Act of 2001 that are inconsistent with or would diminish the exercise of an organization's autonomy recognized in section 702 of

the Civil Rights Act of 1964 or the Charitable Choice Act of 2001, and to add language to the end of subsection (e) of the Charitable Choice Act of 2001. The amendment was modified to omit its striking of language in the amendment of Mr. Sensenbrenner and to add the following language at the end of subsection (e): "Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described in subsection (c)(4)." As so modified, the amendment was agreed to by unanimous consent.

3. An amendment was offered by Mr. Nadler (for himself, Mr. Conyers, and Mr. Scott) that would perfect the amendment offered by Mr. Sensenbrenner a subsection providing that a party alleging that the rights of the party under subsection (f), (g), or (i) of the amendment offered by Mr. Sensenbrenner have been violated may bring a civil action seeking any form of legal or equitable relief, including a writ of mandamus, injunctive relief, or monetary damages, in a State court of general jurisdiction or in a District Court of the United States, against a religious organization, official, or Government agency, and that in any action or proceeding to enforce the foregoing rights, the court may allow a prevailing plaintiff reasonable attorneys' fees as part of the costs and may include expert fees as part of the attorneys' fees. The amendment was defeated by voice vote.

4. An amendment was offered by Mr. Nadler that would strike subsection (h) of the Charitable Choice Act of 2001 contained in the amendment offered by Mr. Sensenbrenner and replace it with a a new subsection (h) providing that a religious organization shall be eligible for assistance under a program described in subsection (c)(4) only through an entity incorporated separately from its pervasively sectarian parent or affiliate under section 501(c)(3) of the Internal Revenue Code of 1986. The amendment was defeated by voice vote.

5. An amendment was offered by Mr. Nadler (for himself, Mr. Conyers, Mr. Frank, Ms. Jackson Lee and Mr. Watt) that would have added language to the amendment offered by Mr. Sensenbrenner prohibiting religious organization receiving funds under programs covered by subsection (c)(4) from engaging any beneficiaries of such programs in religious worship, instruction, or proselytization while they were receiving assistance under a covered program. The amendment was defeated by rollcall vote of 7 to 22.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Scarborough		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers			
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott		X	
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Ms. Baldwin	X		
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Sensenbrenner, Chairman		X	
Total	7	22	

6. An amendment was offered by Mr. Scott (for himself and Ms. Waters) that would have provided that nothing in the Charitable Choice Act of 2001 in the amendment offered by Mr. Sensenbrenner shall affect any programs under the Elementary and Secondary Education Act of 1965. The amendment was defeated by a rollcall vote of 10 to 17.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus		X	
Mr. Scarborough			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa			
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers			
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	10	17	

7. An amendment was offered by Ms. Lofgren (for herself and Mr. Schiff) that would have striken section 104 of title I of H.R. 7 in the amendment offered by Mr. Sensenbrenner, which extends liability protection to businesses making in-kind donations to charitable organizations. The amendment was defeated by a rollcall vote of 7 to 13.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot			
Mr. Barr		X	
Mr. Jenkins			
Mr. Hutchinson		X	
Mr. Cannon			
Mr. Graham		X	
Mr. Bachus			
Mr. Scarborough			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa			
Ms. Hart		X	
Mr. Flake			
Mr. Conyers			
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Total	7	13	

8. An amendment was offered by Mr. Frank (for himself and Ms. Baldwin) that would have added language to subsection (g) of the Charitable Choice Act of 2001, in the amendment offered by Mr. Sensenbrenner, prohibiting a religious organization receiving indirect forms of assistance from discriminating, in carrying out a covered program, against an individual on the basis of a religious belief. The amendment was defeated by a rollcall vote of 7 to 15.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson			
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus			
Mr. Scarborough			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa			
Ms. Hart		X	
Mr. Flake			
Mr. Conyers			
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	7	15	

9. An amendment was offered by Mr. Frank (for himself and Mr. Scott) that would strike subsection (e)(2) of the Charitable Choice Act of 2001 in the amendment offered by Mr. Sensenbrenner and insert a new subsection (f) listing the same anti-discrimination statutes listed in subsection (e)(2) and preceding them with the language "nothing in section 1994A shall alter the duty of a religious organization receiving assistance or providing services under

any program described in subsection (c)(4) to comply with the nondiscrimination provisions in" the listed statutes. The amendment was agreed to by voice vote.

10. An amendment was offered by Ms. Jackson Lee (for herself and Ms. Waters) that would strike from the Charitable Choice Act of 2001, in the amendment offered by Mr. Sensenbrenner, its provisions protecting the rights of a religious organization that provides assistance under a program described in subsection (c)(4) to retain its autonomy, including its control over the definition, development, practice, and expression of its religious beliefs, from State and local governments. The amendment would also have allowed State and local governments to require a religious organization, in order to be eligible to provide assistance under a program described in subsection (c)(4), to alter its form of internal governance or provisions of its charter documents, or to remove religious art, icons, scripture or other symbols, or to change its name, because such symbols or name are of a religious character. The amendment also would have striken subsection (j) of the Charitable Choice Act of 2001. The amendment was defeated by a rollcall vote of 7 to 19.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus		X	
Mr. Scarborough			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers			
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff			
Mr. Sensenbrenner, Chairman		X	
Total	7	19	

11. An amendment was offered by Mr. Watt that would have inserted into the subsection of the Charitable Choice Act of 2001 titled "Effect on Other Laws," in the amendment offered by Mr. Sensenbrenner, a reference to the Fair Housing Act. The amendment was withdrawn.

12. An amendment was offered by Mr. Nadler (for himself and Mr. Frank that would have striken from subsection (f)(1)(A) of the Charitable Choice Act of 2001, in the amendment offered by Mr. Sensenbrenner, the phrase "is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds," and replaced it with "is an alternative, including a non-religious alternative, that is accessible and not objectionable to the individual." The amendment also would have added the following language at the end of that subsection: "section 1994A of this title shall not apply with respect to assistance provided under a program described in subsection (c)(4) during a fiscal year by an organization if the requirement of paragraph (1) is not met with respect to that assistance." The amendment was defeated by voice vote.

13. An amendment was offered by Mr. Scott that would have replaced the phrase "an alternative that is accessible" in subsection (f)(1)(A) of the Charitable Choice Act of 2001 in the amendment offered by Mr. Sensenbrenner, with the phrase "an alternative that is at least as accessible." The amendment was defeated by voice vote.

14. An amendment was offered by Mr. Scott that would have added at the end of subsection (c)(1)(A) of the Charitable Choice Act of 2001 in the amendment offered by Mr. Sensenbrenner the following language: "For purposes of this section, a religious organization is an organization which is pervasively sectarian, and states in the application for funding that it is a 'pervasively sectarian organization.'" The amendment was defeated by voice vote.

15. An amendment was offered by Mr. Scott that would have added the following language to subsection (m) of the amendment offered by Mr. Sensenbrenner to title II of H.R. 7: "Funding under this section shall be based on the objective merits of the applications submitted and shall not discriminate against an applicant based on the religious character of the organization." The amendment was defeated by a rollcall vote of 7 to 20.

ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus		X	
Mr. Scarborough		X	
Mr. Hostettler		X	
Mr. Green		X	

ROLLCALL NO. 7—Continued

	Ayes	Nays	Present
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers	X		
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff			
Mr. Sensenbrenner, Chairman		X	
Total	7	20	

16. An amendment was offered by Mr. Scott to the amendment offered by Mr. Sensenbrenner relating to training and technical assistance for small nongovernmental organizations that would have struck language referring to the Office of Justice Programs. The amendment also would have increased from $25 million to $50 million the amounts the Attorney General was authorized to spend to provide training and technical assistance regarding procedures relating to potential application and participation in programs identified in subsection (c)(4), to small nongovernmental organizations, including religious organizations. The amendment also provided that such assistance shall include assistance in creating a 501(c)(3) organization, grant writing workshops, informational assistance regarding accounting, legal, and tax issues, informational assistance regarding how to comply with Federal nondiscrimination provisions. The amendment also provided that, in providing such assistance, priority shall be given to small nongovernmental organizations serving rural and urban communities. By unanimous consent, the amendment was modified to omit the striking of language and to replace the phrase "Such assistance shall include" with "Such assistance may include." The amendment, as modified, was agreed to.

17. An amendment was offered by Mr. Scott in the amendment offered by Mr. Sensenbrenner that would have added at the end of subsection (c)(3) the following language: "Notwithstanding the provisions in this paragraph, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) shall apply to organizations receiving direct assistance funded under any program described in subsection (c)(4)." The amendment was agreed to by voice vote.

18. Mr. Sensenbrenner offered an amendment that would replace existing language in the employment practices provisions of H.R. 7 preserving religious organizations' current exemption from the religious nondiscrimination provisions of title VII with the same language used in the 1996 Welfare Reform Act, with an additional

clause making clear that contrary provisions in the Federal programs covered by H.R. 7 have no force and effect. The amendment also makes clear that, when a beneficiary has an objection to the religious nature of a provider, an alternative provider is required that is unobjectionable to the beneficiary on religious grounds, but that the alternative provider need not be nonreligious. The amendment also permits review of the performance of Federal programs funded through religious organizations and not just its fiscal aspects; requires self-audits by religious organizations; makes a clearer statement that if a religious organization offers sectarian instruction, worship, or proselytization, it shall be voluntary for the individuals receiving services and offered separate from the program funded under this subpart; limits parties alleging that their rights under this section have been violated to injunctive relief; and authorizes the Attorney General to provide training and technical assistance regarding procedures relating to potential applications and participation in programs identified in subsection (c)(4), to small nongovernmental organizations, including religious organizations. The amendment offered by Mr. Sensenbrenner, as amended, was agreed to by voice vote.

19. Final Passage. The motion to report favorably the bill H.R. 7, as amended, was adopted. The motion was agreed to by a rollcall vote of 20 to 5.

ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (Texas)			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Cannon	X		
Mr. Graham	X		
Mr. Bachus	X		
Mr. Scarborough	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Ms. Hart	X		
Mr. Flake	X		
Mr. Conyers			
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			

ROLLCALL NO. 8—Continued

	Ayes	Nays	Present
Mr. Schiff			
Mr. Sensenbrenner, Chairman	X		
Total	20	5	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Subsection (o) of title II of H.R. 7, the Charitable Choice Act of 2001, provides that, from amounts made available to carry out the purposes of the Office of Justice Programs, funds are authorized to provide training and technical assistance, directly, or through grants or other arrangements, in procedures relating to potential application and participation in covered programs to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $50 million annually. An amount of no less than $5,000,000 shall be reserved under this section, and small nongovernmental organizations may apply for these funds to be used for assistance in providing full and equal integrated access to individuals with disabilities in programs covered by the Charitable Choice Act of 2001.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because the portion of this legislation referred to the Committee does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 7, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 11, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 7, the Community Solutions Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for

Federal spending), who can be reached at 226–2860, Erin Whitaker (for revenues), who can be reached at 226–2720, and Shelley Finlayson (for the state and local impact), who can be reached at 225–3220.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Member

H.R. 7—Community Solutions Act of 2001.

SUMMARY

H.R. 7 would establish certain guidelines for religious organizations or their affiliates to receive Federal funds for the provision of social services and would make several changes to tax law concerning deductions for charitable contributions. The Joint Committee on Taxation (JCT) estimates that the revenue loss associated with this legislation would be almost $50 billion over the 2002–2006 period and more than $120 billion over the 2002–2011 period. Because H.R. 7 would affect revenues, pay-as-you-go procedures would apply. The bill also would establish certain reporting requirements of the Secretary of the Treasury and authorize the appropriation of $1 million each year for the Secretary to comply with those requirements. Assuming the appropriation of the specified amounts, CBO estimates that implementing H.R. 7 would cost $5 million over the 2001–2006 period.

Section 104 of H.R. 7 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt certain state liability laws. CBO estimates that complying with this mandate would result in no direct costs to state governments and thus would not exceed the threshold established in that act ($56 million in 2001, adjusted annually for inflation). Title 2 of the bill also would establish new requirements and prohibitions on state and local governments as conditions of receiving Federal assistance under numerous Federal programs. This bill contains no new private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 7 is shown in the following table. The cost of this legislation falls within budget function 800 (general government).

	By Fiscal Year, in Millions of Dollars					
	2001	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	0	1	1	1	1	1
Estimated Outlays	0	1	1	1	1	1
CHANGES IN REVENUES[a]						
Deductions for charitable contributions of individuals who do not itemize deductions	0	-1,278	-8,603	-9,159	-9,748	-10,401
Tax-free distributions from individual retirement accounts for charitable purposes	0	-118	-195	-215	-284	-368
Expand and increase the charitable deduction for contributions of food	0	-78	-146	-173	-194	-208
Individual Development Accounts	0	-891	-1,750	-1,767	-1,874	-2,028
Total Changes in Revenue	0	-2,365	-10,694	-11,314	-12,100	-13,005

a. All estimates of the revenue effects of H.R. 7 were provided by JCT.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 7 will be enacted by the end of fiscal year 2001 and that the authorized amounts will be appropriated for each year.

Spending Subject to Appropriation

Title III would establish tax credits for certain financial institutions that provide individual development accounts and would set certain requirements for the administration of the accounts and for the withdrawals from those accounts by individual taxpayers. The bill would authorize the appropriation of $1 million in each year over the 2002–2008 period for the Secretary of the Treasury to monitor the cost and performance of the individual development account programs and prepare an annual report to the Congress. Assuming the appropriation of the specified amounts, CBO estimates that implementing H.R. 7 would cost $5 million over the 2002–2006 period.

H.R. 7 would establish certain guidelines for religious organizations or their affiliates to receive Federal funds for the provision of social services. It also would require that any governmental organization that contracts with a religious organization to provide social services guarantee that eligible individuals who object to a specific service provider on religious grounds be directed to a different provider of comparable services. Although in many areas the number of providers would be sufficient to ensure that alternative providers would be available, very small communities might find it difficult to comply with these requirements. Although the requirement to find an alternate provider could increase Federal costs in some cases by requiring the Federal Government to pay a portion of the costs of such alternate providers, CBO has been unable to

obtain data to estimate any such costs. However, CBO does not anticipate that any resulting costs to the Federal Government would be substantial.

Revenues

H.R. 7 would allow taxpayers who do not itemize their deductions to deduct their charitable contributions up to the amount of the standard deduction, and continue to allow such taxpayers to take the standard deduction. The bill would allow taxpayers to exclude from their gross income otherwise taxable withdrawals from individual retirement accounts if those withdrawals were made for certain charitable distributions. The bill also would amend charitable contribution rules to enhance deductions for donations of food for all taxpayers other than certain corporations, and would limit the liability of corporate entities for certain charitable contributions of equipment.

H.R. 7 would establish tax credits for certain financial institutions that provide a program for certain accounts in which eligible individuals receive matching contributions from those institutions (individual development account program). The tax credit for these financial institutions would be equal to the amount of matching contributions made under the program plus amounts for accounts opened or maintained during the taxable year. It would set certain requirements for the administration of individual development accounts and for withdrawals from those accounts by individual taxpayers.

The Joint Committee on Taxation estimates that the revenue loss associated with this legislation would be almost $50 billion over the 2002–2006 period and more than $120 billion over the 2002–2011 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding 4 years are counted.

	By Fiscal Year, in Millions of Dollars										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays	Not applicable										
Changes in receipts[a]	0	-2,365	-10,694	-11,314	-12,100	-13,005	-13,534	-14,105	-14,212	-14,455	-15,432

a. Estimate was provided by JCT.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

CBO has reviewed section 104 and title 2 of H.R. 7 for intergovernmental mandates.

Mandates

Section 104 contains an intergovernmental mandate as defined in UMRA because it would preempt inconsistent or more stringent state liability laws that hold businesses civilly liable for injuries or death that result from the use of equipment, facilities, or vehicles donated or loaned to nonprofit organizations. This preemption would be an intergovernmental mandate as defined in UMRA, but because the preemption is narrow and state governments would not be required to take any action, CBO estimates complying with this mandate would result in no direct costs. Thus, the threshold established in UMRA ($56 million in 2001, adjusted annually for inflation) would not be exceeded.

Other Impacts

Title 2 would establish new requirements and prohibitions on how state and local governments receive and use Federal funds under numerous Federal programs. Such programs include anything related to hunger relief activities, Federal housing under the Community Development Block Grant Program, prevention of domestic violence under the Child Abuse Prevention and Treatment Act, and services for the elderly under the Older Americans Act. Specifically, title 2 would require state and local governments to consider religious organizations on the same basis as other organizations to provide assistance under programs carried out using Federal funds.

The bill also would require that the appropriate government entity notify applicants and recipients about provider options and provide, in a timely manner, an equivalent alternative from a nonreligious provider if a recipient objects to receiving services from a religious provider. In addition, state and local governments that discriminate on the basis of religion in selecting service providers could be sued for injunctive relief. All of those requirements are conditions of Federal assistance, and therefore, are not mandates under UMRA. However, those requirements could increase state and local costs to administer numerous Federal programs. In particular, some small communities could find it difficult or costly to comply with the alternate provider requirements. CBO does not have sufficient information to estimate the aggregate costs nationwide.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill contains no new private-sector mandates as defined in UMRA.

ESTIMATE PREPARED BY:

Federal Spending: Lanette J. Walker (226–2860)
Federal Revenues: Erin Whitaker (226–2720)
Impact on State, Local, and Tribal Governments: Shelley Finlayson (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226-2960)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

G. Thomas Woodward
Assistant Director for Tax Analysis Division

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clauses 1, 3 and 18 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SECTION 104 OF TITLE I—CHARITABLE DONATIONS LIABILITY REFORM FOR IN-KIND CORPORATE CONTRIBUTIONS

Subsection (a)—Definitions

This subsection defines the terms aircraft, business entity, equipment, facility, gross negligence, intentional misconduct, motor vehicle, nonprofit organization, and State, as used in section 104 of title I of H.R. 7.

Subsection (b)—Liability

Subsection (b) applies with respect to civil liability under Federal and State law. Subsection (b) provides that, subject to subsection (c), a business entity shall not be subject to civil liability relating to any injury or death that results from the use of equipment donated by that business entity to a nonprofit organization. Businesses donating facilities to nonprofit organizations shall not be subject to civil liability relating to any injury or death occurring at the facility if the use occurs outside of the scope of business of the business entity, such injury or death occurs during a period that such facility is used by the nonprofit organization, and the business entity authorized the use of such facility by the nonprofit organization. Businesses shall not be subject to civil liability relating to any injury or death occurring as a result of the operation of aircraft or a motor vehicle of a business entity loaned to a nonprofit organization for use outside the scope of business of the business entity, if such injury or death occurs during a period that such motor vehicle or aircraft is used by a nonprofit organization, and the business entity authorized the use by the nonprofit organization of motor vehicle or aircraft that resulted in the injury or death.

Subsection (c)—Exceptions

Subsection (c) provides that subsection (b) shall not apply to an injury or death that results from an act or omission of a business entity that constitutes gross negligence or intentional misconduct.

Subsection (d)—Superceding Provision

Subsection (d) provides that, subject to subsection (e), this title preempts the laws of any State to the extent that such laws are inconsistent with this title, except that this title shall not preempt any State law that provides additional protection for a business entity for an injury or death described in a paragraph of subsection (b) with respect to which the conditions specified in such paragraph apply. Subsection (d) also provides that nothing in this title shall be construed to supersede any Federal or State health or safety law.

Subsection (e)—Election of State Regarding Nonapplicability

Subsection (e) provides that a provision of this title shall not apply to any civil action in a State court against a business entity in which all parties are citizens of the State if such State enacts a statute citing the authority of this section, declaring the election of such State that such provision shall not apply to such civil action in the State, and containing no other provisions.

Subsection (f)—Effective Date

Subsection (f) provides that this section shall apply to injuries and deaths resulting therefrom and occurring on or after the date of the enactment of this act.

SECTION 201 OF TITLE II OF H.R. 7—EXPANSION OF CHARITABLE CHOICE

Subsection (a)—Short Title

Subsection (a) provides that this section may be cited as the Charitable Choice Act of 2001.

Subsection (b)—Purposes

Subsection (b) provides that the purposes of the Charitable Choice Act of 2001 are to enable assistance to be provided to individuals and families in need in the most effective and efficient manner; to supplement the nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organizations in the administration and distribution of Government assistance under the covered Government programs; to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of Government assistance under such programs; to allow religious organizations to participate in the administration and distribution of such assistance without impairing the religious character and autonomy of such organizations; and to protect the religious freedom of individuals and families in need who are eligible for Government assistance, including expanding the possibility of their being able to choose to receive services from a religious organization providing such assistance.

Subsection (c)—Religious Organizations Included as Providers, Disclaimers

Subsection (c) provides that for any covered program that is carried out by the Federal Government, or by a State or local government with Federal funds, the Government shall consider, on the same basis as other non-governmental organizations, religious organizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the Constitution. It also provides that neither the Federal Government, nor a State or local government receiving funds under a covered program, shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character. Subsection (c) also makes clear that Federal, State, or local government funds or other assist-

ance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not support for religion or the organization's religious beliefs or practices, and that the receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not an endorsement by the Government of religion or of the organization's religious beliefs or practices. Subsection (c) defines the covered programs as those that involve activities carried out using Federal funds and that are related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974; related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968; related to the provision of assistance under Federal housing statutes, including the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974; under subtitle B or D of title I of the Workforce Investment Act of 1998; under the Older Americans Act of 1965; related to the intervention in and prevention of domestic violence, including programs under the Child Abuse and Prevention and Treatment Act or the Family Violence Prevention and Services Act; related to hunger relief activities; under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998; or that involve activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to non-school hours programs, including programs under chapter 3 of subtitle A of title II of the Workforce Investment Act of 1998 or part I of title X of the Elementary and Secondary Education Act; but not if they include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965.

Subsection (d)—Organizational Character and Autonomy

Subsection (d) provides that a religious organization that provides assistance under a covered program shall have the right to retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs. Neither the Federal Government, nor a State or local government with Federal funds, shall require a religious organization, in order to be eligible to provide assistance under a covered program, to alter its form of internal governance or provisions in its charter documents or to remove religious art, icons, scripture, or other symbols, or to change its name, because such symbols or names are of a religious character.

Subsection (e)—Employment Practices

Subsection (e) provides that a religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 regarding employment practices shall not be affected by its participation in, or receipt of funds from, covered programs, and any provision

in such programs that is inconsistent with, or would diminish, the exercise of an organization's autonomy recognized in section 702 or in this section shall have no effect. The duties of religious organizations not to discriminate based on race, color, sex, and national origin, from which religious organizations are not exempt under title VII, are retained.

Subsection (f)—Effect on Other Laws

Subsection (f) provides that nothing in this section alters the duty of a religious organization receiving assistance or providing services under a covered program to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Subsection (g)—Rights of Beneficiaries of Assistance

Subsection (g) provides that if a beneficiary has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any covered program, the appropriate Federal, State, or local governmental entity shall provide to such individual within a reasonable period of time after the date of such objection, assistance that is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds and has a value that is not less than the value of the assistance that the individual would have received from such organization. The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the beneficiaries of their rights under this section.

Subsection (h)—Nondiscrimination against Beneficiaries

Subsection (h) provides that a religious organization providing assistance through a grant or cooperative agreement under a covered program shall not discriminate, in carrying out the program, against a beneficiary on the basis of religion, a religious belief, or a refusal to hold a religious belief. A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a covered program shall not deny a beneficiary admission into such program on the basis of religion, a religious belief, or a refusal to hold a religious belief.

Subsection (i)—Accountability

Subsection (i) provides that a religious organization providing assistance under any covered program shall be subject to the same regulations as other non-governmental organizations to account, in accord with generally accepted accounting principles, for the use of such funds and its performance of such programs. A religious organization providing assistance through a grant or cooperative agreement under a covered program shall segregate Government funds provided under such program into a separate account or accounts, and only the separate accounts consisting of funds from the Government shall be subject to audit by the Government. A religious organization providing assistance through a form of indirect assistance under a covered program may segregate Government funds provided under such program into a separate account or accounts

and, if such funds are so segregated, only the separate accounts consisting of funds from the Government shall be subject to audit by the Government. Subsection (i) further requires a religious organization providing services under any covered program to conduct annually a self audit for compliance with its duties under this section and to submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit.

Subsection (j)—Limitations on Use of Funds; Voluntariness

Subsection (j) provides that no funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any covered program shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4). A certificate shall be separately signed by religious organizations, and filed with the Government agency that disburses the funds, certifying that the organization is aware of and will comply with this subsection. Noncompliance with the certificate is a violation of the grant or cooperative agreement and shall be enforced in the same manner as other breaches of a grant or cooperative agreement.

Subsection (k)—Effect on State and Local Funds

Subsection (k) provides that if a State or local government contributes State or local funds to carry out a covered program, the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

Subsection (l)—Indirect Assistance

Subsection (l) provides that, when consistent with the purpose of a covered program, the Secretary of the department administering the program may direct the disbursement of some or all of the funds, if determined by the Secretary to be feasible and efficient, in the form of indirect assistance. Subsection (l) defines indirect assistance as assistance in which an organization receiving funds receives such funds only as a result of the choices of individual beneficiaries.

Subsection (m)—Treatment of Intermediate Grantors

Subsection (m) provides that if a non-governmental organization, acting under a grant or other agreement with the Federal Government, or a State or local government with Federal funds, is given the authority under the agreement to select non-governmental organizations to provide assistance under a covered program, the intermediate grantor shall have the same duties under this section as the Government when selecting or otherwise dealing with subgrantors, but the intermediate grantor, if it is a religious orga-

nization, shall retain all other rights of a religious organization under this section.

Subsection (n)—Compliance

Subsection (n) provides that a party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action for injunctive relief pursuant to section 1979 of the Revised Statutes against the State official or local government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for injunctive relief in Federal district court against the official or Government agency that has allegedly committed such violation.

Subsection (o)—Training and Technical Assistance for Small Nongovernmental Organizations

Subsection (o) provides that, from amounts made available to carry out the purposes of the Office of Justice Programs, funds are authorized to provide training and technical assistance, directly, or through grants or other arrangements, in procedures relating to potential application and participation in covered programs to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $50 million annually. An amount of no less than $5,000,000 shall be reserved under this section, and small nongovernmental organizations may apply for these funds to be used for assistance in providing full and equal integrated access to individuals with disabilities in programs under this title. In giving out the assistance described in this subsection, priority shall be given to small nongovernmental organizations serving urban and rural communities.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by that portion of the bill within the jurisdiction of the Committee on the Judiciary, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

REVISED STATUTES OF THE UNITED STATES

* * * * * * *

TITLE XXIV.—CIVIL RIGHTS.

* * * * * * *

SEC. 1991. CHARITABLE CHOICE.

(a) SHORT TITLE.—This section may be cited as the "Charitable Choice Act of 2001".

(b) PURPOSES.—The purposes of this section are—

(1) to enable assistance to be provided to individuals and families in need in the most effective and efficient manner;

(2) to supplement the Nation's social service capacity by facilitating the entry of new, and the expansion of existing, efforts by religious and other community organizations in the administration and distribution of government assistance under the government programs described in subsection (c)(4);

(3) to prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of government assistance under such programs;

(4) to allow religious organizations to participate in the administration and distribution of such assistance without impairing the religious character and autonomy of such organizations; and

(5) to protect the religious freedom of individuals and families in need who are eligible for government assistance, including expanding the possibility of their being able to choose to receive services from a religious organization providing such assistance.

(c) RELIGIOUS ORGANIZATIONS INCLUDED AS PROVIDERS; DISCLAIMERS.—

(1) IN GENERAL.—

(A) INCLUSION.—For any program described in paragraph (4) that is carried out by the Federal Government, or by a State or local government with Federal funds, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, and the program shall be implemented in a manner that is consistent with the establishment clause and the free exercise clause of the first amendment to the Constitution.

(B) DISCRIMINATION PROHIBITED.—Neither the Federal Government, nor a State or local government receiving funds under a program described in paragraph (4), shall discriminate against an organization that provides assistance under, or applies to provide assistance under, such program on the basis that the organization is religious or has a religious character.

(2) FUNDS NOT AID TO RELIGION.—Federal, State, or local government funds or other assistance that is received by a religious organization for the provision of services under this section constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not support for religion or the organization's religious beliefs or practices. Notwithstanding the provisions in this paragraph, title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.) shall apply to organizations receiving assistance funded under any program described in subsection (c)(4).

(3) FUNDS NOT ENDORSEMENT OF RELIGION.—The receipt by a religious organization of Federal, State, or local government funds or other assistance under this section is not an endorsement by the government of religion or of the organization's religious beliefs or practices.

(4) PROGRAMS.—For purposes of this section, a program is described in this paragraph—

(A) if it involves activities carried out using Federal funds—

(i) related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.);

(ii) related to the prevention of crime and assistance to crime victims and offenders' families, including programs funded under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.);

(iii) related to the provision of assistance under Federal housing statutes, including the Community Development Block Grant Program established under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

(iv) under subtitle B or D of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

(v) under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.);

(vi) related to the intervention in and prevention of domestic violence, including programs under the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

(vii) related to hunger relief activities; or

(viii) under the Job Access and Reverse Commute grant program established under section 3037 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note); or

(B)(i) if it involves activities to assist students in obtaining the recognized equivalents of secondary school diplomas and activities relating to nonschool hours programs, including programs under—

(I) chapter 3 of subtitle A of title II of the Workforce Investment Act of 1998 (Public Law 105–220); or

(II) part I of title X of the Elementary and Secondary Education Act (20 U.S.C. 6301 et seq.); and

(ii) except as provided in subparagraph (A) and clause (i), does not include activities carried out under Federal programs providing education to children eligible to attend elementary schools or secondary schools, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(d) ORGANIZATIONAL CHARACTER AND AUTONOMY.—

(1) IN GENERAL.—A religious organization that provides assistance under a program described in subsection (c)(4) shall have the right to retain its autonomy from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) ADDITIONAL SAFEGUARDS.—Neither the Federal Government, nor a State or local government with Federal funds, shall require a religious organization, in order to be eligible to pro-

vide assistance under a program described in subsection (c)(4), to—

(A) alter its form of internal governance or provisions in its charter documents; or

(B) remove religious art, icons, scripture, or other symbols, or to change its name, because such symbols or names are of a religious character.

(e) EMPLOYMENT PRACTICES.—A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (c)(4), and any provision in such programs that is inconsistent with or would diminish the exercise of an organization's autonomy recognized in section 702 or in this section shall have no effect. Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described in subsection (c)(4).

(f) EFFECT ON OTHER LAWS.—Nothing in this section shall alter the duty of a religious organization receiving assistance or providing services under any program described in subsection (c)(4) to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688) (prohibiting discrimination in education programs or activities on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (prohibiting discrimination on the basis of age).

(g) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

(1) IN GENERAL.—If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive, assistance funded under any program described in subsection (c)(4), the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection, assistance that—

(A) is an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds; and

(B) has a value that is not less than the value of the assistance that the individual would have received from such organization.

(2) NOTICE.—The appropriate Federal, State, or local governmental entity shall guarantee that notice is provided to the individuals described in paragraph (3) of the rights of such individuals under this section.

(3) INDIVIDUAL DESCRIBED.—An individual described in this paragraph is an individual who receives or applies for assistance under a program described in subsection (c)(4).

(h) NONDISCRIMINATION AGAINST BENEFICIARIES.—

(1) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall not discriminate in carrying out the program against an individual described in subsection (g)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief.

(2) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) shall not deny an individual described in subsection (g)(3) admission into such program on the basis of religion, a religious belief, or a refusal to hold a religious belief.

(i) ACCOUNTABILITY.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a religious organization providing assistance under any program described in subsection (c)(4) shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds and its performance of such programs.

(2) LIMITED AUDIT.—

(A) GRANTS AND COOPERATIVE AGREEMENTS.—A religious organization providing assistance through a grant or cooperative agreement under a program described in subsection (c)(4) shall segregate government funds provided under such program into a separate account or accounts. Only the separate accounts consisting of funds from the government shall be subject to audit by the government.

(B) INDIRECT FORMS OF ASSISTANCE.—A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) may segregate government funds provided under such program into a separate account or accounts. If such funds are so segregated, then only the separate accounts consisting of funds from the government shall be subject to audit by the government.

(3) SELF AUDIT.—A religious organization providing services under any program described in subsection (c)(4) shall conduct annually a self audit for compliance with its duties under this section and submit a copy of the self audit to the appropriate Federal, State, or local government agency, along with a plan to timely correct variances, if any, identified in the self audit.

(j) LIMITATIONS ON USE OF FUNDS; VOLUNTARINESS.—No funds provided through a grant or cooperative agreement to a religious organization to provide assistance under any program described in subsection (c)(4) shall be expended for sectarian instruction, worship, or proselytization. If the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under subsection (c)(4). A certificate shall be separately signed by religious organizations, and filed with the government agency that disburses the funds, certifying that the organization is aware of and will comply with this subsection.

(k) EFFECT ON STATE AND LOCAL FUNDS.—If a State or local government contributes State or local funds to carry out a program

described in subsection (c)(4), the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(l) INDIRECT ASSISTANCE.—When consistent with the purpose of a program described in subsection (c)(4), the Secretary of the department administering the program may direct the disbursement of some or all of the funds, if determined by the Secretary to be feasible and efficient, in the form of indirect assistance. For purposes of this section, "indirect assistance" constitutes assistance in which an organization receiving funds through a voucher, certificate, or other form of disbursement under this section receives such funding only as a result of the private choices of individual beneficiaries and no government endorsement of any particular religion, or of religion generally, occurs.

(m) TREATMENT OF INTERMEDIATE GRANTORS.—If a nongovernmental organization (referred to in this subsection as an "intermediate grantor"), acting under a grant or other agreement with the Federal Government, or a State or local government with Federal funds, is given the authority under the agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (c)(4), the intermediate grantor shall have the same duties under this section as the government when selecting or otherwise dealing with subgrantors, but the intermediate grantor, if it is a religious organization, shall retain all other rights of a religious organization under this section.

(n) COMPLIANCE.—A party alleging that the rights of the party under this section have been violated by a State or local government may bring a civil action for injunctive relief pursuant to section 1979 against the State official or local government agency that has allegedly committed such violation. A party alleging that the rights of the party under this section have been violated by the Federal Government may bring a civil action for injunctive relief in Federal district court against the official or government agency that has allegedly committed such violation.

(o) TRAINING AND TECHNICAL ASSISTANCE FOR SMALL NONGOVERNMENTAL ORGANIZATIONS.—

(1) IN GENERAL.—From amounts made available to carry out the purposes of the Office of Justice Programs (including any component or unit thereof, including the Office of Community Oriented Policing Services), funds are authorized to provide training and technical assistance, directly or through grants or other arrangements, in procedures relating to potential application and participation in programs identified in subsection (c)(4) to small nongovernmental organizations, as determined by the Attorney General, including religious organizations, in an amount not to exceed $50 million annually.

(2) TYPES OF ASSISTANCE.—Such assistance may include—

(A) assistance and information relative to creating an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 to operate identified programs;

(B) granting writing assistance which may include workshops and reasonable guidance;

(C) information and referrals to other nongovernmental organizations that provide expertise in accounting, legal issues, tax issues, program development, and a variety of other organizational areas; and

(D) information and guidance on how to comply with Federal nondiscrimination provisions including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Fair Housing Act, as amended (42 U.S.C. 3601 et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 694), and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107).

(3) RESERVATION OF FUNDS.—An amount of no less than $5,000,000 shall be reserved under this section. Small nongovernmental organizations may apply for these funds to be used for assistance in providing full and equal integrated access to individuals with disabilities in programs under this title.

(4) PRIORITY.—In giving out the assistance described in this subsection, priority shall be given to small nongovernmental organizations serving urban and rural communities.

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July 11, 2001

The Honorable James Sensenbrenner, Jr.
Chairman, Committee on the Judiciary
2138 Rayburn HOB
Washington, D.C. 20515
Attn: Will Moschella

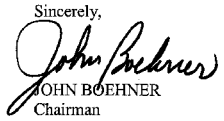
Dear Chairman Sensenbrenner:

Thank you for working with me regarding H.R. 7, the Community Solutions Act of 2001, which was referred to the Committee on Ways and Means and in addition the Committee on the Judiciary. As you know, the Committee on Education and the Workforce holds a jurisdictional interest in this legislation and I appreciate your acknowledgement of that jurisdictional interest. While the bill would be sequentially referred to the Education and the Workforce Committee, I understand the desire to have this legislation considered expeditiously by the House; hence, I do not intend to hold a hearing or markup on this legislation.

In agreeing to waive consideration by our Committee, I would expect you to agree that this procedural route should not be construed to prejudice the Committee on Education and the Workforce's jurisdictional interest and prerogatives on this or any similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my Committee in the future. I would also expect your support in my request to the Speaker for the appointment of conferees from my Committee with respect to matters within the jurisdiction of my Committee should a conference with the Senate be convened on this or similar legislation.

Again, thank you for your letter. I would appreciate your including our exchange of letters in your Committee's report to accompany H.R. 7. Again, I thank you for working with me in developing this legislation and I look forward to working with you on these issues in the future.

Sincerely,



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ONE HUNDRED SEVENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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July 11, 2001

The Honorable John Boehner
Chairman
House Committee on Education and the Workforce
2181 Rayburn HOB
Washington, D.C. 20515

Dear John:

This letter responds to your letter dated July 11, 2001, concerning H.R. 7, the "Community Solutions Act " which was favorably reported by the House Committee on the Judiciary on June 28, 2001.

I agree that the bill contains matters within the Committee on Education and the Workforce's jurisdiction and appreciate your willingness to be discharged from further consideration of H.R. 7 so that we may proceed to the floor expeditiously. Your willingness to be discharged is not construed by the Committee on the Judiciary to prejudice the Committee on Education and the Workforce's jurisdictional interest under Rule X of the House of Representatives.

Pursuant to your request, a copy of your letter and this letter will be included in the report of the Committee on the Judiciary on H.R. 7.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable George Miller
The Honorable Charles W. Johnson, III

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July 11, 2001

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Jim:

I understand that the Committee on the Judiciary recently ordered reported H.R. 7, the Community Solutions Act of 2001. As you know, the legislation contains provisions relating to community development block grants (CDBGs) and other programs under the Nation's housing laws which fall within the jurisdiction of the Committee on Financial Services pursuant to clause 1(g) of rule X of the Rules of the House of Representatives.

Because of your willingness to consult with the Committee on Financial Services regarding this matter and the need to move this legislation expeditiously, I will waive consideration of the bill by the Financial Services Committee. By agreeing to waive its consideration of the bill, the Financial Services Committee does not waive its jurisdiction over H.R. 7. In addition, the Committee on Financial Services reserves its authority to seek conferees on any provisions of the bill that are within the Financial Services Committee's jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Financial Services for conferees on H.R. 7 or related legislation.

I request that you include this letter and your response as part of your committee's report on the bill and the *Congressional Record* during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

Michael G. Oxley
Chairman

MGO/hnh

cc: The Honorable J. Dennis Hastert, Speaker
The Honorable John J. LaFalce
The Honorable Marge Roukema
The Honorable Barney Frank
The Honorable Charles W. Johnson, III, Parliamentarian

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ONE HUNDRED SEVENTH CONGRESS

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ADAM B. SCHIFF, California

July 11, 2001

The Honorable Michael G. Oxley
Chairman
House Committee on Financial Services
2129 Rayburn HOB
Washington, D.C. 20515

Dear Mike:

This letter responds to your letter dated July 11, 2001, concerning H.R. 7, the "Community Solutions Act" which was favorably reported by the House Committee on the Judiciary on June 28, 2001.

I agree that the bill contains matters within the Committee on Financial Services' jurisdiction and appreciate your willingness to be discharged from further consideration of H.R. 7 so that we may proceed to the floor expeditiously. Your willingness to be discharged is not construed by the Committee on the Judiciary to prejudice the Committee on Financial Services' jurisdictional interest under Rule X of the House of Representatives.

Pursuant to your request, a copy of your letter and this letter will be included in the report of the Committee on the Judiciary on H.R. 7.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable John J. LaFalce
The Honorable Charles W. Johnson, III

MARKUP TRANSCRIPT

BUSINESS MEETING

THURSDAY, JUNE 28, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:35 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., Chairman of the Committee, presiding.

Chairman SENSENBRENNER. The Committee will be in order. Without objection, the Chair has given the authority to grant or call recesses at any point in today's markup. A working quorum is present.

Pursuant to notice, I now call up the bill H.R. 7, the Charitable Choice Act of 2001 for purposes of markup, and move its favorable recommendation to the House.

Without objection, the bill will be considered as read and open to amendment at any point.

[The bill, H.R. 7, follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 7

To provide incentives for charitable contributions by individuals and businesses, to improve the effectiveness and efficiency of government program delivery to individuals and families in need, and to enhance the ability of low-income Americans to gain financial security by building assets.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2001

Mr. WATTS of Oklahoma (for himself, Mr. HALL of Ohio, and Mr. HASTERT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide incentives for charitable contributions by individuals and businesses, to improve the effectiveness and efficiency of government program delivery to individuals and families in need, and to enhance the ability of low-income Americans to gain financial security by building assets.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 "Community Solutions Act of 2001".

4 (b) TABLE OF CONTENTS.—The table of contents is
5 as follows:

Sec. 1. Short title; table of contents.

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

Sec. 101. Deduction for portion of charitable contributions to be allowed to individuals who do not itemize deductions.
Sec. 102. Tax-free distributions from individual retirement accounts for charitable purposes.
Sec. 103. Charitable deduction for contributions of food inventory.
Sec. 104. Charitable donations liability reform for in-kind corporate contributions.

TITLE II—EXPANSION OF CHARITABLE CHOICE

Sec. 201. Provision of assistance under government programs by religious and community organizations.

TITLE III—INDIVIDUAL DEVELOPMENT ACCOUNTS

Sec. 301. Purposes.
Sec. 302. Definitions.
Sec. 303. Structure and administration of qualified individual development account programs.
Sec. 304. Procedures for opening and maintaining an individual development account and qualifying for matching funds.
Sec. 305. Deposits by qualified individual development account programs.
Sec. 306. Withdrawal procedures.
Sec. 307. Certification and termination of qualified individual development account programs.
Sec. 308. Reporting, monitoring, and evaluation.
Sec. 309. Authorization of appropriations.
Sec. 310. Account funds disregarded for purposes of certain means-tested Federal programs.
Sec. 311. Matching funds for individual development accounts provided through a tax credit for qualified financial institutions.

TITLE I—CHARITABLE GIVING INCENTIVES PACKAGE

SEC. 101. DEDUCTION FOR PORTION OF CHARITABLE CONTRIBUTIONS TO BE ALLOWED TO INDIVIDUALS WHO DO NOT ITEMIZE DEDUCTIONS.

(a) IN GENERAL.—Section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING DEDUCTIONS.—In the case of an individual who does not itemize his deductions for the taxable year, there shall be taken into account as a direct charitable deduction under section 63 an amount equal to the lesser of—

"(1) the amount allowable under subsection (a) for the taxable year, or

"(2) the amount of the standard deduction."

(b) DIRECT CHARITABLE DEDUCTION.—

(1) IN GENERAL.—Subsection (b) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following new paragraph:

1 "(3) the direct charitable deduction."

2 (2) DEFINITION.—Section 63 of such Code is
3 amended by redesignating subsection (g) as sub-
4 section (h) and by inserting after subsection (f) the
5 following new subsection:

6 "(g) DIRECT CHARITABLE DEDUCTION.—For pur-
7 poses of this section, the term 'direct charitable deduction'
8 means that portion of the amount allowable under section
9 170(a) which is taken as a direct charitable deduction for
10 the taxable year under section 170(m)."

11 (3) CONFORMING AMENDMENT.—Subsection (d)
12 of section 63 of such Code is amended by striking
13 "and" at the end of paragraph (1), by striking the
14 period at the end of paragraph (2) and inserting ",
15 and", and by adding at the end thereof the following
16 new paragraph:

17 "(3) the direct charitable deduction."

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 the date of the enactment of this Act.

21 **SEC. 102. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RE-**
22 **TIREMENT ACCOUNTS FOR CHARITABLE**
23 **PURPOSES.**

24 (a) IN GENERAL.—Subsection (d) of section 408 of
25 the Internal Revenue Code of 1986 (relating to individual

1 retirement accounts) is amended by adding at the end the
2 following new paragraph:
3 "(8) DISTRIBUTIONS FOR CHARITABLE PUR-
4 POSES.—
5 "(A) IN GENERAL.—No amount shall be
6 includible in gross income by reason of a quali-
7 fied charitable distribution from an individual
8 retirement account to an organization described
9 in section 170(c).
10 "(B) SPECIAL RULES RELATING TO CHARI-
11 TABLE REMAINDER TRUSTS, POOLED INCOME
12 FUNDS, AND CHARITABLE GIFT ANNUITIES.—
13 "(i) IN GENERAL.—No amount shall
14 be includible in gross income by reason of
15 a qualified charitable distribution from an
16 individual retirement account—
17 "(I) to a charitable remainder
18 annuity trust or a charitable remain-
19 der unitrust (as such terms are de-
20 fined in section 664(d)),
21 "(II) to a pooled income fund (as
22 defined in section 642(c)(5)), or
23 "(III) for the issuance of a chari-
24 table gift annuity (as defined in sec-
25 tion 501(m)(5)).

1 The preceding sentence shall apply only if
2 no person holds an income interest in the
3 amounts in the trust, fund, or annuity at-
4 tributable to such distribution other than
5 one or more of the following: the individual
6 for whose benefit such account is main-
7 tained, the spouse of such individual, or
8 any organization described in section
9 170(c).
10 "(ii) DETERMINATION OF INCLUSION
11 OF AMOUNTS DISTRIBUTED.—In deter-
12 mining the amount includible in the gross
13 income of any person by reason of a pay-
14 ment or distribution from a trust referred
15 to in clause (i)(I) or a charitable gift annu-
16 ity (as so defined), the portion of any
17 qualified charitable distribution to such
18 trust or for such annuity which would (but
19 for this subparagraph) have been includible
20 in gross income—
21 "(I) shall be treated as income
22 described in section 664(b)(1), and
23 "(II) shall not be treated as an
24 investment in the contract.

1 "(iii) NO INCLUSION FOR DISTRIBU-
2 TION TO POOLED INCOME FUND.—No
3 amount shall be includible in the gross in-
4 come of a pooled income fund (as so de-
5 fined) by reason of a qualified charitable
6 distribution to such fund.
7 "(C) QUALIFIED CHARITABLE DISTRIBU-
8 TION.—For purposes of this paragraph, the
9 term 'qualified charitable distribution' means
10 any distribution from an individual retirement
11 account—
12 "(i) which is made on or after the
13 date that the individual for whose benefit
14 the account is maintained has attained age
15 59½, and
16 "(ii) which is made directly from the
17 account to—
18 "(I) an organization described in
19 section 170(c), or
20 "(II) a trust, fund, or annuity re-
21 ferred to in subparagraph (B).
22 "(D) DENIAL OF DEDUCTION.—The
23 amount allowable as a deduction under section
24 170 to the taxpayer for the taxable year shall
25 be reduced (but not below zero) by the sum of

1 the amounts of the qualified charitable distribu-
2 tions during such year which would be includ-
3 ible in the gross income of the taxpayer for
4 such year but for this paragraph."

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall apply to taxable years beginning after
7 the date of the enactment of this Act.

8 **SEC. 103. CHARITABLE DEDUCTION FOR CONTRIBUTIONS**
9 **OF FOOD INVENTORY.**

10 (a) IN GENERAL.—Subsection (e) of section 170 of
11 the Internal Revenue Code of 1986 (relating to certain
12 contributions of ordinary income and capital gain prop-
13 erty) is amended by adding at the end the following new
14 paragraph:

15 "(7) SPECIAL RULE FOR CONTRIBUTIONS OF
16 FOOD INVENTORY.—For purposes of this section—

17 "(A) CONTRIBUTIONS BY NON-CORPORATE
18 TAXPAYERS.—In the case of a charitable con-
19 tribution of food by a taxpayer, paragraph
20 (3)(A) shall be applied without regard to wheth-
21 er or not the contribution is made by a corpora-
22 tion.

23 "(B) LIMIT ON REDUCTION.—In the case
24 of a charitable contribution of food which is a
25 qualified contribution (within the meaning of

1 paragraph (3)(A), as modified by subparagraph
2 (A) of this paragraph)—
3 "(i) paragraph (3)(B) shall not apply,
4 and
5 "(ii) the reduction under paragraph
6 (1)(A) for such contribution shall be no
7 greater than the amount (if any) by which
8 the amount of such contribution exceeds
9 twice the basis of such food.
10 "(C) DETERMINATION OF BASIS.—For
11 purposes of this paragraph, if a taxpayer uses
12 the cash method of accounting, the basis of any
13 qualified contribution of such taxpayer shall be
14 deemed to be 50 percent of the fair market
15 value of such contribution.
16 "(D) DETERMINATION OF FAIR MARKET
17 VALUE.—In the case of a charitable contribu-
18 tion of food which is a qualified contribution
19 (within the meaning of paragraph (3), as modi-
20 fied by subparagraphs (A) and (B) of this para-
21 graph) and which, solely by reason of internal
22 standards of the taxpayer, lack of market, or
23 similar circumstances, or which is produced by
24 the taxpayer exclusively for the purposes of
25 transferring the food to an organization de-

1 scribed in paragraph (3)(A), cannot or will not
2 be sold, the fair market value of such contribu-
3 tion shall be determined—
4 "(i) without regard to such internal
5 standards, such lack of market, such cir-
6 cumstances, or such exclusive purpose, and
7 "(ii) if applicable, by taking into ac-
8 count the price at which the same or simi-
9 lar food items are sold by the taxpayer at
10 the time of the contribution (or, if not so
11 sold at such time, in the recent past).".
12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply to taxable years beginning after
14 December 31, 2001.

15 **SEC. 104. CHARITABLE DONATIONS LIABILITY REFORM**
16 **FOR IN-KIND CORPORATE CONTRIBUTIONS.**

17 (a) DEFINITIONS.—For purposes of this section:
18 (1) AIRCRAFT.—The term "aircraft" has the
19 meaning provided that term in section 40102(6) of
20 title 49, United States Code.
21 (2) BUSINESS ENTITY.—The term "business
22 entity" means a firm, corporation, association, part-
23 nership, consortium, joint venture, or other form of
24 enterprise.

1 (3) EQUIPMENT.—The term "equipment" in-
2 cludes mechanical equipment, electronic equipment,
3 and office equipment.
4 (4) FACILITY.—The term "facility" means any
5 real property, including any building, improvement,
6 or appurtenance.
7 (5) GROSS NEGLIGENCE.—The term "gross
8 negligence" means voluntary and conscious conduct
9 by a person with knowledge (at the time of the con-
10 duct) that the conduct is likely to be harmful to the
11 health or well-being of another person.
12 (6) INTENTIONAL MISCONDUCT.—The term
13 "intentional misconduct" means conduct by a person
14 with knowledge (at the time of the conduct) that the
15 conduct is harmful to the health or well-being of an-
16 other person.
17 (7) MOTOR VEHICLE.—The term "motor vehi-
18 cle" has the meaning provided that term in section
19 30102(6) of title 49, United States Code.
20 (8) NONPROFIT ORGANIZATION.—The term
21 "nonprofit organization" means—
22 (A) any organization described in section
23 501(c)(3) of the Internal Revenue Code of 1986
24 and exempt from tax under section 501(a) of
25 such Code; or

1 (B) any not-for-profit organization orga-
2 nized and conducted for public benefit and op-
3 erated primarily for charitable, civic, edu-
4 cational, religious, welfare, or health purposes.
5 (9) STATE.—The term "State" means each of
6 the several States, the District of Columbia, the
7 Commonwealth of Puerto Rico, the Virgin Islands,
8 Guam, American Samoa, the Northern Mariana Is-
9 lands, any other territory or possession of the
10 United States, or any political subdivision of any
11 such State, territory, or possession.
12 (b) LIABILITY.—
13 (1) LIABILITY OF BUSINESS ENTITIES THAT
14 DONATE EQUIPMENT TO NONPROFIT ORGANIZA-
15 TIONS.—
16 (A) IN GENERAL.—Subject to subsection
17 (c), a business entity shall not be subject to
18 civil liability relating to any injury or death that
19 results from the use of equipment donated by a
20 business entity to a nonprofit organization.
21 (B) APPLICATION.—This paragraph shall
22 apply with respect to civil liability under Fed-
23 eral and State law.

1 (2) LIABILITY OF BUSINESS ENTITIES PRO-
2 VIDING USE OF FACILITIES TO NONPROFIT ORGANI-
3 ZATIONS.—
4 (A) IN GENERAL.—Subject to subsection
5 (c), a business entity shall not be subject to
6 civil liability relating to any injury or death oc-
7 curring at a facility of the business entity in
8 connection with a use of such facility by a non-
9 profit organization, if—
10 (i) the use occurs outside of the scope
11 of business of the business entity;
12 (ii) such injury or death occurs during
13 a period that such facility is used by the
14 nonprofit organization; and
15 (iii) the business entity authorized the
16 use of such facility by the nonprofit orga-
17 nization.
18 (B) APPLICATION.—This paragraph shall
19 apply—
20 (i) with respect to civil liability under
21 Federal and State law; and
22 (ii) regardless of whether a nonprofit
23 organization pays for the use of a facility.
24 (3) LIABILITY OF BUSINESS ENTITIES PRO-
25 VIDING USE OF A MOTOR VEHICLE OR AIRCRAFT.—

1 (A) IN GENERAL.—Subject to subsection
2 (c), a business entity shall not be subject to
3 civil liability relating to any injury or death oc-
4 curring as a result of the operation of aircraft
5 or a motor vehicle of a business entity loaned
6 to a nonprofit organization for use outside of
7 the scope of business of the business entity, if—
8 (i) such injury or death occurs during
9 a period that such motor vehicle or aircraft
10 is used by a nonprofit organization; and
11 (ii) the business entity authorized the
12 use by the nonprofit organization of motor
13 vehicle or aircraft that resulted in the in-
14 jury or death.
15 (B) APPLICATION.—This paragraph shall
16 apply—
17 (i) with respect to civil liability under
18 Federal and State law; and
19 (ii) regardless of whether a nonprofit
20 organization pays for the use of the air-
21 craft or motor vehicle.
22 (4) LIABILITY OF BUSINESS ENTITIES PRO-
23 VIDING TOURS OF FACILITIES.—
24 (A) IN GENERAL.—Subject to subsection
25 (c), a business entity shall not be subject to

1 civil liability relating to any injury to, or death
2 of an individual occurring at a facility of the
3 business entity, if—
4 (i) such injury or death occurs during
5 a tour of the facility in an area of the fa-
6 cility that is not otherwise accessible to the
7 general public; and
8 (ii) the business entity authorized the
9 tour.
10 (B) APPLICATION.—This paragraph shall
11 apply—
12 (i) with respect to civil liability under
13 Federal and State law; and
14 (ii) regardless of whether an indi-
15 vidual pays for the tour.
16 (c) EXCEPTIONS.—Subsection (b) shall not apply to
17 an injury or death that results from an act or omission
18 of a business entity that constitutes gross negligence or
19 intentional misconduct, including any misconduct that—
20 (1) constitutes a crime of violence (as that term
21 is defined in section 16 of title 18, United States
22 Code) or act of international terrorism (as that term
23 is defined in section 2331 of title 18, United States
24 Code) for which the defendant has been convicted in
25 any court;

1 (2) constitutes a hate crime (as that term is
2 used in the Hate Crime Statistics Act (28 U.S.C.
3 534 note));
4 (3) involves a sexual offense, as defined by ap-
5 plicable State law, for which the defendant has been
6 convicted in any court; or
7 (4) involves misconduct for which the defendant
8 has been found to have violated a Federal or State
9 civil rights law.
10 (d) SUPERSEDING PROVISION.—
11 (1) IN GENERAL.—Subject to paragraph (2)
12 and subsection (e), this title preempts the laws of
13 any State to the extent that such laws are incon-
14 sistent with this title, except that this title shall not
15 preempt any State law that provides additional pro-
16 tection for a business entity for an injury or death
17 described in a paragraph of subsection (b) with re-
18 spect to which the conditions specified in such para-
19 graph apply.
20 (2) LIMITATION.—Nothing in this title shall be
21 construed to supersede any Federal or State health
22 or safety law.
23 (e) ELECTION OF STATE REGARDING NONAPPLICA-
24 BILITY.—A provision of this title shall not apply to any
25 civil action in a State court against a business entity in

1 which all parties are citizens of the State if such State
2 enacts a statute—
3 (1) citing the authority of this section;
4 (2) declaring the election of such State that
5 such provision shall not apply to such civil action in
6 the State; and
7 (3) containing no other provisions.
8 (f) EFFECTIVE DATE.—This section shall apply to in-
9 juries (and deaths resulting therefrom) occurring on or
10 after the date of the enactment of this Act.

11 TITLE II—EXPANSION OF 12 CHARITABLE CHOICE

13 SEC. 201. PROVISION OF ASSISTANCE UNDER GOVERN- 14 MENT PROGRAMS BY RELIGIOUS AND COM- 15 MUNITY ORGANIZATIONS.

16 Title XXIV of the Revised Statutes is amended by
17 inserting after section 1990 (42 U.S.C. 1994) the fol-
18 lowing:

19 **"SEC. 1994A. CHARITABLE CHOICE.**

20 "(a) SHORT TITLE.—This section may be cited as the
21 'Charitable Choice Act of 2001'.
22 "(b) PURPOSES.—The purposes of this section are—
23 "(1) to provide assistance to individuals and
24 families in need in the most effective and efficient
25 manner;

1 "(2) to prohibit discrimination against religious
2 organizations on the basis of religion in the adminis-
3 tration and distribution of government assistance
4 under the government programs described in sub-
5 section (c)(4);
6 "(3) to allow religious organizations to assist in
7 the administration and distribution of such assist-
8 ance without impairing the religious character of
9 such organizations; and
10 "(4) to protect the religious freedom of individ-
11 uals and families in need who are eligible for govern-
12 ment assistance, including expanding the possibility
13 of choosing to receive services from a religious orga-
14 nization providing such assistance.
15 "(c) RELIGIOUS ORGANIZATIONS INCLUDED AS NON-
16 GOVERNMENTAL PROVIDERS.—
17 "(1) IN GENERAL.—
18 "(A) INCLUSION.—For any program de-
19 scribed in paragraph (4) that is carried out by
20 the Federal Government, or by a State or local
21 government with Federal funds, the government
22 shall consider, on the same basis as other non-
23 governmental organizations, religious organiza-
24 tions to provide the assistance under the pro-
25 gram, if the program is implemented in a man-

1 ner that is consistent with the Establishment
2 Clause and the Free Exercise Clause of the
3 first amendment to the Constitution.
4 "(B) DISCRIMINATION PROHIBITED.—Nei-
5 ther the Federal Government nor a State or
6 local government receiving funds under a pro-
7 gram described in paragraph (4) shall discrimi-
8 nate against an organization that provides as-
9 sistance under, or applies to provide assistance
10 under, such program, on the basis that the or-
11 ganization has a religious character.
12 "(2) FUNDS NOT AID TO RELIGION.—Federal,
13 State, or local government funds or other assistance
14 that is received by a religious organization for the
15 provision of services under this section constitutes
16 aid to individuals and families in need, the ultimate
17 beneficiaries of such services, and not aid to the reli-
18 gious organization.
19 "(3) FUNDS NOT ENDORSEMENT OF RELI-
20 GION.—The receipt by a religious organization of
21 Federal, State, or local government funds or other
22 assistance under this section is not and should not
23 be perceived as an endorsement by the government
24 of religion or the organization's religious beliefs or
25 practices.

1 "(4) PROGRAMS.—For purposes of this section,
2 a program is described in this paragraph—
3 "(A) if it involves activities carried out
4 using Federal funds—
5 "(i) related to the prevention and
6 treatment of juvenile delinquency and the
7 improvement of the juvenile justice system,
8 including programs funded under the Juve-
9 nile Justice and Delinquency Prevention
10 Act of 1974 (42 U.S.C. 5601 et seq.);
11 "(ii) related to the prevention of
12 crime, including programs funded under
13 title I of the Omnibus Crime Control and
14 Safe Streets Act of 1968 (42 U.S.C. 3701
15 et seq.);
16 "(iii) under the Federal housing laws;
17 "(iv) under title I of the Workforce
18 Investment Act of 1998 (29 U.S.C. 2801
19 et seq.)
20 "(v) under the Older Americans Act
21 of 1965 (42 U.S.C. 3001 et seq.);
22 "(vi) under the Child Care Develop-
23 ment Block Grant Act of 1990 (42 U.S.C.
24 9858 et seq.);

1 "(vii) under the Community Develop-
2 ment Block Grant Program established
3 under title I of the Housing and Commu-
4 nity Development Act of 1974 (42 U.S.C.
5 5301 et seq.);
6 "(viii) related to the intervention in
7 and prevention of domestic violence;
8 "(ix) related to hunger relief activi-
9 ties; or
10 "(x) under the Job Access and Re-
11 verse Commute grant program established
12 under section 3037 of the Federal Transit
13 Act of 1998 (49 U.S.C. 5309 note); or
14 "(B)(i) if it involves activities to assist stu-
15 dents in obtaining the recognized equivalents of
16 secondary school diplomas and activities relat-
17 ing to non-school-hours programs; and
18 "(ii) except as provided in subparagraph
19 (A) and clause (i), does not include activities
20 carried out under Federal programs providing
21 education to children eligible to attend elemen-
22 tary schools or secondary schools, as defined in
23 section 14101 of the Elementary and Secondary
24 Education Act of 1965 (20 U.S.C. 8801).

1 "(d) ORGANIZATIONAL CHARACTER AND AUTON-
2 OMY.—
3 "(1) IN GENERAL.—A religious organization
4 that provides assistance under a program described
5 in subsection (c)(4) shall retain its autonomy from
6 Federal, State, and local governments, including
7 such organization's control over the definition, devel-
8 opment, practice, and expression of its religious be-
9 liefs.
10 "(2) ADDITIONAL SAFEGUARDS.—Neither the
11 Federal Government nor a State or local government
12 shall require a religious organization in order to be
13 eligible to provide assistance under a program de-
14 scribed in subsection (c)(4)—
15 "(A) to alter its form of internal govern-
16 ance; or
17 "(B) to remove religious art, icons, scrip-
18 ture, or other symbols because they are reli-
19 gious.
20 "(e) EMPLOYMENT PRACTICES.—
21 "(1) IN GENERAL.—In order to aid in the pres-
22 ervation of its religious character, a religious organi-
23 zation that provides assistance under a program de-
24 scribed in subsection (c)(4) may, notwithstanding
25 any other provision of law, require that its employ-

1 ees adhere to the religious practices of the organiza-
2 tion.
3 "(2) TITLE VII EXEMPTION.—The exemption of
4 a religious organization provided under section 702
5 or 703(e)(2) of the Civil Rights Act of 1964 (42
6 U.S.C. 2000e–1, 2000e–2(e)(2)) regarding employ-
7 ment practices shall not be affected by the religious
8 organization's provision of assistance under, or re-
9 ceipt of funds from, a program described in sub-
10 section (c)(4).
11 "(3) EFFECT ON OTHER LAWS.—Nothing in
12 this section alters the duty of a religious organiza-
13 tion to comply with the nondiscrimination provisions
14 in title VI of the Civil Rights Act of 1964 (42
15 U.S.C. 2000d et seq.) (prohibiting discrimination on
16 the basis of race, color, and national origin), title IX
17 of the Education Amendments of 1972 (20 U.S.C.
18 1681–1686) (prohibiting discrimination in edu-
19 cational institutions on the basis of sex and visual
20 impairment), section 504 of the Rehabilitation Act
21 of 1973 (29 U.S.C. 794) (prohibiting discrimination
22 against otherwise qualified disabled individuals), and
23 the Age Discrimination Act of 1975 (42 U.S.C.
24 6101–6107) (prohibiting discrimination on the basis
25 of age).

1 "(f) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—

2 "(1) IN GENERAL.—If an individual described
3 in paragraph (3) has an objection to the religious
4 character of the organization from which the indi-
5 vidual receives, or would receive, assistance funded
6 under any program described in subsection (c)(4),
7 the appropriate Federal, State, or local govern-
8 mental entity shall provide to such individual (if oth-
9 erwise eligible for such assistance) within a reason-
10 able period of time after the date of such objection,
11 assistance that—

12 "(A) is an alternative, including a nonreli-
13 gious alternative, that is accessible to the indi-
14 vidual; and

15 "(B) has a value that is not less than the
16 value of the assistance that the individual would
17 have received from such organization.

18 "(2) NOTICE.—The appropriate Federal, State,
19 or local governmental entity shall guarantee that no-
20 tice is provided to the individuals described in para-
21 graph (3) of the rights of such individuals under this
22 section.

23 "(3) INDIVIDUAL DESCRIBED.—An individual
24 described in this paragraph is an individual who re-

1 ceives or applies for assistance under a program de-
2 scribed in subsection (c)(4).
3 "(g) NONDISCRIMINATION AGAINST BENE-
4 FICIARIES.—
5 "(1) GRANTS AND CONTRACTS.—A religious or-
6 ganization providing assistance through a grant or
7 contract under a program described in subsection
8 (c)(4) shall not discriminate, in carrying out the pro-
9 gram, against an individual described in subsection
10 (f)(3)on the basis of religion, a religious belief, or a
11 refusal to hold a religious belief..
12 "(2) INDIRECT FORMS OF DISBURSEMENT.—A
13 religious organization providing assistance through a
14 voucher, certificate, or other form of indirect dis-
15 bursement under a program described in subsection
16 (c)(4) shall not discriminate, in carrying out the pro-
17 gram, against an individual described in subsection
18 (f)(3) on the basis of religion, a religious belief, or
19 a refusal to hold a religious belief.
20 "(h) ACCOUNTABILITY.—
21 "(1) IN GENERAL.—Except as provided in para-
22 graph (2), a religious organization providing assist-
23 ance under any program described in subsection
24 (c)(4) shall be subject to the same regulations as
25 other nongovernmental organizations to account in

1 accord with generally accepted accounting principles
2 for the use of such funds provided under such pro-
3 gram.
4 "(2) LIMITED AUDIT.—Such organization shall
5 segregate government funds provided under such
6 program into a separate account or accounts. Only
7 the government funds shall be subject to audit by
8 the government.
9 "(i) LIMITATIONS ON USE OF FUNDS FOR CERTAIN
10 PURPOSES.—No funds provided through a grant or con-
11 tract to a religious organization to provide assistance
12 under any program described in subsection (c)(4) shall be
13 expended for sectarian worship, instruction, or proselytiza-
14 tion. A certificate shall be signed by such organizations
15 and filed with the government agency that disbursed the
16 funds that gives assurance the organization will comply
17 with this subsection.
18 "(j) EFFECT ON STATE AND LOCAL FUNDS.—If a
19 State or local government contributes State or local funds
20 to carry out a program described in subsection (c)(4), the
21 State or local government may segregate the State or local
22 funds from the Federal funds provided to carry out the
23 program or may commingle the State or local funds with
24 the Federal funds. If the State or local government com-
25 mingles the State or local funds, the provisions of this sec-

1 tion shall apply to the commingled funds in the same man-
2 ner, and to the same extent, as the provisions apply to
3 the Federal funds.

4 "(k) TREATMENT OF INTERMEDIATE CONTRAC-
5 TORS.—If a nongovernmental organization (referred to in
6 this subsection as an 'intermediate contractor'), acting
7 under a contract or other agreement with the Federal Gov-
8 ernment or a State or local government, is given the au-
9 thority under the contract or agreement to select non-
10 governmental organizations to provide assistance under
11 the programs described in subsection (c)(4), the inter-
12 mediate contractor shall have the same duties under this
13 section as the government when selecting or otherwise
14 dealing with subcontractors, but the intermediate con-
15 tractor, if it is a religious organization, shall retain all
16 other rights of a religious organization under this section.

17 "(l) COMPLIANCE.—A party alleging that the rights
18 of the party under this section have been violated by a
19 State or local government may bring a civil action pursu-
20 ant to section 1979 against the official or government
21 agency that has allegedly committed such violation. A
22 party alleging that the rights of the party under this sec-
23 tion have been violated by the Federal Government may
24 bring a civil action for appropriate relief in Federal dis-

1 trict court against the official or government agency that
2 has allegedly committed such violation.".

3 TITLE III—INDIVIDUAL
4 DEVELOPMENT ACCOUNTS

5 **SEC. 301. PURPOSES.**

6 The purposes of this title are to provide for the estab-
7 lishment of individual development account programs that
8 will—

9 (1) provide individuals and families with limited
10 means an opportunity to accumulate assets and to
11 enter the financial mainstream;

12 (2) promote education, homeownership, and the
13 development of small businesses;

14 (3) stabilize families and build communities;
15 and

16 (4) support United States economic expansion.

17 **SEC. 302. DEFINITIONS.**

18 As used in this title:

19 (1) ELIGIBLE INDIVIDUAL.—

20 (A) IN GENERAL.—The term "eligible indi-
21 vidual" means an individual who—

22 (i) has attained the age of 18 years
23 but not the age of 61;

24 (ii) is a citizen or legal resident of the
25 United States;

1 (iii) is not a student (as defined in
2 section 151(c)(4)); and
3 (iv) is a taxpayer the adjusted gross
4 income of whom for the preceding taxable
5 year does not exceed—
6 (I) $20,000, in the case of a tax-
7 payer described in section 1(c) or 1(d)
8 of the Internal Revenue Code of 1986;
9 (II) $25,000, in the case of a
10 taxpayer described in section 1(b) of
11 such Code; and
12 (III) $40,000, in the case of a
13 taxpayer described in section 1(a) of
14 such Code.
15 (B) INFLATION ADJUSTMENT.—
16 (i) IN GENERAL.—In the case of any
17 taxable year beginning after 2002, each
18 dollar amount referred to in subparagraph
19 (A)(iv) shall be increased by an amount
20 equal to—
21 (I) such dollar amount, multi-
22 plied by
23 (II) the cost-of-living adjustment
24 determined under section (1)(f)(3) of
25 the Internal Revenue Code of 1986

1 for the calendar year in which the tax-
2 able year begins, by substituting
3 "2001" for "1992".
4 (ii) ROUNDING.—If any amount as
5 adjusted under clause (i) is not a multiple
6 of $50, such amount shall be rounded to
7 the nearest multiple of $50.
8 (2) INDIVIDUAL DEVELOPMENT ACCOUNT.—
9 The term "Individual Development Account" means
10 an account established for an eligible individual as
11 part of a qualified individual development account
12 program, but only if the written governing instru-
13 ment creating the account meets the following re-
14 quirements:
15 (A) The sole owner of the account is the
16 individual for whom the account was estab-
17 lished.
18 (B) No contribution will be accepted unless
19 it is in cash.
20 (C) The holder of the account is a quali-
21 fied financial institution.
22 (D) The assets of the account will not be
23 commingled with other property except in a
24 common trust fund or common investment
25 fund.

1 (E) Except as provided in section 306(b),
2 any amount in the account may be paid out
3 only for the purpose of paying the qualified ex-
4 penses of the account owner.
5 (3) PARALLEL ACCOUNT.—The term "parallel
6 account" means a separate, parallel individual or
7 pooled account for all matching funds and earnings
8 dedicated to an Individual Development Account
9 owner as part of a qualified individual development
10 account program, the sole owner of which is a quali-
11 fied financial institution, a qualified nonprofit orga-
12 nization, or an Indian tribe.
13 (4) QUALIFIED FINANCIAL INSTITUTION.—
14 (A) IN GENERAL.—The term "qualified fi-
15 nancial institution" means any person author-
16 ized to be a trustee of any individual retirement
17 account under section 408(a)(2).
18 (B) RULE OF CONSTRUCTION.—Nothing in
19 this paragraph shall be construed as preventing
20 a person described in subparagraph (A) from
21 collaborating with 1 or more contractual affili-
22 ates, qualified nonprofit organizations, or In-
23 dian tribes to carry out an individual develop-
24 ment account program established under sec-
25 tion 303.

1 (5) QUALIFIED NONPROFIT ORGANIZATION.—
2 The term "qualified nonprofit organization"
3 means—
4 (A) any organization described in section
5 501(c)(3) of the Internal Revenue Code of 1986
6 and exempt from taxation under section 501(a)
7 of such Code;
8 (B) any community development financial
9 institution certified by the Community Develop-
10 ment Financial Institution Fund; or
11 (C) any credit union chartered under Fed-
12 eral or State law.
13 (6) INDIAN TRIBE.—The term "Indian tribe"
14 means any Indian tribe as defined in section 4(12)
15 of the Native American Housing Assistance and
16 Self-Determination Act of 1996 (25 U.S.C.
17 4103(12), and includes any tribal subsidiary, sub-
18 division, or other wholly owned tribal entity.
19 (7) QUALIFIED INDIVIDUAL DEVELOPMENT AC-
20 COUNT PROGRAM.—The term "qualified individual
21 development account program" means a program es-
22 tablished under section 303 under which—
23 (A) Individual Development Accounts and
24 parallel accounts are held by a qualified finan-
25 cial institution; and

1 (B) additional activities determined by the
2 Secretary as necessary to responsibly develop
3 and administer accounts, including recruiting,
4 providing financial education and other training
5 to account owners, and regular program moni-
6 toring, are carried out by the qualified financial
7 institution, a qualified nonprofit organization,
8 or an Indian tribe.
9 (8) QUALIFIED EXPENSE DISTRIBUTION.—
10 (A) IN GENERAL.—The term "qualified ex-
11 pense distribution" means any amount paid (in-
12 cluding through electronic payments) or distrib-
13 uted out of an Individual Development Account
14 and a parallel account established for an eligible
15 individual if such amount—
16 (i) is used exclusively to pay the quali-
17 fied expenses of the Individual Develop-
18 ment Account owner or such owner's
19 spouse or dependents, as approved by the
20 qualified financial institution, qualified
21 nonprofit organization, or Indian tribe;
22 (ii) is paid by the qualified financial
23 institution, qualified nonprofit organiza-
24 tion, or Indian tribe—

1 (I) except as otherwise provided
2 in this clause, directly to the unre-
3 lated third party to whom the amount
4 is due;
5 (II) in the case of distributions
6 for working capital under a qualified
7 business plan (as defined in subpara-
8 graph (B)(iv)(IV)), directly to the ac-
9 count owner;
10 (III) in the case of any qualified
11 rollover, directly to another Individual
12 Development Account and parallel ac-
13 count; or
14 (IV) in the case of a qualified
15 final distribution, directly to the
16 spouse, dependent, or other named
17 beneficiary of the deceased account
18 owner; and
19 (iii) is paid after the account owner
20 has completed a financial education course
21 as required under section 304(b).
22 (B) QUALIFIED EXPENSES.—
23 (i) IN GENERAL.—The term "qualified
24 expenses" means any of the following:

1 (I) Qualified higher education ex-
2 penses.
3 (II) Qualified first-time home-
4 buyer costs.
5 (III) Qualified business capital-
6 ization or expansion costs.
7 (IV) Qualified rollovers.
8 (V) Qualified final distribution.
9 (ii) QUALIFIED HIGHER EDUCATION
10 EXPENSES.—
11 (I) IN GENERAL.—The term
12 "qualified higher education expenses"
13 has the meaning given such term by
14 section 72(t)(7) of the Internal Rev-
15 enue Code of 1986, determined by
16 treating postsecondary vocational edu-
17 cational schools as eligible educational
18 institutions.
19 (II) POSTSECONDARY VOCA-
20 TIONAL EDUCATION SCHOOL.—The
21 term "postsecondary vocational edu-
22 cational school" means an area voca-
23 tional education school (as defined in
24 subparagraph (C) or (D) of section
25 521(4) of the Carl D. Perkins Voca-

1 tional and Applied Technology Edu-
2 cation Act (20 U.S.C. 2471(4)))
3 which is in any State (as defined in
4 section 521(33) of such Act), as such
5 sections are in effect on the date of
6 the enactment of this Act.
7 (III) COORDINATION WITH
8 OTHER BENEFITS.—The amount of
9 qualified higher education expenses
10 for any taxable year shall be reduced
11 as provided in section 25A(g)(2) of
12 such Code and may not be taken into
13 account for purposes of determining
14 qualified higher education expenses
15 under section 135 or 530 of the Inter-
16 nal Revenue Code of 1986.
17 (iii) QUALIFIED FIRST-TIME HOME-
18 BUYER COSTS.—The term "qualified first-
19 time homebuyer costs" means qualified ac-
20 quisition costs (as defined in section
21 72(t)(8) of such Code without regard to
22 subparagraph (B) thereof) with respect to
23 a principal residence (within the meaning
24 of section 121 of such Code) for a qualified

first-time homebuyer (as defined in section 72(t)(8) of such Code).

(iv) QUALIFIED BUSINESS CAPITALIZATION OR EXPANSION COSTS.—

(I) IN GENERAL.—The term "qualified business capitalization or expansion costs" means qualified expenditures for the capitalization or expansion of a qualified business pursuant to a qualified business plan.

(II) QUALIFIED EXPENDITURES.—The term "qualified expenditures" means expenditures included in a qualified business plan, including capital, plant, equipment, working capital, inventory expenses, attorney and accounting fees, and other costs normally associated with starting or expanding a business.

(III) QUALIFIED BUSINESS.—The term "qualified business" means any business that does not contravene any law.

(IV) QUALIFIED BUSINESS PLAN.—The term "qualified business

1 plan" means a business plan which
2 has been approved by the qualified fi-
3 nancial institution, qualified nonprofit
4 organization, or Indian tribe and
5 which meets such requirements as the
6 Secretary may specify.
7 (v) QUALIFIED ROLLOVERS.—The
8 term "qualified rollover" means the com-
9 plete distribution of the amounts in an In-
10 dividual Development Account and parallel
11 account to another Individual Development
12 Account and parallel account established in
13 another qualified financial institution,
14 qualified nonprofit organization, or Indian
15 tribe for the benefit of the account owner.
16 (vi) QUALIFIED FINAL DISTRIBU-
17 TION.—The term "qualified final distribu-
18 tion" means, in the case of a deceased ac-
19 count owner, the complete distribution of
20 the amounts in an Individual Development
21 Account and parallel account directly to
22 the spouse, any dependent, or other named
23 beneficiary of the deceased.
24 (9) SECRETARY.—The term "Secretary" means
25 the Secretary of the Treasury.

1 **SEC. 303. STRUCTURE AND ADMINISTRATION OF QUALI-**
2 **FIED INDIVIDUAL DEVELOPMENT ACCOUNT**
3 **PROGRAMS.**

4 (a) ESTABLISHMENT OF QUALIFIED INDIVIDUAL DE-
5 VELOPMENT ACCOUNT PROGRAMS.—Any qualified finan-
6 cial institution, qualified nonprofit organization, or Indian
7 tribe may establish 1 or more qualified individual develop-
8 ment account programs which meet the requirements of
9 this title.

10 (b) BASIC PROGRAM STRUCTURE.—

11 (1) IN GENERAL.—All qualified individual de-
12 velopment account programs shall consist of the fol-
13 lowing 2 components:

14 (A) An Individual Development Account to
15 which an eligible individual may contribute cash
16 in accordance with section 304.

17 (B) A parallel account to which all match-
18 ing funds shall be deposited in accordance with
19 section 305.

20 (2) TAILORED IDA PROGRAMS.—A qualified fi-
21 nancial institution, a qualified nonprofit organiza-
22 tion, or an Indian tribe may tailor its qualified indi-
23 vidual development account program to allow match-
24 ing funds to be spent on 1 or more of the categories
25 of qualified expenses.

1 (c) TAX TREATMENT OF PARALLEL ACCOUNTS.—
2 Any account described in subparagraph (B) of subsection
3 (b)(1) is exempt from taxation under the Internal Revenue
4 Code of 1986.

5 **SEC. 304. PROCEDURES FOR OPENING AND MAINTAINING**
6 **AN INDIVIDUAL DEVELOPMENT ACCOUNT**
7 **AND QUALIFYING FOR MATCHING FUNDS.**

8 (a) OPENING AN ACCOUNT.—An eligible individual
9 may open an Individual Development Account with a
10 qualified financial institution, a qualified nonprofit organi-
11 zation, or an Indian tribe upon certification that such indi-
12 vidual maintains no other Individual Development Ac-
13 count (other than an Individual Development Account to
14 be terminated by a qualified rollover).

15 (b) REQUIRED COMPLETION OF FINANCIAL EDU-
16 CATION COURSE.—

17 (1) IN GENERAL.—Before becoming eligible to
18 withdraw matching funds to pay for qualified ex-
19 penses, owners of Individual Development Accounts
20 must complete a financial education course offered
21 by a qualified financial institution, a qualified non-
22 profit organization, an Indian tribe, or a government
23 entity.

24 (2) STANDARD AND APPLICABILITY OF
25 COURSE.—The Secretary, in consultation with rep-

1 resentatives of qualified individual development ac-
2 count programs and financial educators, shall estab-
3 lish minimum quality standards for the contents of
4 financial education courses and providers of such
5 courses offered under paragraph (1) and a protocol
6 to exempt individuals from the requirement under
7 paragraph (1) because of hardship or lack of need.
8 (c) STATUS AS AN ELIGIBLE INDIVIDUAL.—Federal
9 income tax forms from the preceding taxable year (or in
10 the absence of such forms, such documentation as speci-
11 fied by the Secretary proving the eligible individual's ad-
12 justed gross income and the status of the individual as
13 an eligible individual) shall be presented to the qualified
14 financial institution, qualified nonprofit organization, or
15 Indian tribe at the time of the establishment of the Indi-
16 vidual Development Account and in any taxable year in
17 which contributions are made to the Account to qualify
18 for matching funds under section 305(b)(1)(A).
19 (d) DIRECT DEPOSITS.—The Secretary may, under
20 regulations, provide for the direct deposit of any portion
21 (not less than $1) of any overpayment of Federal tax of
22 an individual as a contribution to the Individual Develop-
23 ment Account of such individual.

1 **SEC. 305. DEPOSITS BY QUALIFIED INDIVIDUAL DEVELOP-**
2 **MENT ACCOUNT PROGRAMS.**

3 (a) PARALLEL ACCOUNTS.—The qualified financial
4 institution, qualified nonprofit organization, or Indian
5 tribe shall deposit all matching funds for each Individual
6 Development Account into a parallel account at a qualified
7 financial institution, a qualified nonprofit organization, or
8 an Indian tribe.

9 (b) REGULAR DEPOSITS OF MATCHING FUNDS.—

10 (1) IN GENERAL.—Subject to paragraph (2),
11 the qualified financial institution, qualified nonprofit
12 organization, or Indian tribe shall not less than
13 quarterly (or upon a proper withdrawal request
14 under section 306, if necessary) deposit into the par-
15 allel account with respect to each eligible individual
16 the following:

17 (A) A dollar-for-dollar match for the first
18 $500 contributed by the eligible individual into
19 an Individual Development Account with re-
20 spect to any taxable year.

21 (B) Any matching funds provided by State,
22 local, or private sources in accordance to the
23 matching ratio set by those sources.

24 (2) INFLATION ADJUSTMENT.—

25 (A) IN GENERAL.—In the case of any tax-
26 able year beginning after 2002, the dollar

1 amount referred to in paragraph (1)(A) shall be
2 increased by an amount equal to—
3 (i) such dollar amount, multiplied by
4 (ii) the cost-of-living adjustment de-
5 termined under section (1)(f)(3) of the In-
6 ternal Revenue Code of 1986 for the cal-
7 endar year in which the taxable year be-
8 gins, by substituting "2001" for "1992".
9 (B) ROUNDING.—If any amount as ad-
10 justed under subparagraph (A) is not a multiple
11 of $20, such amount shall be rounded to the
12 nearest multiple of $20.
13 (3) CROSS REFERENCE.—

For allowance of tax credit for Individual Development Account subsidies, including matching funds, see section 30B of the Internal Revenue Code of 1986.

14 (c) DEPOSIT OF MATCHING FUNDS INTO INDI-
15 VIDUAL DEVELOPMENT ACCOUNT OF INDIVIDUAL WHO
16 HAS ATTAINED AGE 61.—In the case of an Individual De-
17 velopment Account owner who attains the age of 61, the
18 qualified financial institution, qualified nonprofit organi-
19 zation, or Indian tribe which holds the parallel account
20 for such individual shall deposit the funds in such parallel
21 account into the Individual Development Account of such
22 individual on the first day of the succeeding taxable year
23 of such individual.

1 (d) UNIFORM ACCOUNTING REGULATIONS.—To en-
2 sure proper recordkeeping and determination of the tax
3 credit under section 30B of the Internal Revenue Code
4 of 1986, the Secretary shall prescribe regulations with re-
5 spect to accounting for matching funds in the parallel ac-
6 counts.

7 (e) REGULAR REPORTING OF ACCOUNTS.—Any
8 qualified financial institution, qualified nonprofit organi-
9 zation, or Indian tribe shall report the balances in any
10 Individual Development Account and parallel account of
11 an individual on not less than an annual basis to such
12 individual.

13 **SEC. 306. WITHDRAWAL PROCEDURES.**

14 (a) WITHDRAWALS FOR QUALIFIED EXPENSES.—To
15 withdraw money from an individual's Individual Develop-
16 ment Account to pay qualified expenses of such individual
17 or such individual's spouse or dependents, the qualified
18 financial institution, qualified nonprofit organization, or
19 Indian tribe shall directly transfer such funds from the
20 Individual Development Account, and, if applicable, from
21 the parallel account electronically to the distributees de-
22 scribed in section 302(8)(A)(ii). If the distributee is not
23 equipped to receive funds electronically, the qualified fi-
24 nancial institution, qualified nonprofit organization, or In-

1 dian tribe may issue such funds by paper check to the
2 distributee.

3 (b) WITHDRAWALS FOR NONQUALIFIED EX-
4 PENSES.—An Individual Development Account owner may
5 unilaterally withdraw any amount of funds from the Indi-
6 vidual Development Account for purposes other than to
7 pay qualified expenses, but shall forfeit a proportionate
8 amount of matching funds from the individual's parallel
9 account by doing so, unless such withdrawn funds are re-
10 contributed to such Account by September 30 following
11 the withdrawal.

12 (c) WITHDRAWALS FROM ACCOUNTS OF NON-
13 ELIGIBLE INDIVIDUALS.—If the individual for whose ben-
14 efit an Individual Development Account is established
15 ceases to be an eligible individual, such account shall re-
16 main an Individual Development Account, but such indi-
17 vidual shall not be eligible for any further matching funds
18 under section 305(b)(1)(A) during the period—

19 (1) beginning on the first day of the taxable
20 year of such individual following the beginning of
21 such ineligibility, and

22 (2) ending on the last day of the taxable year
23 of such individual in which such ineligibility ceases.

1 (d) TAX TREATMENT OF MATCHING FUNDS.—Any
2 amount withdrawn from a parallel account shall not be
3 includible in an eligible individual's gross income.
4 (e) WITHDRAWAL LIABILITY RESTS ONLY WITH EL-
5 IGIBLE INDIVIDUALS.—Nothing in this title may be con-
6 strued to impose liability on a qualified financial institu-
7 tion, a qualified nonprofit organization, or an Indian tribe
8 for non-compliance with the requirements of this title re-
9 lated to withdrawals from Individual Development Ac-
10 counts.

11 **SEC. 307. CERTIFICATION AND TERMINATION OF QUALI-**
12 **FIED INDIVIDUAL DEVELOPMENT ACCOUNT**
13 **PROGRAMS.**

14 (a) CERTIFICATION PROCEDURES.—Upon estab-
15 lishing a qualified individual development account pro-
16 gram under section 303, a qualified financial institution,
17 a qualified nonprofit organization, or an Indian tribe shall
18 certify to the Secretary on forms prescribed by the Sec-
19 retary and accompanied by any documentation required
20 by the Secretary, that—
21 (1) the accounts described in subparagraphs
22 (A) and (B) of section 303(b)(1) are operating pur-
23 suant to all the provisions of this title; and
24 (2) the qualified financial institution, qualified
25 nonprofit organization, or Indian tribe agrees to im-

1 plement an information system necessary to monitor
2 the cost and outcomes of the qualified individual de-
3 velopment account program.

4 (b) AUTHORITY TO TERMINATE QUALIFIED IDA
5 PROGRAM.—If the Secretary determines that a qualified
6 financial institution, a qualified nonprofit organization, or
7 an Indian tribe under this title is not operating a qualified
8 individual development account program in accordance
9 with the requirements of this title (and has not imple-
10 mented any corrective recommendations directed by the
11 Secretary), the Secretary shall terminate such institu-
12 tion's, nonprofit organization's, or Indian tribe's authority
13 to conduct the program. If the Secretary is unable to iden-
14 tify a qualified financial institution, a qualified nonprofit
15 organization, or an Indian tribe to assume the authority
16 to conduct such program, then any funds in a parallel ac-
17 count established for the benefit of any individual under
18 such program shall be deposited into the Individual Devel-
19 opment Account of such individual as of the first day of
20 such termination.

21 **SEC. 308. REPORTING, MONITORING, AND EVALUATION.**

22 (a) RESPONSIBILITIES OF QUALIFIED FINANCIAL IN-
23 STITUTIONS, QUALIFIED NONPROFIT ORGANIZATIONS,
24 AND INDIAN TRIBES.—Each qualified financial institu-
25 tion, qualified nonprofit organization, or Indian tribe that

1 operates a qualified individual development account pro-
2 gram under section 303 shall report annually to the Sec-
3 retary within 90 days after the end of each calendar year
4 on—
5 (1) the number of eligible individuals making
6 contributions into Individual Development Accounts;
7 (2) the amounts contributed into Individual De-
8 velopment Accounts and deposited into parallel ac-
9 counts for matching funds;
10 (3) the amounts withdrawn from Individual De-
11 velopment Accounts and parallel accounts, and the
12 purposes for which such amounts were withdrawn;
13 (4) the balances remaining in Individual Devel-
14 opment Accounts and parallel accounts; and
15 (5) such other information needed to help the
16 Secretary monitor the cost and outcomes of the
17 qualified individual development account program
18 (provided in a non-individually-identifiable manner).
19 (b) RESPONSIBILITIES OF THE SECRETARY.—
20 (1) MONITORING PROTOCOL.—Not later than
21 12 months after the date of the enactment of this
22 Act, the Secretary shall develop and implement a
23 protocol and process to monitor the cost and out-
24 comes of the qualified individual development ac-
25 count programs established under section 303.

1 (2) ANNUAL REPORTS.—In each year after the
2 date of the enactment of this Act, the Secretary
3 shall submit a progress report to Congress on the
4 status of such qualified individual development ac-
5 count programs. Such report shall include from a
6 representative sample of qualified individual develop-
7 ment account programs information on—
8 (A) the characteristics of participants, in-
9 cluding age, gender, race or ethnicity, marital
10 status, number of children, employment status,
11 and monthly income;
12 (B) deposits, withdrawals, balances, uses
13 of Individual Development Accounts, and par-
14 ticipant characteristics;
15 (C) the characteristics of qualified indi-
16 vidual development account programs, including
17 match rate, economic education requirements,
18 permissible uses of accounts, staffing of pro-
19 grams in full time employees, and the total
20 costs of programs; and
21 (D) information on program implementa-
22 tion and administration, especially on problems
23 encountered and how problems were solved.

1 **SEC. 309. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated to the Sec-
3 retary $1,000,000 for fiscal year 2002 and for each fiscal
4 year through 2008, for the purposes of implementing this
5 title, including the reporting, monitoring, and evaluation
6 required under section 308, to remain available until ex-
7 pended.

8 **SEC. 310. ACCOUNT FUNDS DISREGARDED FOR PURPOSES**
9 **OF CERTAIN MEANS-TESTED FEDERAL PRO-**
10 **GRAMS.**

11 Notwithstanding any other provision of Federal law
12 that requires consideration of 1 or more financial cir-
13 cumstances of an individual, for the purposes of deter-
14 mining eligibility to receive, or the amount of, any assist-
15 ance or benefit authorized by such provision to be provided
16 to or for the benefit of such individual, an amount equal
17 to the sum of—

18 (1) all amounts (including earnings thereon) in
19 any Individual Development Account; plus

20 (2) the matching deposits made on behalf of
21 such individual (including earnings thereon) in any
22 parallel account,

23 shall be disregarded for such purposes.

1 **SEC. 311. MATCHING FUNDS FOR INDIVIDUAL DEVELOP-**
2 **MENT ACCOUNTS PROVIDED THROUGH A TAX**
3 **CREDIT FOR QUALIFIED FINANCIAL INSTITU-**
4 **TIONS.**

5 (a) IN GENERAL.—Subpart B of part IV of sub-
6 chapter A of chapter 1 of the Internal Revenue Code of
7 1986 (relating to other credits) is amended by inserting
8 after section 30A the following new section:

9 **"SEC. 30B. INDIVIDUAL DEVELOPMENT ACCOUNT INVEST-**
10 **MENT CREDIT FOR QUALIFIED FINANCIAL IN-**
11 **STITUTIONS.**

12 "(a) DETERMINATION OF AMOUNT.—There shall be
13 allowed as a credit against the applicable tax for the tax-
14 able year an amount equal to the individual development
15 account investment provided by an eligible entity during
16 the taxable year under an individual development account
17 program established under section 303 of the Community
18 Solutions Act of 2001.

19 "(b) APPLICABLE TAX.—For the purposes of this
20 section, the term 'applicable tax' means the excess (if any)
21 of—

22 "(1) the tax imposed under this chapter (other
23 than the taxes imposed under the provisions de-
24 scribed in subparagraphs (C) through (Q) of section
25 26(b)(2)), over

1 "(2) the credits allowable under subpart B
2 (other than this section) and subpart D of this part.
3 "(c) INDIVIDUAL DEVELOPMENT ACCOUNT INVEST-
4 MENT.—
5 "(1) IN GENERAL.—For purposes of this sec-
6 tion, the term 'individual development account in-
7 vestment' means, with respect to an individual devel-
8 opment account program of a qualified financial in-
9 stitution in any taxable year, an amount equal to the
10 sum of—
11 "(A) the aggregate amount of dollar-for-
12 dollar matches under such program under sec-
13 tion 305(b)(1)(A) of the Community Solutions
14 Act of 2001 for such taxable year, plus
15 "(B) an amount equal to the sum of—
16 "(i) with respect to each Individual
17 Development Account opened during such
18 taxable year, $100, plus
19 "(ii) with respect to each Individual
20 Development Account maintained during
21 such taxable year, $30.
22 "(2) INFLATION ADJUSTMENT.—
23 "(A) IN GENERAL.—In the case of any
24 taxable year beginning after 2002, each dollar

1 amount referred to in paragraph (1)(B) shall be
2 increased by an amount equal to—
3 "(i) such dollar amount, multiplied by
4 "(ii) the cost-of-living adjustment de-
5 termined under section (1)(f)(3) for the
6 calendar year in which the taxable year be-
7 gins, by substituting '2001' for '1992'.
8 "(B) ROUNDING.—If any amount as ad-
9 justed under subparagraph (A) is not a multiple
10 of $5, such amount shall be rounded to the
11 nearest multiple of $5.
12 "(d) ELIGIBLE ENTITY.—For purposes of this sec-
13 tion, the term 'eligible entity' means a qualified financial
14 institution, or 1 or more contractual affiliates of such an
15 institution as defined by the Secretary in regulations.
16 "(e) OTHER DEFINITIONS.—For purposes of this
17 section, any term used in this section and also in the Com-
18 munity Solutions Act shall have the meaning given such
19 term by such Act.
20 "(f) DENIAL OF DOUBLE BENEFIT.—No deduction
21 or credit (other than under this section) shall be allowed
22 under this chapter with respect to any expense which is
23 taken into account under subsection (c)(1)(A) in deter-
24 mining the credit under this section.

1 "(g) REGULATIONS.—The Secretary may prescribe
2 such regulations as may be necessary or appropriate to
3 carry out this section, including regulations providing for
4 a recapture of the credit allowed under this section (not-
5 withstanding any termination date described in subsection
6 (h)) in cases where there is a forfeiture under section
7 306(b) of the Community Solutions Act of 2001 in a sub-
8 sequent taxable year of any amount which was taken into
9 account in determining the amount of such credit.

10 "(h) APPLICATION OF SECTION.—This section shall
11 apply to any expenditure made in any taxable year begin-
12 ning after December 31, 2001, and before January 1,
13 2009, with respect to any Individual Development Account
14 opened before January 1, 2007.".

15 (b) CONFORMING AMENDMENT.—The table of sec-
16 tions for subpart B of part IV of subchapter A of chapter
17 1 is amended by inserting after the item relating to section
18 30A the following new item:

"Sec. 30B. Individual development account investment credit for qualified financial institutions.".

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 2001.

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Ohio, Mr. Chabot, the Chairman of the Subcommittee on the Constitution for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

While the First Amendment to the Constitution provides that the government shall not establish a particular religion or religion over non-religion, the First Amendment also provides that the government shall not prohibit the free exercise of religion. Consequently, government must ensure that members of organizations seeking to take part in government programs designed to meet basic and universal human needs are not discriminated against because of their religious views.

The simple principles of charitable choice, embedded in H.R. 7, the Community Solutions Act, which we're considering today, allow for the public funding of faith-based organizations that have demonstrated abilities to meet the basic needs of their neighbors in trouble, while also preserving the religious character of those organizations by allowing them to choose their staff, board members and methods. These principles also protect the rights of conscience of program beneficiaries by ensuring that alternative providers that are unobjectionable to them on religious grounds, are always available, and by prohibiting the use of Federal funds for sectarian worship, instruction of proselytizing. Charitable choice simply means equal access.

Four existing charitable choice programs have been passed by Congress and signed into law by President Clinton, the first which was part of the 1996 Welfare Reform Act. These programs have benefited thousands of persons in need without raising constitutional concerns in their implementation.

When the government takes so much from average citizens in taxes, little is left for those families to give to their local charities, including faith-based organizations. At the same time the government too often excludes out of hand faith-based organizations from the receipt of government funds, even when such organizations can help meet basic human needs most effectively, and in accordance with both the free exercise of religion and the establishment clause. Charitable choice programs seek to address this problem.

The charitable choice principles in H.R. 7 recognize that it is wrong to assume that religious people can't be trusted to follow rules against using Federal funds for proselytizing activities, and on that basis deny them equal opportunities. The Supreme Court has long recognized that, and now the Congress should too.

Charitable choice principles also recognize that people in need should have the benefit of the best social services available, whether the providers of those services are faith-based or otherwise. That is the goal, helping the tens of thousands of America's people in need. We're considering today whether the legions of faith-based organizations in the inner cities and local communities can compete for Federal funds to help pay the heating bills in shelters for women victims of domestic violence, to help them pay for training materials teaching basic work skills, to help them feed the hungry, and to provide other social service to those that are most desperate among us.

Some have tried to divert attention from the goal of helping people in need by raising the specter of federally-funded discrimina-

tion. As the argument goes, religious organizations should not be allowed to maintain the religious character through hiring decisions if they receive Federal funds for the purpose of helping others. But the right of religious organizations to take religion into account when hiring staff has long been settled. That right is enshrined in the Civil Rights Act of 1964, and that right was upheld by unanimous Supreme Court, including Justice Brennan and Justice Marshall.

As discussions of charitable choice programs have progressed, however, some opponents have objected that Federal funds should not be allowed to find their way to organizations that maintain their religious character through hiring decisions. That is truly a radical notion. It is not a recipe for maintaining the status quo, but rather, a recipe for withdrawing Federal funds from, among other things, religiously affiliated colleges and universities, religiously affiliated hospitals, and religiously affiliated day care centers, all of which already receive Federal funds through a variety of Federal programs, and all of which are essential parts of our education, health care and child care systems.

The Constitution does not require rolling back essential services. Indeed, the Constitution and the free exercise clause allow Congress to improve essential services by letting religious organizations compete on an equal basis for Federal social service funds, which they will use to help the poor and the helpless and not to proselytize.

H.R. 7 makes clear that you can't discriminate against faith-based organizations, and that what they believe should have no bearing on how they are evaluated regarding what they can do. The Supreme Court has made clear that religious people should be trusted to follow rules against using Federal funds to proselytize, and it's time that Congress did the same.

Yield back the balance of my time.

Mr. BERMAN. Would the gentleman yield?

Mr. CHABOT. I'm out of time.

Chairman SENSENBRENNER. The time of the gentleman has expired. Who wishes to give the statement for the minority in the absence of Mr. Conyers? The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

Today we wade into an area of the law which is, I think fair to say, in great flux. Certainly the split opinion by the Supreme Court in Mitchell v. Helms demonstrates just how closely divided the Justices are in the very difficult issues which surround entanglement between government and religion. While my sympathies are well known to my colleagues, the difficult issues with which the Court has been grappling, how much religious activity should be permitted in a publicly funded program? Which programs should be allowed to participate? What are the rights of program participants and employees vis-a-vis the publicly funded benefit? How much separation, if at all, should there be between the clearly sectarian and the clearly secular functions of an agency, are not trivial. We would do a disservice to the Nation if we simply wished these difficulties away and pretend that they did not exist.

I think Chairman Sensenbrenner is to be commended for standing up to what can only be described as tremendous pressure from the White House and from his own leadership, to lay aside his con-

cerns about these important questions and simply push the bill along.

While I have many reservations about the language we have before us, indeed I think some changes made in the substitute are changes for the worse, and the risks this legislation poses to religious liberty, I do not think our disagreement should obscure the Chairman's very real efforts to begin to get this right.

I hope today's markup will be a first step. I would note that Senator Sentorum and former Senator Wolford have assembled a group from many different viewpoints on this issue to try to find some common ground. I will be joining that effort, and I would invite the Chairman to view today's markup and his efforts leading up to today as a first step, and I would hope the Chairman would join that effort also, to find common ground.

Religion should not divide this Nation. If anything, our common commitment to the freedom of conscience should be the one fundamental principle which unites all of us. I recall that when I was first elected to the Congress, one of my first efforts was to work for passage of the Religious Freedom Restoration Act, and last year for the Religious Land Use and Institutionalized Persons Act. Those efforts united everyone from the ACLU to the National Association of Evangelicals, from the Religious Action Center of Reform Judaism to the Christian Legal Society. In fact, many of the players in that legislation have been before the Constitution Subcommittee to present very differing views on this proposal.

I think certain principles are applicable. Certainly Madison's view is expressed in his memorial in remonstrance, that it is a violation of individual religious liberty to compel one citizen to support another faith is still valid, whether it applies to the hiring of teachers of religious instruction in Madison's time, or to funding other pervasively sectarian activities as Justice Thomas and three other Justices would permit today.

Mr. Chairman, under current law, pervasively sectarian institutions are perfectly free to compete for Federal grants for social programs on the same basis as non-sectarian institutions. They simply have to form a 501(c)(3) not-for-profit affiliate in today's law. That provision that they must fund a 501(c)(3) is designed to protect the sectarian organization, to protect the church from government intrusion and government audits and government regulation. This bill, unfortunately and very unwisely, would repeal that requirement and would allow the funding directly into church funds, which would lead to government audits of those funds and of the church's funds with which they are commingled unavoidably. That is a very unfortunate step which will lead to government regulation of churches and other institutions and is the first step on a very bad road.

Secondly, Mr. Chairman, this bill would extend the exemptions from the Civil Rights Act to activities involving the use of government funds, and under this bill, there would be enabled to be discrimination on the basis of religion and some other bases in the use of Federal funding, and I do not believe that if a church is running a soup kitchen for poor people, that they should be permitted to discriminate on a religious or other basis, in who can serve out the soup or who can drink the soup.

Number three, this bill would permit the proselytization with government funds. It says the funds may not be used for proselytization, but it certainly does not preclude the church's funds from being commingled and used for proselytization in a program which is federally funded.

I think these are three fundamental breaches of the wall of separation of church and state.

Finally, on the subject of religious autonomy, religious institutions are being coaxed into a devil's bargain. There are precious few constitutional restrictions of the rules government may now apply to religious institutions. The day will come, when having permitted excessive entanglement between religious institutions and the government, there will be no protection for religion when government flexes its muscle. I do not understand why some of my conservative colleagues suddenly have so much trust in big government that they are willing to take such a phenomenal risk with freedom of religion.

I thank the Chairman and I yield back.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will appear in the record at this point, and I have an amendment at the desk.

[The statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

I want to thank Chairman Sensenbrenner and Ranking Member Conyers for convening this important markup on H.R. 7, *"the Charitable Choice Act of 2001."* It is imperative that the Committee gives careful consideration to this legislation; we must evaluate its merits closely.

The basic elements of charitable choice, as found in 104 of the 1996 "welfare reform" law, provide that if a State administration Temporary Assistance for Needy Families (TANF) block granted programs, or Welfare-to-Work grants under TANF, the State may not, in the distribution of such funding or contracts discriminate against any religious organization. As a general matter, let me just say that we are confronting serious civil rights concerns with respect to government involvement in religion.

The legislation before this committee clearly raises some serious constitutional issues which must be addressed. The limited proposed changes put forward by the Bush administration do little to the constitutional and civil rights problems that exist within this proposal. The Charitable Choice provisions of this bill remain in conflict with the Establishment Clause of the First Amendment and would possibly undermine nearly sixty years of federal civil rights protections against most uses of federal money by persons engaged in employment discrimination based on religion.

Unfortunately, the charges incorporated into H.R. 7 are counterproductive or harmful and do little to change or address the issues even said he was committed to addressing. In short, the bill still allows federal funds to flow directly to religiously organizations and still in direct violation of the Establishment Clause. Although the U.S. Supreme Court has allowed religiously affiliated organizations to provide government-funded services in a secular manner, it has never allowed religious institutions to receive direct government aid. I am concerned that H.R. 7 would mandate that federal, State, and local governments award federally funded contracts to any religious organization, on the same basis as any other organization, without "impairing the religious character of the organizations." Given that no changes were proposed to this problem, H.R. 7 still limits the availability of a State to even question whether or not it will be funded a sectarian or secular program, Mr. Chairman.

Further, this bill attempts to address the employment discrimination problem in H.R. 7 by removing language that would allow religious organizations to require beneficiaries to "adhere to the religious beliefs and practices of the organization." However, the "religious practices" language does not change the fundamental civil rights problem with this provision. H.R. 7 would still put the government squarely in the business of funding discrimination. We must remember that the provision

provides that religious organizations may retain their right under Title VII of the Civil Rights Act of 1964 to discriminate in employment by preferring members of their own religion.

Allowing federal funds to go to persons who discriminate based on religion undermines core civil rights protections that date back to the time of President Franklin Delano Roosevelt. Although current law allows religious organizations to use their own private money to prefer members of their own religion, they generally cannot use federal funds to discriminate. Congress and the Executive Branch have further extended the prohibition on federally funded religious discrimination by adding statutes and regulations affecting a wide range of federal contracts and grants programs. For sixty years, the basic principle has been that the federal government should not be financing religious discrimination against others.

Finally, while the Manager's Amendment deleted language allowing religious organizations to safeguard their "religious practices" the manager's amendment added other equally problematic new language striking out any provision (such as discrimination requirements) in any other government program which may be 'inconsistent with" or "would diminish" the religious organization's autonomy. This is all apparently quite confusing.

Mr. Chairman, we must proceed very carefully.

[The statement of Mr. Barr follows:]

PREPARED STATEMENT OF THE HONORABLE BOB BARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman, the practice of engaging faith-based organizations in the delivery of social services using government funds is not new. This has been happening at the State and local level for years. Religious-oriented and faith-based programs are provided funds to do what local governments do not have the capacity to do—provide a full spectrum of successful community services. It is time the federal government follow the lead of our State legislatures and local governments, and put the best organizations to work for the betterment of our communities.

H.R. 7, the Charitable Choice Act of 2001, will significantly impact the degree to which prevention, treatment, and other social service programs reach and rehabilitate those most in need. The faith community has achieved results in ways in which other programs have not, mainly due to unique element of faith and how it impacts the structure and success of these programs. The Congress needs to support and encourage such programs that work, that is why I am pleased to be a co-sponsor of Congressman J.C. Watts' bill, H.R. 7.

Mr. Chairman, I'd like to address the concern being raised by opponents of the legislation who charge that, on enactment of H.R. 7, the federal government will begin discriminating against certain religions that aren't officially "approved" or "condoned" by government bureaucrats. Opponenets also charge this legislation will result in the federal government being in a position of supporting, or even establishing, a religion or religious preference. These charges are completely unfounded.

Charitable Choice is not a set-aside program; it is merely an opportunity to open up the system of delivery of social services, so that all *groups meeting the prescribed performance requirements* are allowed to compete fairly. If anything, under current law and practice, the government is practicing a form of discrimination by not allowing sectarian organizations to compete for government funds available to non-sectarian groups. Under this bill, any organization—religious or otherwise—would be able to compete, with the sole focus being on which groups best deliver services to the most needy in our communities. The religious affiliation or nature of an organization should not preclude it from receiving government funds, if such organizations successfully deliver needed services and so long as they meet the objective criteria the law requires.

Recently, I participated in a panel discussion on Faith-Based Initiatives, as a part of the President's Faith-Based Summit. The on-going goal of the summit is to establish networks of mutual support as we work to revitalize communities across the nation through faith-based and locally controlled initiatives.

Government must begin to view faith-based and community organizations as partners, not competitors—or worse, as some would have it, adversaries—in the fight against drug usage, poverty, teen pregnancy, and other social ills. There are millions across the country who need help. Under President Bush's initiative, as reflected in this legislation, faith-based organizations can now play a vital and needed in role in providing that help. H.R. 7 will make a significant and needed impact on improving the lives of all members of the community, and I strongly support its passage.

Chairman SENSENBRENNER. The clerk will report the——

Mr. CONYERS. Hold it, Mr. Chairman, hold it. You missed——

The CLERK. Amendment to H.R. 7, offered by Mr. Sensenbrenner——

Mr. CONYERS. Hold it, Mr. Chairman. You missed the Ranking Member.

Chairman SENSENBRENNER. I had thought that the gentleman from New York had given the minority statement, but if the gentleman from Michigan wishes to say something, he is recognized for 5 minutes.

Mr. CONYERS. Thank you, sir. While I support the gentleman from New York entirely, I had prepared my own set of opening remark statements.

And it will only take a moment or two, because we all agree at the outset that religious organizations play a positive role in our communities, and we all want them to play a large and positive role in the lives of our children. That's a good starting point.

Now, there are some, however, that believe we can accomplish this goal by government mandate. Some believe we can have the best of both worlds, better social services, and more religion, without intruding on religious prerogatives. But what they fail to grasp is that we pass new laws—if we pass new laws requiring that our government begin funding religious—pervasively religious programs, we'll be sacrificing two of our Nation's most fundamental principles of justice and liberty. We will be saying that it's okay to use taxpayer funds to fund employment discrimination.

Now at this stage and time in the development of our Nation toward improved policies of race, do we really want to say that? By taking the religious exemption to the civil rights laws and extending it to charitable choice, as the measure before us unfortunately does, we'll be saying it's acceptable to openly discriminate against gays, or divorced persons, or unmarried pregnant women, or women who have had an abortion, or persons who use birth control, or even persons who favor reproductive rights, and against individuals married to a member of another race, or any manner of unusual personal sentiments that one may be entitled to have, but that we don't want grafted into the law.

And so that's why all the civil rights groups strongly have reservations about the measure before us. It has nothing to do with anything against religion, but they believe we do nothing to help poor and needy individuals if we indeed tolerate more discrimination. By approving the expenditure of government funds for pervasively-sectarian programs, this measure wittingly opens a very large hole in the wall separating church and state, and I say this because the safeguards included in this legislation are frankly largely illusory. The non-sectarian alternative provided in the bill, for openers, is totally unfunded. The language specifying that the religious aspects of government funded programs ought to be voluntary and offered separately will be impossible to enforce. The audit requirements will be of little or no benefit since they are self imposed and not subject to government review or any other outside review. So because our First Amendment, we have the most carefully and strongly, a very diverse Nation, maybe in the world. Our country has more religious diversity than anywhere else on the planet. Dr. Martin Luther King, Jr. once said in America, that the church is not the master of the State, nor is it the servant of the State, but it is the conscience of the State. My fear is that under

this bill, religion may become the servant of the State rather than its conscience.

So if all of us gathered here really want to do something to help religion, you might try to include the proposed charitable tax deductions in their $2 trillion tax bill, which was so heavily slanted toward the wealthy. If you want to do something to improve social services, then we might consider increasing funding for drug treatment, for literacy, for child welfare. If you want to help our kids and our urban areas, we might try to figure a better way to rebuild our crumbling schools. And so I urge that we carefully and soberly consider the alternatives that will be presented before us during this discussion.

And I thank the Chairman very much.

Chairman SENSENBRENNER. The gentleman's time has expired.

The Chair would like to announce what the schedule will be for today. We are told that at approximately noon there will be votes on several amendments and a recommittal and passage vote on the Energy and Water Appropriations Bill currently pending on the floor. At that point in time, it is the intention of the Chair to adjourn for lunch, and we will come back either at 1:30 or 2:00 o'clock, depending upon when these votes are called.

It is also the intention of the Chair not to adjourn this Committee until we have a final vote on the motion to report the bill favorably, so I would urge the Members to be prepared to stick around because we're going to get this done today, one way or the other.

The Chair has an amendment at the desk and the clerk will report the amendment.

The CLERK. Amendment to H.R. 7 offered by Mr. Sensenbrenner.

Chairman SENSENBRENNER. Will the clerk pull the microphone closer to her?

The CLERK. Amendment to H.R. 7 offered by Mr. Sensenbrenner. Strike section 104 and insert the following.

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read and open for amendment at any point.

[The amendment follows:]

AMENDMENT TO H.R. 7

OFFERED BY MR. SENSENBRENNER

Strike section 104 and insert the following:

1 **SEC. 104. CHARITABLE DONATIONS LIABILITY REFORM**
2 **FOR IN-KIND CORPORATE CONTRIBUTIONS.**
3 (a) DEFINITIONS.—For purposes of this section:
4 (1) AIRCRAFT.—The term "aircraft" has the
5 meaning provided that term in section 40102(6) of
6 title 49, United States Code.
7 (2) BUSINESS ENTITY.—The term "business
8 entity" means a firm, corporation, association, part-
9 nership, consortium, joint venture, or other form of
10 enterprise.
11 (3) EQUIPMENT.—The term "equipment" in-
12 cludes mechanical equipment, electronic equipment,
13 and office equipment.
14 (4) FACILITY.—The term "facility" means any
15 real property, including any building, improvement,
16 or appurtenance.
17 (5) GROSS NEGLIGENCE.—The term "gross
18 negligence" means voluntary and conscious conduct
19 by a person with knowledge (at the time of the con-
20 duct) that the conduct is likely to be harmful to the
21 health or well-being of another person.

1 (6) INTENTIONAL MISCONDUCT.—The term
2 "intentional misconduct" means conduct by a person
3 with knowledge (at the time of the conduct) that the
4 conduct is harmful to the health or well-being of an-
5 other person.
6 (7) MOTOR VEHICLE.—The term "motor vehi-
7 cle" has the meaning provided that term in section
8 30102(6) of title 49, United States Code.
9 (8) NONPROFIT ORGANIZATION.—The term
10 "nonprofit organization" means—
11 (A) any organization described in section
12 501(c)(3) of the Internal Revenue Code of 1986
13 and exempt from tax under section 501(a) of
14 such Code; or
15 (B) any not-for-profit organization orga-
16 nized and conducted for public benefit and op-
17 erated primarily for charitable, civic, edu-
18 cational, religious, welfare, or health purposes.
19 (9) STATE.—The term "State" means each of
20 the several States, the District of Columbia, the
21 Commonwealth of Puerto Rico, the Virgin Islands,
22 Guam, American Samoa, the Northern Mariana Is-
23 lands, any other territory or possession of the
24 United States, or any political subdivision of any
25 such State, territory, or possession.

1 (b) LIABILITY.—

2 (1) LIABILITY OF BUSINESS ENTITIES THAT
3 DONATE EQUIPMENT TO NONPROFIT ORGANIZA-
4 TIONS.—

5 (A) IN GENERAL.—Subject to subsection
6 (c), a business entity shall not be subject to
7 civil liability relating to any injury or death that
8 results from the use of equipment donated by a
9 business entity to a nonprofit organization.

10 (B) APPLICATION.—This paragraph shall
11 apply with respect to civil liability under Fed-
12 eral and State law.

13 (2) LIABILITY OF BUSINESS ENTITIES PRO-
14 VIDING USE OF FACILITIES TO NONPROFIT ORGANI-
15 ZATIONS.—

16 (A) IN GENERAL.—Subject to subsection
17 (c), a business entity shall not be subject to
18 civil liability relating to any injury or death oc-
19 curring at a facility of the business entity in
20 connection with a use of such facility by a non-
21 profit organization, if—

22 (i) the use occurs outside of the scope
23 of business of the business entity;

1 (ii) such injury or death occurs during
2 a period that such facility is used by the
3 nonprofit organization; and
4 (iii) the business entity authorized the
5 use of such facility by the nonprofit orga-
6 nization.
7 (B) APPLICATION.—This paragraph shall
8 apply—
9 (i) with respect to civil liability under
10 Federal and State law; and
11 (ii) regardless of whether a nonprofit
12 organization pays for the use of a facility.
13 (3) LIABILITY OF BUSINESS ENTITIES PRO-
14 VIDING USE OF A MOTOR VEHICLE OR AIRCRAFT.—
15 (A) IN GENERAL.—Subject to subsection
16 (c), a business entity shall not be subject to
17 civil liability relating to any injury or death oc-
18 curring as a result of the operation of aircraft
19 or a motor vehicle of a business entity loaned
20 to a nonprofit organization for use outside of
21 the scope of business of the business entity, if—
22 (i) such injury or death occurs during
23 a period that such motor vehicle or aircraft
24 is used by a nonprofit organization; and

1 (ii) the business entity authorized the
2 use by the nonprofit organization of motor
3 vehicle or aircraft that resulted in the in-
4 jury or death.
5 (B) APPLICATION.—This paragraph shall
6 apply—
7 (i) with respect to civil liability under
8 Federal and State law; and
9 (ii) regardless of whether a nonprofit
10 organization pays for the use of the air-
11 craft or motor vehicle.
12 (4) LIABILITY OF BUSINESS ENTITIES PRO-
13 VIDING TOURS OF FACILITIES.—
14 (A) IN GENERAL.—Subject to subsection
15 (c), a business entity shall not be subject to
16 civil liability relating to any injury to, or death
17 of an individual occurring at a facility of the
18 business entity, if—
19 (i) such injury or death occurs during
20 a tour of the facility in an area of the fa-
21 cility that is not otherwise accessible to the
22 general public; and
23 (ii) the business entity authorized the
24 tour.

1 (B) APPLICATION.—This paragraph shall
2 apply—
3 (i) with respect to civil liability under
4 Federal and State law; and
5 (ii) regardless of whether an indi-
6 vidual pays for the tour.
7 (c) EXCEPTIONS.—Subsection (b) shall not apply to
8 an injury or death that results from an act or omission
9 of a business entity that constitutes gross negligence or
10 intentional misconduct.
11 (d) SUPERSEDING PROVISION.—
12 (1) IN GENERAL.—Subject to paragraph (2)
13 and subsection (e), this title preempts the laws of
14 any State to the extent that such laws are incon-
15 sistent with this title, except that this title shall not
16 preempt any State law that provides additional pro-
17 tection for a business entity for an injury or death
18 described in a paragraph of subsection (b) with re-
19 spect to which the conditions specified in such para-
20 graph apply.
21 (2) LIMITATION.—Nothing in this title shall be
22 construed to supersede any Federal or State health
23 or safety law.
24 (e) ELECTION OF STATE REGARDING NONAPPLICA-
25 BILITY.—A provision of this title shall not apply to any

1 civil action in a State court against a business entity in
2 which all parties are citizens of the State if such State
3 enacts a statute—
4 (1) citing the authority of this section;
5 (2) declaring the election of such State that
6 such provision shall not apply to such civil action in
7 the State; and
8 (3) containing no other provisions.
9 (f) EFFECTIVE DATE.—This section shall apply to in-
10 juries (and deaths resulting therefrom) occurring on or
11 after the date of the enactment of this Act.

Strike title II and insert the following:

12 **TITLE II—EXPANSION OF**
13 **CHARITABLE CHOICE**

14 **SEC. 201. PROVISION OF ASSISTANCE UNDER GOVERN-**
15 **MENT PROGRAMS BY RELIGIOUS AND COM-**
16 **MUNITY ORGANIZATIONS.**

17 Title XXIV of the Revised Statutes is amended by
18 inserting after section 1990 (42 U.S.C. 1994) the fol-
19 lowing:

20 **"SEC. 1994A. CHARITABLE CHOICE.**

21 "(a) SHORT TITLE.—This section may be cited as the
22 'Charitable Choice Act of 2001'.
23 "(b) PURPOSES.—The purposes of this section are—

1 "(1) to enable assistance to be provided to indi-
2 viduals and families in need in the most effective
3 and efficient manner;
4 "(2) to supplement the Nation's social service
5 capacity by facilitating the entry of new, and the ex-
6 pansion of existing, efforts by religious and other
7 community organizations in the administration and
8 distribution of government assistance under the gov-
9 ernment programs described in subsection (c)(4);
10 "(3) to prohibit discrimination against religious
11 organizations on the basis of religion in the adminis-
12 tration and distribution of government assistance
13 under such programs;
14 "(4) to allow religious organizations to partici-
15 pate in the administration and distribution of such
16 assistance without impairing the religious character
17 and autonomy of such organizations; and
18 "(5) to protect the religious freedom of individ-
19 uals and families in need who are eligible for govern-
20 ment assistance, including expanding the possibility
21 of their being able to choose to receive services from
22 a religious organization providing such assistance.
23 "(c) RELIGIOUS ORGANIZATIONS INCLUDED AS PRO-
24 VIDERS; DISCLAIMERS.—
25 "(1) IN GENERAL.—

1 "(A) INCLUSION.—For any program de-
2 scribed in paragraph (4) that is carried out by
3 the Federal Government, or by a State or local
4 government with Federal funds, the government
5 shall consider, on the same basis as other non-
6 governmental organizations, religious organiza-
7 tions to provide the assistance under the pro-
8 gram, and the program shall be implemented in
9 a manner that is consistent with the establish-
10 ment clause and the free exercise clause of the
11 first amendment to the Constitution.
12 "(B) DISCRIMINATION PROHIBITED.—Nei-
13 ther the Federal Government, nor a State or
14 local government receiving funds under a pro-
15 gram described in paragraph (4) shall discrimi-
16 nate against an organization that provides as-
17 sistance under, or applies to provide assistance
18 under, such program on the basis that the orga-
19 nization is religious or has a religious character.
20 "(2) FUNDS NOT AID TO RELIGION.—Federal,
21 State, or local government funds or other assistance
22 that is received by a religious organization for the
23 provision of services under this section constitutes
24 aid to individuals and families in need, the ultimate
25 beneficiaries of such services, and not support for re-

1 ligion or the organization's religious beliefs or prac-
2 tices.
3 "(3) FUNDS NOT ENDORSEMENT OF RELI-
4 GION.—The receipt by a religious organization of
5 Federal, State, or local government funds or other
6 assistance under this section is not an endorsement
7 by the government of religion or of the organiza-
8 tion's religious beliefs or practices.
9 "(4) PROGRAMS.—For purposes of this section,
10 a program is described in this paragraph—
11 "(A) if it involves activities carried out
12 using Federal funds—
13 "(i) related to the prevention and
14 treatment of juvenile delinquency and the
15 improvement of the juvenile justice system,
16 including programs funded under the Juve-
17 nile Justice and Delinquency Prevention
18 Act of 1974 (42 U.S.C. 5601 et seq.);
19 "(ii) related to the prevention of crime
20 and assistance to crime victims and offend-
21 ers' families, including programs funded
22 under title I of the Omnibus Crime Control
23 and Safe Streets Act of 1968 (42 U.S.C.
24 3701 et seq.);

1 "(iii) related to the provision of assist-
2 ance under Federal housing statutes, in-
3 cluding the Community Development Block
4 Grant Program established under title I of
5 the Housing and Community Development
6 Act of 1974 (42 U.S.C. 5301 et seq.);
7 "(iv) under subtitle B or D of title I
8 of the Workforce Investment Act of 1998
9 (29 U.S.C. 2801 et seq.);
10 "(v) under the Older Americans Act
11 of 1965 (42 U.S.C. 3001 et seq.);
12 "(vi) related to the intervention in
13 and prevention of domestic violence, in-
14 cluding programs under the Child Abuse
15 Prevention and Treatment Act or the
16 Family Violence Prevention and Services
17 Act;
18 "(vii) related to hunger relief activi-
19 ties; or
20 "(viii) under the Job Access and Re-
21 verse Commute grant program established
22 under section 3037 of the Federal Transit
23 Act of 1998 (49 U.S.C. 5309 note); or
24 "(B)(i) if it involves activities to assist stu-
25 dents in obtaining the recognized equivalents of

1 secondary school diplomas and activities relat-
2 ing to nonschool hours programs, including pro-
3 grams under—
4 "(I) chapter 3 of subtitle A of title II
5 of the Workforce Investment Act of 1998;
6 or
7 "(II) part I of title X of the Elemen-
8 tary and Secondary Education Act; and
9 "(ii) except as provided in subparagraph
10 (A) and clause (i), does not include activities
11 carried out under Federal programs providing
12 education to children eligible to attend elemen-
13 tary schools or secondary schools, as defined in
14 section 14101 of the Elementary and Secondary
15 Education Act of 1965 (20 U.S.C. 8801).
16 "(d) ORGANIZATIONAL CHARACTER AND AUTON-
17 OMY.—
18 "(1) IN GENERAL.—A religious organization
19 that provides assistance under a program described
20 in subsection (c)(4) shall have the right to retain its
21 autonomy from Federal, State, and local govern-
22 ments, including such organization's control over the
23 definition, development, practice, and expression of
24 its religious beliefs.

1 "(2) ADDITIONAL SAFEGUARDS.—Neither the
2 Federal Government, nor a State or local govern-
3 ment with Federal funds, shall require a religious
4 organization, in order to be eligible to provide assist-
5 ance under a program described in subsection (c)(4),
6 to—
7 "(A) alter its form of internal governance
8 or provisions in its charter documents; or
9 "(B) remove religious art, icons, scripture,
10 or other symbols, or to change its name, be-
11 cause such symbols or name is of a religious
12 character.
13 "(e) EMPLOYMENT PRACTICES.—
14 "(1) IN GENERAL.—A religious organization's
15 exemption provided under section 702 of the Civil
16 Rights Act of 1964 (42 U.S.C. 2000e–1) regarding
17 employment practices shall not be affected by its
18 participation in, or receipt of funds from, programs
19 described in subsection (c)(4), and any provision in
20 such programs that is inconsistent with or would di-
21 minish the exercise of an organization's autonomy
22 recognized in section 702 or in this section shall
23 have no effect.
24 "(2) EFFECT ON OTHER LAWS.—Nothing in
25 this section alters the duty of a religious organiza-

1 tion to comply with the nondiscrimination provisions
2 in title VI of the Civil Rights Act of 1964 (42
3 U.S.C. 2000d et seq.) (prohibiting discrimination on
4 the basis of race, color, and national origin), title IX
5 of the Education Amendments of 1972 (20 U.S.C.
6 1681–1688) (prohibiting discrimination in edu-
7 cational programs or activities on the basis of sex
8 and visual impairment), section 504 of the Rehabili-
9 tation Act of 1973 (29 U.S.C. 794) (prohibiting dis-
10 crimination against otherwise qualified disabled indi-
11 viduals), and the Age Discrimination Act of 1975
12 (42 U.S.C. 6101–6107) (prohibiting discrimination
13 on the basis of age).
14 "(f) RIGHTS OF BENEFICIARIES OF ASSISTANCE.—
15 "(1) IN GENERAL.—If an individual described
16 in paragraph (3) has an objection to the religious
17 character of the organization from which the indi-
18 vidual receives, or would receive assistance funded
19 under any program described in subsection (c)(4),
20 the appropriate Federal, State, or local govern-
21 mental entity shall provide to such individual (if oth-
22 erwise eligible for such assistance) within a reason-
23 able period of time after the date of such objection,
24 assistance that—

1 "(A) is an alternative that is accessible to
2 the individual and unobjectionable to the indi-
3 vidual on religious grounds; and
4 "(B) has a value that is not less than the
5 value of the assistance that the individual would
6 have received from such organization.
7 "(2) NOTICE.—The appropriate Federal, State,
8 or local governmental entity shall guarantee that no-
9 tice is provided to the individuals described in para-
10 graph (3) of the rights of such individuals under this
11 section.
12 "(3) INDIVIDUAL DESCRIBED.—An individual
13 described in this paragraph is an individual who re-
14 ceives or applies for assistance under a program de-
15 scribed in subsection (c)(4).
16 "(g) NONDISCRIMINATION AGAINST BENE-
17 FICIARIES.—
18 "(1) GRANTS AND COOPERATIVE AGREE-
19 MENTS.—A religious organization providing assist-
20 ance through a grant or cooperative agreement
21 under a program described in subsection (c)(4) shall
22 not discriminate in carrying out the program against
23 an individual described in subsection (f)(3) on the
24 basis of religion, a religious belief, or a refusal to
25 hold a religious belief.

1 "(2) INDIRECT FORMS OF ASSISTANCE.—A reli-
2 gious organization providing assistance through a
3 voucher, certificate, or other form of indirect assist-
4 ance under a program described in subsection (c)(4)
5 shall not deny an individual described in subsection
6 (f)(3) admission into such program on the basis of
7 religion, a religious belief, or a refusal to hold a reli-
8 gious belief.
9 "(h) ACCOUNTABILITY.—
10 "(1) IN GENERAL.—Except as provided in para-
11 graphs (2) and (3), a religious organization pro-
12 viding assistance under any program described in
13 subsection (c)(4) shall be subject to the same regula-
14 tions as other nongovernmental organizations to ac-
15 count in accord with generally accepted accounting
16 principles for the use of such funds and the perform-
17 ance of such programs.
18 "(2) LIMITED AUDIT.—
19 "(A) GRANTS AND COOPERATIVE AGREE-
20 MENTS.—A religious organization providing as-
21 sistance through a grant or cooperative agree-
22 ment under a program described in subsection
23 (c)(4) shall segregate government funds pro-
24 vided under such program into a separate ac-
25 count or accounts. Only the separate accounts

1 consisting of funds from the government shall
2 be subject to audit by the government.
3 "(B) INDIRECT FORMS OF ASSISTANCE.—
4 A religious organization providing assistance
5 through a voucher, certificate, or other form of
6 indirect assistance under a program described
7 in subsection (c)(4) may segregate government
8 funds provided under such program into a sepa-
9 rate account or accounts. If such funds are so
10 segregated, only the separate accounts con-
11 sisting of funds from the government shall be
12 subject to audit by the government.
13 "(3) SELF AUDIT.—An organization providing
14 services under any program described in subsection
15 (c)(4) shall conduct annually a self audit for compli-
16 ance with its duties under this section and submit
17 a copy of the self audit to the appropriate Federal,
18 State, or local government agency, along with a plan
19 to timely correct variances, if any, identified in the
20 self audit.
21 "(i) LIMITATIONS ON USE OF FUNDS; VOLUNTARI-
22 NESS.—No funds provided through a grant or cooperative
23 agreement to a religious organization to provide assistance
24 under any program described in subsection (c)(4) shall be
25 expended for sectarian instruction, worship, or proselytiza-

1 tion. If the religious organization offers such an activity,
2 it shall be voluntary for the individuals receiving services
3 and offered separate from the program funded under this
4 subpart. A certificate shall be separately signed by reli-
5 gious organizations, and filed with the government agency
6 that disburses the funds, certifying that the organization
7 is aware of and will comply with this subsection.

8 "(j) EFFECT ON STATE AND LOCAL FUNDS.—If a
9 State or local government contributes State or local funds
10 to carry out a program described in subsection (c)(4), the
11 State or local government may segregate the State or local
12 funds from the Federal funds provided to carry out the
13 program or may commingle the State or local funds with
14 the Federal funds. If the State or local government com-
15 mingles the State or local funds, the provisions of this sec-
16 tion shall apply to the commingled funds in the same man-
17 ner, and to the same extent, as the provisions apply to
18 the Federal funds.

19 "(k) INDIRECT ASSISTANCE.—When consistent with
20 the purpose of a program described in subsection (c)(4),
21 the Secretary of the department administering the pro-
22 gram may direct the disbursement of some or all of the
23 funds, if determined by the Secretary to be feasible and
24 efficient, in the form of indirect assistance. For purposes
25 of this section, "indirect assistance" constitutes assistance

1 in which an organization receiving funds through a vouch-
2 er, certificate, or other form of indirect disbursement
3 under this section receives such funding only as a result
4 of the private choices of individual beneficiaries and no
5 government endorsement of any particular religion, or of
6 religion generally, occurs.

7 "(l) TREATMENT OF INTERMEDIATE GRANTORS.—If
8 a nongovernmental organization (referred to in this sub-
9 section as an 'intermediate grantor'), acting under a grant
10 or other agreement with the Federal Government, or a
11 State or local government with Federal funds, is given the
12 authority under the agreement to select nongovernmental
13 organizations to provide assistance under the programs
14 described in subsection (c)(4), the intermediate grantor
15 shall have the same duties under this section as the gov-
16 ernment when selecting or otherwise dealing with
17 subgrantors, but the intermediate grantor, if it is a reli-
18 gious organization, shall retain all other rights of a reli-
19 gious organization under this section.

20 "(m) COMPLIANCE.—A party alleging that the rights
21 of the party under this section have been violated by a
22 State or local government may bring a civil action for in-
23 junctive relief pursuant to section 1979 against the State
24 official or local government agency that has allegedly com-
25 mitted such violation. A party alleging that the rights of

1 the party under this section have been violated by the Fed-
2 eral Government may bring a civil action for injunctive
3 relief in Federal district court against the official or gov-
4 ernment agency that has allegedly committed such viola-
5 tion.

6 "(n) TRAINING AND TECHNICAL ASSISTANCE FOR
7 SMALL NONGOVERNMENTAL ORGANIZATIONS.—From
8 amounts made available to carry out the purposes of the
9 Office of Justice Programs (including any component or
10 unit thereof, including the Office of Community Oriented
11 Policing Services), funds are authorized to provide train-
12 ing and technical assistance, directly or through grants or
13 other arrangements, in procedures relating to potential
14 application and participation in programs identified in
15 subsection (c)(4) to small nongovernmental organizations,
16 as determined by the Attorney General, including religious
17 organizations, in an amount not to exceed $25 million an-
18 nually.

Chairman SENSENBRENNER. And the Chair recognizes himself.

The proposed changes embodied in my amendment clarify current provisions and improve the legislation by refining the bill in ways that further protect it from constitutional challenge. I realize that some entered the room today intending to oppose reporting H.R. 7 favorably. However, I encourage all of you to consider the important changes made by this amendment, and to perhaps re-examine your position on the entire bill. I sincerely believe this amendment firms up the constitutionality of the bill and expands the options of individuals to receive government services from the type of organization they themselves are most comfortable with.

To begin with, this amendment would make it clear that when a beneficiary has an objection to the religious nature of a provider, an alternative provider is required that is unobjectionable to the beneficiary on religious grounds, that the alternative provider need not be non-religious in character. The same requirement appears charitable choice provisions of the 1996 Welfare Reform Act. If, of course, a beneficiary objects to being served by any faith-based organization, under this amendment, such a beneficiary would be guaranteed a secular alternative.

Existing charitable choice law contains an explicit protection of a beneficiary's right to refuse to actively participate in a religious practice, thereby ensuring the beneficiary's right to avoid any, and I mean any, unwanted sectarian practices. This protection is in 42 U.S.C. 204a(g), part of the Welfare Reform Act of 1996. Such a provision makes clear that participation, if any, in a sectarian practice is voluntary and noncompulsory. Further, Justices O'Connor and Breyer, in the Helms case, require that no government funds be diverted to religious indoctrination. Therefore, religious organizations receiving direct funding will have to separate their social service program from sectarian practices. If any part of a faith-based organization's activities involve religious indoctrination, such activities must be set apart from the government funded program, and hence, privately funded.

For example, a welfare-to-work program operated by a church in Philadelphia illustrates how this can be done successfully. Teachers in the program conduct readiness-to-work classes in the church basement weekdays pursuant to a government grant. During a free time period, the pastor of the church holds a voluntary Bible study in her office up on the ground floor, separate from where the social services activities take place. The sectarian instruction is privately funded and separated in both time and location from the welfare-to-work classes. And no one is required to participate in the Bible study in order to complete the readiness-to-work program.

The Department of Justice recommends that H.R. 7 be strengthened by amending Subsection (i) by including an even clearer statement of the voluntariness requirement, namely that, quote, "If the religious organization offers sectarian instruction, worship or proselytization, it shall be voluntary for the individuals receiving services and offered separate from the program funded under this subpart." Unquote. Also the amendment includes a requirement that a certificate shall be separately signed by religious organizations and filed with the government agency that disburses the funds, certifying that the organization is aware of and will take care to comply with this subsection.

The amendment makes clear that a failure to comply with the terms of the certification may result in the withholding of funds and the suspension or termination of the agreement. The amendment also makes clear that volunteers cannot come in to a federally-funded program and proselytize or otherwise engage in sectarian activity. The amendment also includes Subsection (h)(1), to permit the review of the performance of the program itself and not just its fiscal aspect. This amendment is needed to prevent an unconstitutional preference for faith-based organizations as secular programs are subject to both types of review, meaning performance review and fiscal review.

I ask unanimous consent for four additional minutes.

Also, nothing in H.R. 7 prevents officials from implementing reasonable and prudent procurement regulations, and it is not uncommon for program policies to require providers to conduct periodic compliance self audits. Any discrepancies uncovered in a self audit must be promptly reported to the government along with a plan to timely correct any deficiencies. This amendment, which is a good suggestion from the Department of Justice, would codify such a self-audit requirement for faith-based organizations receiving Federal funds, and it would be prudent to add this additional provision to H.R. 7.

One of the most important guarantees of institutional autonomy is a faith-based organization's ability to select its own staff in a manner that takes into account its faith. It was for this reason that Congress wrote an exemption from religious discrimination by religious employers into title VII of the Civil Rights Act of 1964. And charitable choice laws specifically provide that faith-based organizations retain this limited exemption from Federal employment nondiscrimination laws.

The amendment would replace existing language in H.R. 7 with the same language used in the 1996 Welfare Reform Act, which was signed into law by President Clinton, with an additional clause, making it clear that contrary provisions in Federal programs covered by H.R. 7 have no force in effect. This additional clause was not necessary in the '96 Welfare Reform Act because it codified charitable choice rules for a new program, whereas H.R. 7 covers already existing programs that may have conflicting provisions. This amendment is offered to avoid any confusion.

The language of the 1996 Welfare Reform Act did nothing, and I repeat, nothing to roll back existing civil rights laws, and that same language is used in this amendment. It is important for all of us to understand that this bill and the amendment do not change existing antidiscrimination laws one bit, either with respect to employers or beneficiaries. Faith-based organizations must comply with civil rights laws, prohibiting discrimination on the basis of race, color, national origin, gender, age and disability.

Since 1964 faith-based organizations have been entitled to the title VII exemption to hire staff that share religious beliefs. The courts, including the Supreme Court, have upheld this exemption. Do critics of these laws really want to revoke current public funding from thousands of child care centers, colleges and universities that receive Federal funds in the form of Pell grants, veteran's benefits, vocational training, et cetera, because these institutions hire faculty and staff that share religious beliefs?

My amendment would also limit parties alleging that their rights under this section have been violated to injunctive relief, just as the 1996 Welfare Reform Act charitable choice provisions limit liability for violations of its provisions to injunctive relief.

This amendment has been requested by the National League of Cities, the National Association of Counties and the Conference of Mayors.

Finally, my amendment further solidifies the constitutionality of H.R. 7 and will assist in the practical implementation of its terms. I urge my colleagues to support it, and my time has now expired.

[The statement of Chairman Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

The proposed changes embodied in my amendment clarify H.R. 7's current provisions and improve the legislation by refining the bill in ways that further protect it from constitutional challenge. I realize that some entered the room today intending to oppose reporting H.R. 7 favorably, however, I urge you to consider the important changes made by this amendment and perhaps reexamine your position on the entire bill. I sincerely believe that the amendment firms up the constitutionality of the bill and expands the options of individuals to receive government services from the type of organization they are most comfortable with.

To begin with, this amendment would make clear that, when a beneficiary has an objection to the religious nature of a provider, an alternative provider is required that is unobjectionable to the beneficiary on religious grounds, but that the alternative provider need not be nonreligious. This same requirement appears in the charitable choice provisions of the 1996 Welfare Reform Act. If, of course, a beneficiary objects to being served by any faith-based organization, under this amendment such a beneficiary would be guaranteed a secular alternative.

Existing charitable choice law contains an explicit protection of a beneficiary's right to "refus[e] to actively participate in a religious practice," thereby insuring a beneficiary's right to avoid any unwanted sectarian practices.

This protection is in 42 U.S.C. § 604a(g), part of the Welfare Reform Act of 1996. Such a provision makes clear that participation, if any, in a sectarian practice is voluntary or noncompulsory. Further, Justices O'Connor and Breyer require that no government funds be diverted to "religious indoctrination." Therefore, religious organizations receiving direct funding will have to separate their social service program from their sectarian practices. If any part of a faith-based organization's activities involve "religious indoctrination," such activities must be set apart from the government-funded program and, hence, privately funded.

For example, a welfare-to-work program operated by a church in Philadelphia illustrates how this can be done successfully. Teachers in the program conduct readiness-to-work classes in the church basement weekdays pursuant to a government grant. During a free-time period the pastor of the church holds a voluntary Bible study in her office up on the ground floor.

The sectarian instruction is privately funded and separated in both time and location from the welfare-to-work classes—and no one is required to participate in the bible study in order to complete the bible study in order to complete the readiness-to-work program.

The Department of Justice recommends that H.R. 7 be strengthened by amending subsection (i) by including an even clearer statement of the voluntariness requirement, namely that "If the religious organization offers [sectarian instruction, worship, or proselytization], it shall be voluntary for the individuals receiving services and offered separate from the program funded under this subpart." Also, the amendment includes a requirement that a certificate shall be separately signed by religious organizations, and filed with the government agency that disburses funds, certifying that the organization is aware of and will take care to comply with this subsection.

The amendment makes clear that a failure to comply with the terms of the certification may result in the withholding of the funds and the suspension or termination of the agreement. The amendment also makes clear that volunteers cannot come into a federally funded program and proselytize or otherwise engage in sectarian activity.

The amendment also includes subsection (h)(1) to permit review of the performance of the program itself, not just its fiscal aspects. This amendment is needed to

prevent an unconstitutional preference for faith-based organizations, as secular programs are subject to both types of review.

Also, nothing in H.R. 7 prevents officials from implementing reasonable and prudent procurement regulations, and it is not uncommon for program policies to require providers to conduct periodic compliance self-audits. Any discrepancies uncovered in a self-audit must be promptly reported to the government along with a plan to timely correct any deficiencies. This amendment, which is a good suggestion from the Department of Justice, would codify such a self-audit requirement for faith-based organizations receiving federal funds, and it would be prudent to add this additional provision to H.R. 7.

One of the most important guarantees of institutional autonomy is a faith-based organization's ability to select its own staff in a manner that takes into account its faith. It was for this reason that Congress wrote an exemption from religious discrimination by religious employers into Title VII of the Civil Rights Act of 1964, and charitable choice laws specifically provide that faith-based organizations retain this limited exemption from federal employment nondiscrimination laws.

The amendment would replace existing language in H.R. 7 with the *same language used in the 1996 Welfare Reform Act*, which was signed into law by President Clinton, with an additional clause making clear that contrary provisions in the federal programs covered by H.R. 7 have no force and effect. This additional clause was not necessary in the 1996 Welfare Reform Act because it codified charitable choice rules for a new program, whereas H.R. 7 covers already-existing programs that may have conflicting provisions. This amendment is offered to avoid any confusion. The language of the 1996 Welfare Reform Act did nothing to "roll back" existing civil rights laws, and that same language is used in this amendment.

It is important for all to understand that this bill does not change the anti-discrimination laws one bit—either with respect to employees or beneficiaries.

Faith-based organizations must comply with civil rights laws prohibiting discrimination on the basis of race, color, national origin, gender, age and disability. Since 1964, Faith-based organizations have been entitled to the Title VII exemption to hire staff that share religious beliefs—courts, including the Supreme Court, have upheld this exemption. Do the critics of these laws really want to revoke current public funding from the thousands of child care centers, colleges and universities that receive federal funds—in the form of Pell Grants, veterans benefits, vocational training, etc.—because these institutions hire faculty and staff that share religious beliefs?

My amendment would also limit parties alleging that their rights under this section have been violated to injunctive relief, just as the 1996 Welfare Reform Act's charitable choice limited liability for violations of its provisions to injunctive relief.

This amendment has been requested by the National League of Cities, the National Association of Counties, and the Conference of Mayors.

This amendment further solidifies the constitutionality of H.R. 7 and will assist in the practical implementation of its terms. I urge my colleagues to support it.

Mr. CONYERS. A friendly inquiry, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman will state his friendly inquiry.

Mr. CONYERS. This sounds like a substitute amendment. It has all the earmarks of it, but it's called an amendment. So what's your response to my friendly inquiry?

Chairman SENSENBRENNER. The answer is that it was not offered as a substitute, and the Chair will stipulate that the inquiry was friendly.

Mr. CONYERS. Okay. Thank you so much.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, for what purpose do you seek recognition?

Mr. NADLER. I have two questions. I have a memo here from Americans United for Separation of Church and State, which make a couple of comments. I want to ask for your comment on their comments, whether——

Chairman SENSENBRENNER. I have not seen the memo, but go ahead.

Mr. NADLER. I'll read it. It's only a paragraph. It says: "The new version", meaning the substitute, "leaves language intact that would allow for employment discrimination based on religious practices, tenets or teachings. The new H.R. 7 extends the title VII exemption, allowing religious-based employment discrimination to taxpayer-funded programs under charitable choice. If this exemption is extended in this way, it will result in the religious practices discrimination that is supposedly being stricken. The courts have recognized that institutions eligible for this exemption may discriminate in employment based on religious tenets and teachings in addition to simply refusing to hire someone of a certain religion."

In other words, under this—even under this changed H.R. 7, a publicly-funded program could discriminate in employment against an applicant or employee if they are, for example, unmarried and pregnant, divorced, gay or lesbian, or engaged in any other activity that violates the tenets and teachings of the group's religion.

My question is the following. A, does this correctly state what—what the bill as amended does?

Chairman SENSENBRENNER. No.

Mr. NADLER. And second—okay. And second, my understanding of the current law is that a church or other sectarian institution quite properly can discriminate on the basis of religion in its own religious officials, ministers, deacons and so forth, but that if you want to have a publicly-funded program, you cannot discriminate on the basis of religion in who maintains the soup kitchen, for example, and that this bill would allow that to happen. Is that—well, first of all, you just said, in what way is this description incorrect, and second, is my second question correct?

Chairman SENSENBRENNER. The description that you have read to me—and again, I do not have it in writing in front of me and I have not seen it—seems to indicate that the amendment that I have offered to this bill somehow either reduces civil rights protections to people who are seeking employment, or expands the exemption that was contained in title VII from the time it was initially enacted by Congress. That is not what the amendment does. The amendment keeps title VII exactly the way it is as it is applied to the organizations that would be qualified for grants under this bill.

Mr. NADLER. But does the tenets and—doesn't the tenets and teachings provision extend the exemption in title VII beyond where it was?

Chairman SENSENBRENNER. Well, you know, that would depend upon how the courts, you know, interpreted religious discrimination. You know, it is obvious that the original purpose of title VII was to protect a religious institution from a suit if they refused to hire as a clergy person someone not of their denomination, but it has been—that exemption has been expanded in further enactments by the Congress. Most recently, the 1996 Welfare Reform Law, that provided a religious institution that type of exemption from the antidiscrimination laws in hiring and employment.

Mr. NADLER. Thank you. Let me just suggest that—let me just make one comment. A lot of comment on this bill has been saying that, well, this doesn't change in certain respects what was done in the charitable choice provisions or the faith-based provisions of the Welfare Reform Act of 1996, it simply extends it into other pro-

gram areas. I simply want to comment that at the time the Welfare Reform Bill was passed, there was a lot of debate about the Welfare Reform Bill, there was almost no debate about the charitable choice provision in the Welfare Reform Bill. It was just included, an omnibus bill, and some of us believe that that was a very wrong thing to do at that point, and it will be equally wrong to extend it. Yield back.

Mr. CHABOT. Mr. Chairman. Will you yield for a question, Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Ohio seek recognition?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

I rise in strong support of this amendment, and I'd like to commend President Bush for his leadership on this critical issue, and I applaud the President and Chairman Sensenbrenner, and Representatives J.C. Watts and Tony Hall for their good work in moving this legislation forward today.

Charitable choice proposals have received bipartisan backing in the past. I offer the words of former Vice President Al Gore, who strongly supported expanding charitable choice during his presidential campaign. In a major address to the Salvation Army, Mr. Gore couldn't have summarized the purposes of H.R. 7 and its provisions under this amendment more succinctly. In that address he stated, and I quote: "The men and women who work in faith-based organizations are driven by their spiritual commitment. They have sustained the drug addicted, the mentally ill and the homeless. They have trained them, educated them, cared for them. Most of all, they have done what government can never do, they have loved them." Unquote.

After referring to the charitable choice provisions in the 1996 Welfare Reform Act, Mr. Gore continued, quote: "As long as there is always a secular alternative for anyone who wants one, and as long as no one is required to participate in religious observances as a condition for receiving services, faith-based organizations can provide jobs and job training, counseling and mentoring, food and basic medical care. They can do so with public funds, and without having to alter the religious character that is so often the key to their effectiveness." Unquote.

That is precisely what H.R. 7 does. Proposed Subsection (f) guarantees a beneficiary an alternative to which they have no religious objection. Proposed Subsection (i) states clearly that if a religious organization offers religious instruction or worship, a beneficiary must engage in it voluntarily and separate and apart from the federally-funded program. And proposed Subsection (e) does just what Mr. Gore correctly prescribes, it allows churches to remain churches, even when they apply for and administer social service programs. And it does so in the same words used in the 1996 Welfare Reform Act, which Mr. Gore referred to explicitly and approvingly in his speech. Indeed, it was President Clinton who signed those same words into law.

I also offer the words of civil rights leader Rosa Parks in support of the amendment's proposed section (e). In endorsing H.R. 7 she

stated it would reduce, quote, "discriminatory barriers currently suffered by the many grass roots churches who are unable to access funding for education and social welfare programs." Unquote. Of course for a church to be protected from discriminatory barriers that lie between it and funds for social service programs, it must be free to remain a church when it applies for such funds, and retain its current exemption from title VII.

That is precisely what this amendment does. Under this proposed amendment, H.R. 7 is constitutionally airtight. We even have a statement to that effect from the Fourth Circuit Court of Appeals, which just yesterday held that the Constitution allows the government to provide direct aid to a religious organization without having to resort to an examination of whether that organization is pervasively sectarian or not. The court held that as long as there are protections in place prohibiting Federal funds from being used for proselytizing activities, a faith-based organization must not be presumed to be incapable of following the rules against using government funds for worship activities, and on that basis, redlined from government programs. H.R. 7 explicitly prohibits the use of Federal funds for sectarian worship, instruction or proselytizing activities, just as the program upheld by the Fourth Circuit did in that case just yesterday.

This amendment will make H.R. 7 even clearer on this point by adding language stating that if the religious organization offers such an activity, it shall be voluntary for the individuals receiving services and offered separate from the program funded under this subpart.

To see how the provision operates, we need only to look at how it works in the charitable choice program run by the Reverend Donna Jones of North Philadelphia, whose church runs a welfare-to-work program there. She testified before the Subcommittee on the Constitution and described how teachers in the program conduct readiness-to-work classes in the church basement week days, pursuant to a government grant. During a free time period, the pastor of the church may hold a voluntary Bible study in her office up on the ground floor. The sectarian instruction is therefore privately funded and separated in both time and location from the welfare-to-work classes.

Summing up, the amendment stands solidly within the four corners of the Constitution, and it opens wide the door to faith-based organizations wanting to apply for Federal funds to help pay the heating bills in shelters for women victims of domestic violence, to help pay for training materials teaching basic work skills, and to help them feed the hungry in soup kitchens. I urge my colleagues to join in supporting this important amendment.

Chairman SENSENBRENNER. The gentleman's time has expired. For what purpose the gentleman from California seek recognition?

Mr. BERMAN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BERMAN. Mr. Chairman, as I struggle with this issue, I'd like to ask a question regarding your manager's amendment. Both Mr. Chabot and you have made reference to the protection for the recipient of assistance to, if he or she has an objection to the religious character of the referral, to obtain admission into a secular alter-

native. But the base bill on H.R. 7, on page 15, speaks of that as an alternative that is accessible to the individual, and—I'm sorry. The base bill, H.R. 7 says that it is an alternative, including a non-religious alternative that is accessible to the individual, with the words "including a non-religious alternative." The manager's amendment says, "In an alternative that is accessible to the individual and unobjectionable to the individual on religious grounds."

And I'm curious about why the wording was changed. It leaves at least an implication that a secular alternative, a non-religious alternative does not need to be available and——

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. BERMAN. I'd be happy to.

Chairman SENSENBRENNER. The way this is worded is that if the beneficiary demands a secular alternative, they get it, you know, assuming there are no religious alternatives that are unobjectionable to the individual on religious grounds.

Mr. BERMAN. But, again, what's the purpose of deleting the phrase "including a non-religious alternative," a way of making clear that that is the case?

Chairman SENSENBRENNER. If the gentleman will further yield.

Mr. BERMAN. Yes.

Chairman SENSENBRENNER. It was tightening up the language with exactly the same effect. The determination on what type of a program is unobjectionable to the individual on religious grounds rests with the individual, and this was a tightening up of the language to further empower individuals to make their decision rather than having it being made by the government either as a matter of law or otherwise. The fact is, is that if there is no religious alternative that is unobjectionable on religious grounds, then a secular alternative must be provided.

Mr. GREEN. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California has the time.

Mr. BERMAN. I'm sorry. I yield.

Chairman SENSENBRENNER. For what purpose the gentleman from Wisconsin, Mr. Green, seek recognition?

Mr. GREEN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

I'd like to commend the authors of the underlying legislation, but I guess more to the point for where we are, commend the Chairman for his thoughtful amendment. As the Chairman knows, over the last number of days, I am one of many who have tried to look carefully at many of the issues that are raised by H.R. 7. These are sensitive and weighty issues that are before us. And those who are concerned about the larger implications of the legislation we take up today, should be. We should tread carefully. We should tread sensitively. But, Mr. Chairman, as I take a look at your amendment, and review it carefully, I believe that you have done just that. I believe that you have done a great service to this legislation by using accepted standards and constitutionally settled principles to make sure that religious freedom is protected, and that some of the concerns which have been already expressed, are addressed fairly, honestly, and again, in a settled manner.

I think that those of us who come from States like Wisconsin—and Wisconsin is known for its progressive tradition in the area of education reform and health care reform and welfare reform—we've seen what the community of faith can do in its delivery of services. We see the tremendous potential that is there when we utilize community leaders, when we turn to what is working, when we turn to those unsung heroes in neighborhoods all across this country. I believe that H.R. 7 will help us unleash the great potential of those community leaders, and I'm convinced that your amendment that you bring forward today will ensure that we do it in a way that is sensitive to the larger issues that have been raised. So——

Mr. GEKAS. Would the gentleman yield?

Mr. GREEN. Mr. Chairman, once again I commend you for your amendment, and encourage my colleagues to adopt the amendment.

Mr. GEKAS. Would the gentleman yield for a moment?

Mr. GREEN. Yes, I will yield.

Mr. GEKAS. The gentleman will recall that he and I had an extensive consultation on the contents of the present legislation, and the gentleman, I must say, went a long way in convincing me that some of my concerns about the accommodation to cults, which have no good purpose in most instances, and might be accommodated by this legislation. The gentleman, as I say, convinced me that the provisions here would prevent such an accommodation. Is he willing to confirm that?

Mr. GREEN. I certainly am. I believe we had that discussion as we were racing off to a vote. I believe that those who look carefully at this legislation and will look at the actual language and the protections that have been enshrined and the fact that this legislation is about opening up opportunities for groups to provide services that are currently being provided—we're not launching new services or programs here—will realize that these types of opportunities are probably not attractive to the vast majority of organizations that are out there because we have a number of accountability provisions in here, we have tough standards. Any organization which is applying here to provide services has to demonstrate that they can provide these services in a verifiable way. They have to agree to Generally Accepted Accounting Principles. I believe that there won't be that many organizations, especially early on, that will embrace these opportunities, but those that do, I think will go a long way towards shaping lives in communities and neighborhoods, so I am satisfied, particularly with the Chairman's mark, that we have addressed those concerns.

Ms. WATERS. Would the gentleman yield?

Mr. GREEN. I would be happy to yield what little time I have left.

Ms. WATERS. I was interested in the question that was raised by Mr. Gekas. He specifically asked you what would prevent cults, religious cults, from participating in this legislation. And I was listening very carefully to your answer, and your answer did not say that they could not. You suggested that maybe they won't want to do that because of accountability standards that you are alluding to that are in the bill that I don't see. Would you agree that any religious organization can participate because the bill specifically

does not allow discrimination against any religious organization. Would you agree?

Mr. CHABOT. Will the gentleman yield?

Mr. GREEN. The gentleman would be happy to yield.

Mr. CHABOT. Thank you for yielding. You don't have much time left, but the bottom line is, is that those agencies——

Chairman SENSENBRENNER. Without objection, the gentleman from Wisconsin will be given 2 additional minutes.

Mr. CHABOT. Thank the gentleman. If you'll continue to yield.

This is one of the items that's been brought up for many of the folks that are opposed to the whole faith-based initiative. The bottom line is any of these organizations or so-called cults are free to try to get contracts to serve the public. What will ultimately be the determinative factor is what group, what organization can best provides services to the people at the most efficient cost. And so that's the bottom line answer. So anybody can try to compete for the available dollars out there, but what's going to have to be looked at is who can provide the services best. And they can look at track records, for example, of some of the organizations, what they've done in the past.

Mr. GOODLATTE. Would the gentleman yield?

Ms. WATERS. Will the gentleman yield for a question?

Mr. GOODLATTE. Would the gentleman yield?

Ms. WATERS. Would the gentleman yield for a question?

Mr. GREEN. I would yield time to Mr. Goodlatte.

Mr. GOODLATTE. I thank you, and I'll be very brief, but I would ask the gentleman from Ohio, is it not true that the same complaint that the gentlewoman from California raises exists in the secular society as well, that there are today secular organizations that compete for funds that are of extreme natures or may be offensive to people. They simply aren't of a religious sort. And they're allowed to compete for these funds today. I don't know why we should draw a discriminatory line between religious and non-religious organizations.

Ms. WATERS. Will the gentleman yield? That does not speak to my question. Would the gentleman yield?

Mr. GREEN. No. Actually, I would like to reclaim my time and try to answer the question that was first posed. First off, let's remember, as my colleague from Virginia has pointed out, that in current law, such groups could compete for dollars right now under certain programs. And there's an interesting study out that's referred to I think in some of our materials, which shows that the legitimate fear that many have raised in the past about such organizations entering into these programs has been completely unfounded.

The reason why is charitable choice is not a set-aside, it is not a pot of money which is going to enrich any group.

Chairman SENSENBRENNER. The gentleman's time has once again expired.

Mr. FRANK. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose the gentleman from Massachusetts seek recognition?

Mr. FRANK. To strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. First, the gentleman's question I think has not yet been answered. And I was struck by what seems to me an inconsistency. When the Nation of Islam was hired by many housing authorities some years ago to patrol the housing authorities—I think Baltimore was one and some others—to provide security, a number of people, some of whom are strong supporters—not necessarily on this Committee, but in the Congress—of this bill, were very upset, and indeed, political pressure was brought successfully I think on HUD to disallow the Nation of Islam from providing these services because some people thought it was a religious cult and they disagree very much with it. My guess it—I never went to any of the housing authorities to do an on-spot inspection—my guess is, judged by results, they probably did a very good job of keeping order in those housing authorities. And I think we ought to note to those who objected to the Nation of Islam being involved before, that this is the sort of legislation that will I think bring about their return, judged solely on results, and objections that people might have to various aspects of the way the Nation of Islam worships or what their theology is would be irrelevant. And I think that's just——

Mr. NADLER. Would the gentleman yield?

Mr. FRANK. Well, let me first—I want to ask—I'll yield briefly.

Mr. NADLER. Just one observation. The grounds for which the Nation of Islam was evicted, in effect, from those contracts, was that they discriminated on the basis of religion in who they hired as security guards.

Mr. FRANK. And that would now no longer be the case.

Mr. NADLER. That would no longer be——

Ms. WATERS. Will the gentleman yield?

Mr. FRANK. Let me just get to my other point here if I can, and then I'll get back to this. Because I wanted to ask the Chairman, and I appreciate his effort to try and make some improvements. On the bottom of page 17 there's a provision that may have been in the original one, that says, "No funds shall be expended for sectarian instruction, worship", or a word no one really has an easy time pronouncing—"proselytization." Now, I appreciate that, but here's my question. What if the organization that gets the money believes that a religious message is inherent in providing the service? What if people believe that you cannot get people to get off drugs or to stop violent behavior, or to stop imbibing alcohol excessively or doing other things? What if inherently in their message is, you do this by becoming a Christian, or a better Christian, or a better Muslim or a better Jew? Is that allowed under the bill?

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. FRANK. Yes.

Chairman SENSENBRENNER. The answer to the question is no it is not, and those organizations would not be eligible for funding under H.R. 7.

Mr. FRANK. Well, I appreciate that and I think that's a very important point to make. That is, you could not—and I'm told there are organizations that do this—so in addition to strictly trying to convert people, if in fact you sincerely believed that the way to cure the problem that had brought people to you, the way to inculcate in them better behavior, involved inherently a religious message,

that could not be funded under this program; it would have to be done entirely separately?

Chairman SENSENBRENNER. Would the gentleman yield further? The gentleman's conclusion is correct. It is up to the religious organization to make a determination, if they can separate out their religious mission from their social services mission. If they can do that, they're eligible under H.R. 7. But if they can't do that, then they're not.

Mr. FRANK. And I appreciate the gentleman saying that, because again I want to make it clear. What we're saying is if the fact that they may believe that the social service mission cannot be accomplished in a non-religious context, that would make that ineligible for Federal funding. They're free to do that in other ways, but they could not get Federal funding to do that; is that correct?

Chairman SENSENBRENNER. If the gentleman would yield further. That is what the language of the amendment prohibits doing, and that is, is that if the program, under H.R. 7, is funded, the Federal funds cannot be used in any manner whatsoever for sectarian instruction, worship or proselytization, and those functions must be privately funded and they are voluntary, and the clients or beneficiaries have the opportunity to opt out or to seek another alternative.

Mr. FRANK. Well, let me say, I assume this would mean though that you don't kind of enroll in the program, and then when it gets to the religious part, you get out; you are entitled to a totally separate program?

Chairman SENSENBRENNER. That is correct.

Mr. FRANK. And it's not an in and out kind of——

Chairman SENSENBRENNER. That is correct, and the gentleman's time has expired. And let me find out how many votes we're going to have.

There will be two votes on amendments, recommittal after 10 minutes debate, and final passage. The Committee is recess until 1:30. Please be prompt because we'll start in right away.

[Whereupon, at 11:51 a.m., the Committee recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

Chairman SENSENBRENNER. The Committee will be in order.

Pending at the time the Committee recessed was an amendment to the bill by the Chairman.

Mr. SCOTT. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose the gentleman from Virginia seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SCOTT. And before that, a parliamentary inquiry, Mr. Chairman.

Chairman SENSENBRENNER. State your inquiry.

Mr. SCOTT. When your amendment was introduced, was it introduced as an amendment or an amendment and unanimous consent to consider it as the original text for the purposes of amendment?

Chairman SENSENBRENNER. It was introduced as an amendment. The base bill is what is amendable.

Mr. SCOTT. And parliamentary inquiry?

Chairman SENSENBRENNER. State your inquiry.

Mr. SCOTT. So if there are amendments to the manager's amendment, they should be introduced before it's adopted?

Chairman SENSENBRENNER. That's correct.

And with that happy note, this is a vote on a rule. Is there a vote on the previous question? Okay. I would ask the Members to come back promptly after voting, and the Committee stands in recess. The gentleman from Virginia, Mr. Scott, will be first to be recognized, so he should come back first. [Laughter.]

Chairman SENSENBRENNER. The Committee stands recessed.

[Recess]

Chairman SENSENBRENNER. The Committee will be in order.

Pending at the time of the recess was an amendment to the bill offered by the Chairman. Before recognizing the gentleman from Virginia, let me reiterate my announcement of this morning, that the Chair intends not to adjourn the Committee until we vote to report the bill one way or the other, notwithstanding the announcement that the House will suspend its work on the Agriculture Appropriations Committee between 6:00 and 7:00 p.m.

For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, for several weeks I've been asking the question about various versions of charitable choice as to whether or not under the versions that we would finally get to vote on, whether or not you can proselytize during the program or not. We heard—we read reports that Mr. DeJulio, the Director of the Faith-Based Office in the White House—we heard quotes from him that said that pervasively sectarian programs could in fact be funded. We heard from the chief sponsor of the bill, that religion is a methodology, and therefore, obviously, that's what you were paying for. We've heard references to Democratic leaders as to what their position is on this. The Democratic platform that was adopted by the Democratic Convention last summer, supported faith-based funding with the provision that no proselytization should be funded, and no funds should be used in a discriminatory manner.

Mr. Chairman, your manager's amendment finally answers the question one way or another, and says that there shall be no proselytization during the program. It is consistent with the views expressed by the Department of Justice, where they said there should be no proselytization paid for by Federal money, nor volunteers or any other way during the government sponsored program. In fact, Mr. Chairman, the manager's amendment, in terms of proselytization is a restatement of present law without charitable choice. Any program that can get funded under the manager's amendment can also be funded now with one exception. And that is organizations that do not want to comply with civil rights laws. The requirements that symbols can be there, under the manager's amendment, is a question of constitutional implications. If the Supreme Court requires them to take—them to be taken down, then the statute we're adopting can't cure that. If the Supreme Court does not allow the symbols to be taken down, then of course, you can do it under present law.

What we have right now is a question of whether or not organizations can discriminate, and that's really all that's left in the bill. The main effect, the main effect, after we've gone through the constitutional process of which religion will get funded and which will not, the main effect is that organizations receiving Federal funds can discriminate. The sponsors of federally-funded programs under the bill can discriminate based on religion, and that's really what this debate is all about, nothing more. The extent to whether teachings and tenets are also covered by the right to discriminate is a technical question that we can consider, but after you've stripped it to its bare essentials, the only thing the bill allows not that's not allowed under present law, is the right to discriminate based on religion.

We will have amendments that will focus on this simple question as to whether the sponsor of a federally-funded program can discriminate based on religion for the first time in decades, so that we will consider that question as we consider amendments.

Thank you, Mr. Chairman. I yield back the balance of my time.

Ms. LOFGREN. Mr. Chairman.

Chairman SENSENBRENNER. Are there amendments?

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California seek recognition?

Ms. LOFGREN. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman's recognized for 5 minutes.

Ms. LOFGREN. I wanted to comment briefly on the discussion that was had before the lunch break, which has to do with whether or not cults could be funded under this act. And I guess in a way I'm a little bit reluctant to use the word "cult" because in some cases, one person's cult is another person's faith. But in looking at this, I think we are clearly going to be opening ourselves up to a situation that I think the proponents of this measure do not desire, and perhaps have not fully envisioned.

In thinking about religions that are not the majority religion in the United States, under this act and with the manager's—with the Chairman's amendment, we note that you cannot require a faith-based group to remove their religious scriptures, arts, icons and the like, and the only way a recipient of the services can get out of being served by the faith-based group is if they have objections to the religious character of the organization. It's not clear to me that—and maybe this is a question for the Chairman—let's say I'm receiving child care as part of the federally-funded welfare program, and in California, a large California county, it's the wickens who are providing the child care, which is actually not an improbable situation in some parts of the State. Can I require that a separate child care provider be established because I don't like the wickens? And if then I'm sent to the Catholics, can I require that still another child care be provided until I finally get to the Lutherans, which is what I am? Is that—would that be the impact of this amendment?

Chairman SENSENBRENNER. The answer to your question is no. Anybody who applies for—to receive funds under this program, either directly or indirectly, will have to adhere to all of the qualifications of the program, many of which already exist. We're not

creating new social services programs in this bill, but what we are doing is opening up the eligibility to faith-based organizations to provide those types of social services.

Ms. LOFGREN. Well, reclaiming——

Chairman SENSENBRENNER. The opt out and choice provisions that are contained in the manager's amendment, you know, make it clear that nobody will be forced to go into a faith-based program, and while it is not stated expressly, if someone objects to all faith-based programs, there has to be a secular alternative.

Now, you know, to answer you question, if you don't like denomination 1, you can object to that, and then go to 2 or 3 or 4, until you finally get a denomination that is of your choosing. There's nothing in this legislation that requires a local government to do that. If the Lutherans don't want to put on one of these programs because somebody insists upon going to a Lutheran program, the Lutherans don't have to put on one of these programs.

Ms. LOFGREN. No, that's—if I may, that is clear. But I guess what I'm—what I'm struggling with is there are a whole—I mean I probably have more Buddhists than Baptists in my district, and there are some people who don't believe in what the Buddhists believe, and they are a likely provider of services. And it's not clear to me that we will avoid a result where people who have one faith are required to—because there's a——

Chairman SENSENBRENNER. The gentlewoman yield?

Ms. LOFGREN. Yes, I will.

Chairman SENSENBRENNER. Under this bill there is no requirement that somebody who objects to receiving secular social services in a Buddhist-owned facility and sponsored by a Buddhist congregation or Buddhist faith-based organization, or however they are organized, to have to enroll in that social services program. There has to be, under H.R. 7 and the Chairman's amendment, an alternative that is non-objectionable to the individual seeking the social services.

Ms. LOFGREN. All right. So if I am understanding the Chairman correctly, every—I was in local government for a lot longer than I've been in Congress, and we actually funded a lot of social services with faith-based groups, I mean from the Catholic Charities, the Cathedral of Faith and many, many others. We also had secular programs that we funded for the same activities. So if you're a local government, you better make sure that you have a non-faith-based organization, or else any one person can throw chaos into your program by objecting, and then you would fail to have an alternative.

I have problems with this in many respects, but I guess one of the overlying things I fail to understand is why, in practically every county of this country we're already funding services through faith-based groups, we need to do this. I mean, but I see my time has expired. And I thank the Chairman for allowing me to strike the last word.

Mr. SCHIFF. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff. For what purpose do you seek recognition?

Mr. SCHIFF. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. I'd like to speak briefly to the premise of direct government funding of churches and synagogues and other religious institutions.

The separation of church and state was designed out of a desire to avoid the excessive entanglement for two reasons. One, it was to protect the people from the government's use of its coercive power for religious purposes. And second, it was designed to protect people's free exercise of religion by guarding churches from unwarranted government intrusion. Direct funding of religious institutions, whether characterized under the beneficent sounding, wonderfully alliterative expression, charitable choice, does not serve either priority of the founders. In fact, I believe, although well meaning, it undermines both church and state, and in so doing, undermines our basic freedoms.

How does it do this? How does it undermine the State? Fundamentally, I believe it precludes real accountability in the delivery of services. The principle of greater funding with accountability that we all subscribe to is sacrificed. Would this Committee or any Committee call in the GAO to audit, investigate the performance of the Catholic Church in delivering services, or the Mormon Temple or a Jewish synagogue or any other religious institution, there would be the most natural sensitivity not to pry, a sensitivity that does not exist in the scrutiny we would so willingly permit of a doctor's billings under Medicare or a military contractor, or any other secular provision of services in exchange for Federal funds.

But how does it undermine the church? And I think this is the more serious concern. Fundamentally, I believe it would compromise the mission of a religious organization in an effort to get Federal dollars. Mr. Frank's earlier point that this would preclude a church, for example, from arguing that a belief in the Lord is essential to progress in a person's life that is being served, whereas the argument that these objectives can be met without a belief in God would be federally funded, basically tells a religious organization that as long as they do not espouse a belief in the Lord as a component of recovery, it will get Federal funding. Is this really what we wish to do? Do we wish to turn religious institutions into vendors of government programs? Do we want them competing with each other for grants and a politicalization of religious institutions that would accompany that? Would it be appropriate for Members of Congress to write in support of one church's grant application or against another? Which churches will qualify for funding? What litmus test will be given? Do they need to be conventional? Can they be unconventional?

I want to congratulate the administration and the Chair for the creative thinking in dealing with new ways of wrestling with old challenges, but sometimes, often in fact, the founders get it right. In the establishment clause it says "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." No law respecting an establishment of religion. We are talking about direct government funding of religion. Do we really believe that Jefferson or Madison would have countenanced direct government funding of churches and synagogues? Neither Jefferson nor Madison was hostile to religion. Both were protective of religion, and because protective, they would have believed this idea ill conceived. I urge a no vote.

Chairman SENSENBRENNER. Are there amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, Scott No. 1.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment to H.R. 7, offered by Mr. Scott, Mr. Conyers, Mr. Nadler, Mr. Frank, Ms. Jackson Lee, Ms. Waters, Ms. Baldwin and Mr. Watt.

Page 13, strike line 13 and all that follows through line 23 on page 13. Redesignate accordingly.

[The amendment follows:]

Scott #1

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott, Mr. Conyers, Mr. Nadler, Mr. Frank, Ms. Jackson-Lee, Ms. Waters, Ms. Baldwin, and Mr. Watt

Page 13, strike line 13 and all that follows through line 23 on page 13.

Redesignate accordingly.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes in support of his amendment.

Mr. SCOTT. Mr. Chairman, it is ironic that we would consider H.R. 7 just 2 days after marking the 60th year anniversary of President Roosevelt's signing of Executive Order 8802. Mr. Chairman, that Executive Order provides in part, "whereas there is evidence that available or needed workers have been barred from employment in industries engaged in defense production solely because of considerations of race, creed, color or national origin, to the detriment of workers' morale and of national unity", and goes on to order, "all contracting agencies of the government of the United States shall include in all defense contracts hereafter, negotiated by them, a provision obligating the contractor not to discriminate against any worker because of race, creed, color or national origin."

Mr. Chairman, today we witnessed the erosion of 60 years of civil rights law. This amendment that I'm offering strikes a provision in the bill that allows sponsors of Federal programs to discriminate on the basis of religion, and specifically overrides any contradictory statutes. Religiously-affiliated organizations, including Catholic Charities, Lutheran Services, Jewish Federations, and a vast array of smaller faith-based organizations, now sponsor government programs, and contrary to President Bush's recent assertions, I am unaware of anyone who opposes these organizations operating public programs and providing services. They are funded like all other

private organizations are funded. They are prohibited from using taxpayer money to advance their religious beliefs, and they are subject to civil rights laws. In fact, the bill before us restates the present law with the exception of the application of civil rights laws. Any program that can get funds under the manager's amendment can get money now, except those who refuse to comply with civil rights laws.

Now, there was a time when some Americans, because of their religion, were not considered qualified for certain jobs. In fact, before 1960 it was thought that a Catholic could not be elected President. And before the civil rights laws of the 1960's, people of certain religions routinely suffered invidious discrimination when they sought employment. President Roosevelt's Executive Order 60 years ago, and the civil rights laws of the 1960's, outlawed schemes which allowed job applicants to be rejected solely because of their religious beliefs.

Now, some of us are frankly shocked that we would even have a debate as to whether sponsors of Federal programs can discriminate in hiring. But then we remember that the passage of the civil rights laws of the 1960's was not unanimous, and it is clear that we're using charitable choice to re-debate the passage of basic anti-discrimination laws. Now, I believe that publicly-funded employment discrimination was wrong in the 1940's and 1960's, and it is still wrong.

Now, some have suggested that organizations should be able to discriminate in employment, to select employees who share their vision and philosophy. Under current civil rights laws, you can discriminate against a person based on their views on the environment, views of abortion or gun control, you can select staff based on their commitment to serve the poor or whether you think they have compassion to help others kick drugs. You can discriminate based on a criminal record or credit record or educational achievement. But because of our sorry history of discrimination against certain Americans, we had to establish protected classes, and under present law you cannot discriminate against an individual based on race, sex, national origin or religion.

Now religious organizations were given an exemption to consider religion and hiring with church funds. We have not—but we have not allowed sponsors of federally-funded programs to reject applicants for jobs paid for with Federal money solely because of their religion.

Mr. Chairman, charitable choice represents an historic reversal of decades of progress and civil rights law enforcement. We established the policy years ago that we should not discriminate based on religion. The President and the supporters of charitable choice have promised to invest needed resources in our inner cities, and they can do so today under present law. But it is insulting to suggest that they will not make those investments unless we turn the clock back on our civil rights.

And I hope, Mr. Chairman, we'll adopt the amendment. Yield back the balance of my time, Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. You're recognized for 5 minutes.

Mr. CHABOT. Thank you. I rise in opposition to this amendment. This amendment strikes the same language used in the 1996 Welfare Reform Act. It's part of all existing charitable choice laws now. It would override the title VII exemption. All we want to do is preserve the status quo. This amendment proposed to change it. We agree withthe unanimous Supreme Court that upheld the title VII exemption as written, not as is proposed under this amendment which would change it. This is a change in existing law that would upset the balance struck over the past 30 years.

One of the most important charitable choice principles is the guarantee of institutional autonomy that allows faith-based organizations to select staff on a religious basis. H.R. 7 preserves this guarantee, and it's supported by no less a civil rights leader than Rosa Parks. As I stated before, even Al Gore, during his campaign, said that, quote, "Faith-based organizations can provide jobs and job training, counseling and mentoring, food and basic medical care. They can do so with public funds and without having to alter the religious character that is so often the key to their effectiveness."

And therefore, I rise in opposition to this amendment. Yield back the balance of my time.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose gentleman from Michigan seek recognition? 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman. I rise in support of the amendment, which I'm proud to add my name behind Mr. Scott's.

I'll only take a few minutes, Mr. Chairman. But I notice that our colleague, the gentleman from Texas, Chet Edwards, has been sitting in the audience for many an hour, and I wonder if we could allow him to come up and take the vacant seat next to Mr. Schiff for whatever time he may remain, if there's no problem with that.

Chairman SENSENBRENNER. Without objection, provided he does not exercise undue influence upon Mr. Schiff. [Laughter.]

Mr. CONYERS. Mr. Schiff may be a hopeless case from your point of view already, Mr. Chairman. I doubt if he'll be able to do much with Mr. Schiff one way or the other.

But at any rate, ladies and gentlemen, from my perspective, the his amendment is the key to whether we ought to have a bill or not. I think we've—I think that we could see our way through—I hate to use that term that starts with a "P" because it's been mispronounced so much, and I've taken exception to everyone that has mispronounced it, so I'm not going to even try to do it. But let me point out to you that if we were to follow the recommendations of the Scott amendment, I think we would—I think we could all work this out very quickly in the very short time that's left between now and the time we go into recess. And for that reason, if not on the great substantive reasons that I would offer, I ask the generous consideration of everyone in the Committee, because this—this is troublesome, and I think this Scott amendment cures it.

And I'd like everyone to know that I've been joined in support of this by Ms. Rosa Parks, whose name has been raised more times than anybody else not a Member of the Committee. So if everybody would think carefully about the words and the meaning of the Scott amendment, quickly glance at the short letter of Rosa Parks her-

self, which I ask unanimous consent to put in the record at this time.

Chairman SENSENBRENNER. Without objection.

[The letter of Ms. Parks follows:]

Rosa & Raymond Parks Institute for Self Development
65 Cadillac Square Suite 2200 Detroit, MI 48226 (313) 965-0606 Fax (313) 894-3566

June 26, 2001

The Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
2142 Raybum House Office Building
Washington, DC 20515

Dear John:

As you know, I support legislative efforts to enhance the ability of religious and other faith-based groups to receive government funding in order to respond to community problems.

I believe that helping grassroots churches access this funding can be fully consistent with our civil rights laws and the First Amendment This is why I want to express my support for amendments you plan to offer when the House Judiciary Committee considers HR. 7 which would insure that government funds provided to religious organizations are not used to keep churches or other non-profits from working together for the betterment of us all. We do not want to change the 1964 Civil Rights Bill that we fought so hard to achieve.

Churches already know that they cannot use food or other services they may provide as an excuse to force people to accept their religious views, while using government funds. I am certainly in support of making sure that does not happen.

John, we have both spent our entire lives fighting against discrimination and in favor of the protections set forth in our Bill of Rights. The last thing we would want to do is permit H.R 7 to be used to narrow the civil rights laws or to intrude on the First Amendment. It is my hope that adoption of these amendments will help broaden the bipartisan support for the bill and allow the measure to be quickly passed into law so that churches can increase their role in fighting poverty and other urban ills.

God bless you and your good work,

Peace and Prosperity

Rosa Parks

Rosa Parks

Mr. CONYERS. And I will return my time.

Mr. HUTCHINSON. Mr. Chairman, Mr. Chairman, Mr. Chairman.

Chairman SENSENBRENNER. For what purpose the gentleman from Arkansas seek recognition?

Mr. HUTCHINSON. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. HUTCHINSON. I want to thank the gentleman from Michigan for introducing the letter of Rosa Parks. I think that is very helpful. I read that, and I appreciate that introduction. I also appreciate the tone of this discussion today. I think this is one of the most important and fundamental issues that we can debate in terms of the Constitution and some very important principles. I have always believed that the government should not be directing the churches as to what to do, and religious organizations. And I think to accomplish that goal, you have to make sure that there's not too much entanglement, there's not a potential for overreach by the government in terms of what the churches or religious organizations do.

I look at the amendment that's been offered by the gentleman from Virginia, and that would delete the protection of the religious organizations from the exemption that's already provided in the civil rights law. The—Mr. Chabot, the Chairman of the Constitution Committee, has referred to the fact that this exemption was included in the charitable choice provisions of the Welfare Reform Law. It was also, obviously, originally provided in the 1964 adoption of the civil rights laws. And so I see that this is simply preserving the status quo that has been recognized in our civil rights laws.

It's important to note, in my judgment, that the paragraph that the amendment designs to remove, provides that the religious organization exemption regarding employment practices shall not be affected by its participation in these programs. It only applies to employment practices, which is the exemption that was already existing under the civil rights laws.

Mr. WEINER. Will the gentleman yield?

Mr. HUTCHINSON. Let me go ahead and finish here if I might, then I'd be happy to yield.

And then there is a very important section that follows, that nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions in title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color and national origin. I think what the Chairman has done in working very hard with the administration and others, is to craft a good balance in preserving the autonomy of the religious organization, but also assuring the preservation of a status quo in regard to our civil rights protections, and part of that protection is to allow the religious exemption in regard to employment practices. Otherwise, you'll be altering the nature of the religious organization itself.

And I think that the Supreme Court's review of this is important. It's my understanding that they did review this similar type of exemption from the Welfare Reform Law and upheld that, and that it's a good balance that has been maintained. I think it is a very tough question that we're addressing, but I think that what the Chairman has done and others have done is to maintain that balance. And so I would—I believe it's appropriate that the amendment that's being offered be rejected. I'd be happy to yield.

Mr. WEINER. Mr. Hutchinson, yeah, I am deeply divided on this bill, and one of the four things I made note of that I was interested in seeing if we could have corrected is something that is—I notice in your response, and Mr. Chabot's also, there's no addressing of

the merits of being able to discriminate based on religion. Later on in the bill it talks about—it talks about the fact that these people are not going to be doing sectarian instruction. They aren't going to be involved in worship. They aren't going to be proselytizing. A great deal of energy has been put in by the sponsors of this to say that those things will not be happening.

Can you give me a real-life example about why it would be desirable for a church to be able to run a soup kitchen, hire someone—discriminate against someone in hiring based on their religion or their race? Why would you want that? Why not take that exemption—nothing in this amendment strikes it from the law. It only strikes it from who would be the beneficiaries of the assistance.

Mr. HUTCHINSON. Reclaiming my time.

Mr. WEINER. Certainly.

Mr. HUTCHINSON. It's very important to note that what you just cited about discrimination based upon race, that is not allowed. Clearly, this provision, which is on page 13, says that nothing in this section alters the duty of a religious organization to comply with the non-discrimination provisions in title VI, which prohibits discrimination on the basis of race.

Mr. WEINER. Well, if you'll forgive me then, well, why don't you address the part about discriminating against based on their religion? Why is it desirable to allow them to do that in this context, since it's a non-religious function they're performing?

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. FRANK. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. To strike the requisite number of words.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. I think the gentleman's amendment is a very important one. We are talking here, not about altering a religious organization's structure. We're not remotely suggesting that you will tell people who they can hire as members of the clergy or what conditions will be imposed there. What we are talking about is a religious organization, deciding voluntarily, in addition to its ongoing religious mission, to apply for Federal funds to provide a social service.

Now, the Chairman, in a very cogent and clear-cut way, said, that in doing that, the religious organization may not inculcate its religion. It can be motivated by its religion. Obviously, it will be. And that's to the benefit of our society, that there are people who are religiously motivated to help others. But the Chairman made it very clear, that insofar as their accepting the Federal funds—and this is what the gentleman from New York was alluding to—they will not be carrying out the religious functions. So then the question is why should they be able to discriminate, the gentleman from Arkansas says, and I think that's probably right, they won't be able to discriminate based on race, but he didn't answer the question of the gentleman from New York as to why they should be allowed to discriminate based on religion. So that's the fundamental question: why should you be allowed to take Federal money to provide a service which, as the Chairman has pointed out, will not be religious in its content, it will not be sectarian, it will not proselytize?

Why should you then be able to say, "We're not going to hire you if you are not of our religion?" That's the question that is unanswered.

There are further questions that we have. There is also this list, the non-discrimination statutes, that must be followed. They are the Federal statutes. Some States have decided to go beyond what the Federal Government has done in preventing discrimination, and I would ask, because it's not clear to me, is this preemptive of State employment discrimination laws other than those which might track the Federal one? I would yield to anyone who could give me the answer to that. By specifying the Federal anti-discrimination laws that apply, does this mean that State anti-discrimination laws which cover subjects not covered under the Federal law, would be preempted in effect, and the religious organizations would not have to apply—follow them? I would yield to anyone who would answer that.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. FRANK. Yes, Mr. Chairman.

Chairman SENSENBRENNER. I'll answer the second part of your question and I'll seek my own time for the first part. The second part, relative to Federal preemption. Federal law applies where Federal funds go, and State law does not apply. If the religious organization accepted State funds, and by implication, local government funds, then State laws would apply to them as well.

Mr. FRANK. So it would preempt State laws or allow them to——

Chairman SENSENBRENNER. It would allow them to ignore State laws when Federal—only Federal funds are used, but would not allow them to ignore State laws when State funds are used.

Mr. FRANK. What if there was a mix of Federal funds and private funds?

Chairman SENSENBRENNER. Then they could ignore State laws.

Mr. FRANK. That seems to me to be a serious flaw and hardly consistent with the sporadic States' rights professions that we hear from the other side. The principle ought not to be that you can get out of following a State's enactment because you have accepted some Federal funds, and the Chairman has very straightforwardly made it clear. If you get some Federal funds and you have some of your own funds, you might—not might—you are then allowed to ignore a State law that would otherwise be binding on you. I do not think we ought to be embodying the principle that the acceptance of Federal funds somehow then cancels State law.

There are a number of things. For instance, the States get highway money from the Federal Government. Does that principal apply? Should we then say that a State highway department can ignore its State's own laws with regard—or contractors getting the State highway money? That, really, frankly, surprises me in the very radical nature of a repudiation of what the State can do. In other words, you are in the State and you have set a policy that there will not be discrimination based on this or that or the other, other than what the Federal Government does. And an organization in your State, which decides to do a program, and it's got 70 percent of its money, and it gets 30 percent of the Federal money, that Federal money now becomes a license to ignore State anti-discrimination law. If there's a conflict between the laws, then the Federal would apply, but I had not previously thought it would be

the case that accepting Federal funds allowed you to violate State law. And I think that is a very grievous flaw which the amendment would deal with.

Let me say there's one other question that I had.

Chairman SENSENBRENNER. The gentleman's time has expired. The Chair moves to strike the last word, and recognizes himself for 5 minutes.

The gentleman from Massachusetts knows that there is no substantive change in anti-discrimination laws that is proposed by this bill. The title VII, with its exemption for religious hiring by religious institutions, is no stronger and no weaker under H.R. 7 as amended, then it is under the present law.

What the Scott amendment proposes to do is to go beyond the current law, to go beyond the 1996 Welfare Reform Act similar provisions, and to apply a test which makes it illegal to discriminate by religion in hiring.

Now, I will answer the questions from the other side on why this exemption is necessary. In many cases, the same people that are hired by the church will perform the social services activities. There is a prohibition against commingling funds. I would imagine that they would receive two paychecks based upon the time they spend in the social services sector versus the time they spend in the religious sector. Many of the very effective faith-based religious programs in the social services area will not be hiring new people, and that is why it is important that this exemption be maintained as it has been in the law since 1964, and for that reason I would hope that the amendment by the gentleman from Virginia would be rejected.

Mr. FRANK. Would the gentleman yield?

Chairman SENSENBRENNER. And I yield.

Mr. FRANK. I thank the Chairman. I would disagree that this doesn't expand the title VII exemption on this basis. The title VII exemption, as I understand it, is for religious activities. But as the Chairman himself said, money can be accepted under this program for non-religious activities. In fact, the Chairman's own language says that money——

Chairman SENSENBRENNER. Well, reclaiming my time, that issue was debated and resolved in 1996 with the Welfare Reform Act, which was signed by President Clinton. And in the last campaign, the Democratic candidate for President, Al Gore, said faith-based organizations can provide jobs and job training, counseling and mentoring, food and basic medical care; they can do so with public funds and without having to alter the religious character that is so often the key to their effectiveness.

Mr. FRANK. The gentleman yield?

Chairman SENSENBRENNER. Now, part of that religious character is being able to hire people of one's own religious denomination. What my amendment to this bill does is very clearly saying that with the programs that are funded through H.R. 7, you cannot proselytize or have any type of sectarian worship or instruction involved in it, but it seems to me that we don't want to put ourselves in a position of forcing the Catholic Church to hire a militant atheist for its social services program, having a Jewish faith-based organization having to hire an evangelical fundamentalist Protestant,

or having a mainline Protestant denomination having to hire someone who worships the sun.

Mr. FRANK. Will the gentleman yield?

Mr. SCOTT. Would the gentleman yield?

Chairman SENSENBRENNER. I'm happy to yield to the gentleman from Massachusetts.

Mr. FRANK. First, I want to reject the notion of infallibility, whether it is presidential or vice presidential. Gore and Clinton can say what they want. It doesn't establish the merits. I think the gentleman——

Chairman SENSENBRENNER. If the gentleman will yield, we already established in this Committee that President Clinton was not infallible a couple of years ago.

Mr. FRANK. I said that. You've just—— [Laughter.]

Mr. FRANK. You've just resurrected him. But the point I would make is this: the gentleman has been—he says, should a Jewish organization have to hire an evangelical Christian, for example? Yeah. I think if you're taking Federal money and you're doing a non-religious function, yes, it ought not to be the case that a Jewish organization can refuse to hire an evangelical Christian or vice versa.

Chairman SENSENBRENNER. Reclaiming my time, I believe that you and I have a philosophical disagreement on whether Federal law should require the Jewish organization to hire an evangelical Christian to perform its social services program, and I yield back the balance of my time.

Mr. NADLER. Would the gentleman yield?

Mr. SCOTT. Mr. Chairman?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. Just one comment. First of all——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you. It has been stated—the Chairman said a moment ago, it's been stated several times that this or that was debated and decided in the Welfare Act of 1996. My recollection is that the charitable choice provisions in the Welfare Act of 1996 were placed in that bill with no discussion whatsoever, no debate on the floor of the House as to anything to do with the charitable choice, and I don't remember this Committee debating it or having it in front of us either. Nor do I think that the Congress in 1996 was infallible, any more than I think that President Clinton or Vice President Gore were infallible.

And by the way, this Committee did not establish that the President was infallible in 1998. We made certain allegations. The Senate quite properly rejected those allegations.

But stepping that aside—— [Laughter.]

Mr. GREEN. But putting that aside, the fact is that to establish in law—and I think it was a real mistake to do so in 1996; it ought to be repealed, and it ought to be not extended now—to have the notion that a Protestant church or a Catholic church or a Jewish synagogue can discriminate in employment on the basis of religion for who's going to ladle out the soup at the soup kitchen, or who's

going to be the doctor if they're running a medical program. Who's going to be the priest, yes, that makes sense. If the Catholic church doesn't want to have women as priests, or the Orthodox Jews don't want to have women as rabbis, that's their privilege, and certainly that was the point of the title VII exemption of the Civil Rights Act. But when it comes to non-religious functions with Federal money, if the Salvation Army wants to proselytize before you can have your soup at the soup kitchen, that's their privilege as long as they're not using Federal money. And if they want to discriminate, that's not their privilege, because it's against the Civil Rights laws, and we shouldn't be carving out an exception for churches or anybody else as long as it uses Federal money and as long as it's not for religious function.

Mr. FRANK. The gentleman yield?

Mr. NADLER. I yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman. I am really astounded that apparently one of the merits of this is that we're going to validate the right of one religion to refuse to hire adherence of another religion for non-religious purposes. I mean I had not realized that the model that we were using in this was the inter-religious relationships of the Ukraine, because that seems to be what we're doing. [Laughter.]

Mr. FRANK. We are promoting religious discrimination, that the Jews shouldn't hire the Catholics, and the Catholics shouldn't hire the Protestants, I find that an appalling thing for us to be doing, and the fact that it may have been done in the welfare bill, which I voted against, and now I learned there was another reason for my voting against that foolish bill. And the notion that once having done something, Congress can never again change it, comes strangely to my ears from people who I thought were elected in 1994 precisely to undo a lot of what had been done before. But what you're doing is embodying the principle, apparently, that in totally non-religious activities—religious activities—activities in fact, whereas we've made clear, "You are prohibited from dealing with religion. In those purely secular activities, you can take Federal money, discriminate based on religion and ignore State laws to the contrary." That's a terrible idea.

Chairman SENSENBRENNER. The question is on the amendment——

Mr. GREEN. Mr. Chairman.

Chairman SENSENBRENNER. What purpose does the gentleman from Wisconsin, Mr. Green, seek recognition?

Mr. GREEN. Move to strike the requisite number of words.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

By way of clarification of the discussion we just had, I think in reference made to how we're saying that Catholics shouldn't hire Protestants and vice versa, I think we're saying the opposite. I think we're saying they're not forced to under this law. There's been a lot of talk about freedom of religion and free exercise of religion and the autonomy of religious organizations. That is what the key issue is here. I think this amendment would destroy autonomy of religious organizations.

Now, as the Chairman I think has put very eloquently, we are not changing law here. We are, instead, recognizing and reinforcing existing law, law that has been on the books for a number of years. We keep hearing how this wasn't really debated in 1996 as part of Welfare Reform. There's been a bit of time since 1996 and the present. It is interesting that it isn't brought up again until this point.

If this was a mistake, if this was something that the other side didn't intend to support, if they didn't know what they were voting on, they've had a few years to talk about this, instead of bringing it up at this point.

Mr. NADLER. Would the gentleman yield——

Mr. GREEN. No, not on my dime. Let me finish my comments here. I don't have much time.

Let me suggest here, at the very best, what this amendment seeks to do is to refight a fight that was already fought and settled some years ago. At the very least what it will do is threaten the autonomy and the religious freedom of religious organizations. And at the very worst, I think it's a broadside against these organizations. It seeks to punish any of these organizations which decide that they would like to toil in the fields and get involved in the war on poverty.

What we're saying here is if an organization, if a religious organization sees a problem in its neighborhoods, in its communities, if it wants to get involved, if it wishes to take up the fight, whether it be homelessness, whether it be poverty relief, whether it be hunger relief, if it chooses to do that, if it wants to get involved in the fight, it should surrender an exemption that it enjoys now. I don't think we want to do that. I think we want to encourage these organizations to get involved in the fight, not send them away.

Mr. WEINER. Would the gentleman yield?

Mr. GREEN. This amendment—this amendment would send them away. It would tell them that they should not, they dare not get involved in the fight against poverty. I think that's a terrible message. I think that's a message that is the opposite of what we should be trying to do here today, of what this Congress tried to do a few years ago, of what we should be doing in the future to finish the war on poverty.

Mr. WEINER. Will the gentleman yield on that point?

Mr. WATT. Will the gentleman yield?

Mr. GREEN. I will yield to Mr. Weiner.

Mr. WEINER. I ask this question as a supporter of title VII, and I think that so far the responses to this amendment have presupposed that someone who supports this amendment, supports eliminating title VII. The question is simply why is it necessary to fight to protect a right to discriminate based on religion when it's a nonreligious position?

I think that much of this debate misses people like me, who fundamentally believe that title VII is the right thing to do, who want to——

Mr. GREEN. I'd be happy to answer the question.

Mr. WEINER.—who want to support this initiative, but no one has yet told me why it's desirable.

Mr. GREEN. Reclaiming my time.

Mr. WEINER. Certainly.

Mr. GREEN. Reclaiming my time, the point is, instead, why should such an organization have to give something up just because it wants to get involved in the war on poverty?

Mr. WEINER. Would the gentleman permit me——

Mr. GREEN. What you're saying, what this amendment says is, if they dare to get involved, then they should surrender. Then they should surrender the ability to be religiously autonomous, to take control of their own organization. That's what this amendment is saying. So I don't view this as a benign amendment. I view this as an amendment that is a broadside on religious autonomy of these organizations.

I yield back the balance of my time.

Mr. WATT. Mr. Chairman?

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I, with all respect to the gentleman from Wisconsin, I think he is confusing the free exercise of religion with the free exercise of bigotry. I have absolutely no problem with the free exercise of religion, but when somebody asks me why should we not allow churches or religions to discriminate, that is the free exercise of bigotry. That is not the free exercise of religion.

Second, with all due respect to him, again, he is right. We did think we had fought this fight before. We thought we had fought it in 1964 and '65, not in 1996 or, you know. Some of us thought that we had outlawed all of this bigotry that we're talking about, and now we are here raising it again.

So I just think he's missed the point. I'll yield the balance of my time to Mr. Scott.

Mr. SCOTT. Thank you, and I thank the gentleman for yielding.

I think we've been subjected to a bizarre suggestion that, unless we pass a new bill, we cannot preserve present law. You preserve present law by not passing a bill.

We have a question from the gentleman from New York, why should you be able to discriminate? We haven't gotten an answer to that because the answer to that would be the same answer you'd give to someone running any other secular program. Under the manager's amendment, the program you're running cannot be advancing religion. You can't have worship service, you can't proselytize during the program.

And if you have a secular program offered by a secular organization that just doesn't want to hire people of certain religions, the question is why should they have to?

Mr. HUTCHINSON. Would the gentleman yield?

Mr. SCOTT. Let me finish this. The gentleman from North Carolina said that we argued that, and we thought we'd settled it in 1965, that whether you liked to hire people of those religions or not, as a matter of policy, you have to, particularly when you're receiving Federal funds.

I'll yield the rest of my time to the gentleman from North Carolina——

Mr. HUTCHINSON. Would the gentleman from North Carolina yield?

Mr. WATT. I'm happy to yield to the gentleman.

Mr. HUTCHINSON. I thank the gentleman.

And this is a very fair question. It gets to the heart of the issue, so I think it's fair to put us on the spot and ask us that, although I think the Chairman articulated a response. It might not be acceptable, but it is the answer. I would give another answer, that if you have a religious organization that——

Mr. WATT. Let me just respond to the Chairman quickly, though——

Mr. HUTCHINSON. It's your time.

Mr. WATT. It certainly is——

Mr. HUTCHINSON. I would like to answer.

Mr. WATT.—not as a matter of policy do I accept his explanation when it comes to the service of soup. I don't have any—nobody can justify to me why a church, a private group, anybody ought to be able to discriminate in the service of soup. We ought to be trying to find the most qualified person to serve that soup.

Mr. FRANK. Even chicken soup?

Mr. HUTCHINSON. May I respond?

Mr. WATT. We ought not be trying to find a Baptist or, you know——

Mr. HUTCHINSON. I have an answer, and I would like to provide an answer.

Mr. WATT. All right. I'll yield back to the gentleman.

Mr. HUTCHINSON. The question was originally asked to me, and I would look at this way, if you have a religious organization, even if they're engaging in the delivery of a secular service, there is certain expectation when an individual goes to that church property to receive a service; that is, what they receive and who they receive it from is consistent with the religion.

For example, if you have a Jewish soup kitchen, and they're required to hire a white supremacist, I think that when people go there to get the soup, they would be a little bit surprised to see tatoos——

Mr. WATT. White supremacy is not a protected class. It's a good cliche, but——

Mr. HUTCHINSON. I'm sorry, what?

Mr. WATT. It's not a protected class under title VII.

Mr. FRANK. Would the gentleman yield?

Mr. HUTCHINSON. I think the issue is discrimination on the basis of religion, and there is such a religion, and there is such a circumstance, and I think——

Mr. WATT. There's no—I'm not aware of any religion called white supremacy.

Mr. FRANK. Would the gentleman yield?

Mr. WATT. I'll yield to the gentleman from Massachusetts.

Mr. FRANK. The answer was backwards. We're not denying that they have a right to discriminate based on outrageous political views, but you're talking about religion. And what's interesting, this is reversed. You're now using religion as if it could be a proxy for bigotry, and if you're saying, "Well, there were these white supremacy religions," I suppose I would argue they shouldn't be al-

lowed to come into this program, but this bill goes much further than what you're arguing for.

This says, and the Chairman said, "Well, you know, the Protestant shouldn't have to hire the Jews." I don't know. Maybe what are we saying, the Jews don't have to hire a Catholic to serve chicken soup?

Mr. GRAHAM. Mr. Chairman?

Chairman SENSENBRENNER. The time of the gentleman from North Carolina has expired.

For what purpose does the gentleman from South Carolina, Mr. Graham, seek recognition?

Mr. GRAHAM. I'd like to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GRAHAM. These are emotional, a lot of emotional things being said here that make us all wince a little bit when you talk about discrimination and religion, and is that really what we're trying to do here?

Someone suggested that the local government has been doing this for a long time. I think it was Ms. Lofgren said that local government has been engaging in using faith-based associations to help with local problems. I think that's probably true. I think that's probably a good idea. I think this is a good idea.

What motivates people to want to serve soup or take care of people with AIDS or folks that are just hurting in general? Some people are motivated to help their fellow man for a lot of reasons, and there's a group of those people who are motivated by belief in God, that their religious beliefs compel them to associate together to do good, to go out and help people who are hurting.

This bill says, "Come on in and help us, but you're going to check your proseltyzing at the door. If you want to serve soup, if you want to help people who are downtrodden, we're not going to be biased against you because you want to associate together for religious reasons because that's your motivation to help. If you've got something to bring to the table and you can do it well, you're welcome. Come on in. No more bias against you."

It's funny that one of the first things that Congress did when we organized, with many of the Founding Fathers still alive, is we bought 16,000 Bibles with public funds. I'm not advocating doing that, but I am advocating that we kind of mimic what local government has done and use some good old common sense here. Nobody supporting this bill wants to take Federal money and prop up a religion. What I want to do is allow people who are motivated because of their religious beliefs to help somebody to have a shot at doing it, if they can do it well, and take the bias that exists today against those people and throw it in the trash bin where it belongs.

We've got strict guidelines that regulate your motivation, but if you're pure at heart and you want to help people who are downtrodden, whatever problems they have, and you're willing to check your religion at the door in terms of practicing it, but taking your heart and the motivation for wanting to help, you are welcome. It is no more or no less, and the Welfare Reform Bill has the exact same language. We're allowing people to employ folks who have been on Welfare for four/five generations, who are banded together, nuns—I guess I can't be a nun for a lot of reasons, but I don't want

to keep nuns from helping people who are motivated because of their religion to bring some caring, some comfort to people who are hurting——

Mr. WEINER. Would the gentleman yield on that point?

Mr. GRAHAM.—and not convert them to Catholicism.

Mr. WEINER. Would the gentleman yield on that point?

Mr. GRAHAM. Yes, I'll be glad to.

Mr. WEINER. You know, I think that the problem is, you know, you're talking to someone who agrees with everything you said, and someone who's predisposed——

Mr. GRAHAM. Let's vote for the bill then.

Mr. WEINER.—predisposed to be supportive of the bill, who now is asking a substantive question about an amendment, and I've yet to really get, and Mr. Hutchinson came the closest to doing it, but I hear the rhetoric in support of the bill, and I appreciate it. But for someone who's wrestling with the efficacy of the bill, when I hear such a fever pitch about defending a right that no one can really justify practicing, I agree with title VII. Sold. I'm with you 100 percent. Why would you want to, if it's purely a secular activity, if none of that is written into the law, you can't do anything sectarian at all, why is there such a fierce defense of the right to discriminate based on religion?

You know, it makes someone like me, who is sitting on the fence wavering back and forth, who's getting tugged by people on both sides, to say, "You know what, this makes me very nervous. What is it that I'm missing about this that makes it so—"

Mr. GRAHAM. I will try to answer that question.

Mr. WEINER. Thank you, sir.

Mr. GRAHAM. In the Welfare Reform Bill, we have the exact same language that we're proposing here. Here's what we're trying to say: that if you're motivated by your religious beliefs and that your association is formed around a denomination or religious belief, a set of principles, we, the Federal Government, are not asking you to change who you are to help your fellow man, we're requiring you to leave your religious practices at the door, but you, and others, are advocating to me that you can help only under our terms. This is not about fostering people who have a religious prejudice, this is about allowing people motivated, some because of their belief in God and associations——

Mr. WEINER. Would the gentleman yield?

Mr. GRAHAM. Please let me finish my thought.

You're wanting us to make these groups disband. We're wanting them to come into the—come into to——

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. GRAHAM. Come in and help, that's all.

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York, Mr. Weiner, rise?

Mr. WEINER. Wish to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEINER. I have to say, you know, I came to this room, as some in the audience are aware, you know, seriously considering, and I still am, supporting this bill because I think that, on one

hand, there's a great deal of great work being done, and I don't understand where, in the amendment, that we're currently considering, it says you have to abandon your religion. I don't know where in this, in this amendment it says you have to disband your organization. I don't know where it says that someone with a good heart will be driven out of the program.

I think it's a fairly simple proposition, and I've asked it several different times, whenever anyone has yielded, I am asking what is a substantive question about why it is that it's necessary to have the protections of title VII included, when title VII, let's face the facts, title VII was written under the precept that we don't want to require people of one religion who are engaging in their religion, who are participating in religious activities, from being forced to embraced, through hiring, someone who disagrees with those religious precepts. So we carved out this exemption which, for some in this body, is controversial, I support it. I believe it's the right thing to do.

But now we have a nonreligious element to that organization. It's nonreligious not because I say it is, but because, Chairman Sensenbrenner, in his very sensible alternative that I think went a long way to assuaging people like me about the true intents of this bill, wrote it in, in so many words. In a colloquy between Mr. Frank and Mr. Sensenbrenner, they made it even clearer that you can't even say you've got to find—you've got to find a spirit, you've got to find God before you get off alcohol. You can't even say that, according to the colloquy.

And now here it is an amendment to simply say, look, if you're going to do these purely secular things, these nonreligious things that just happen to be under the umbrella of a religious organization, people who want to help, they want to do the right thing, simply don't, for the purposes of hiring for those jobs, don't discriminate based on religion.

And rather than have a debate about why it's necessary to have that, there is a—there is the straw man of we're trying to tear down the program. Well, I don't know if the sponsor is or isn't, but I really do believe that this is one of the two or three things that we can fix, make this a bill that will be widely acceptable in this body, and I just don't see—I just don't see the wisdom on a political level by——

Mr. ISSA. Would the gentleman yield?

Mr. WEINER. Certainly.

Mr. ISSA. Perhaps I can give you an example that might clarify why I think that, as the law is about to be written, it has merit.

In our own congressional offices, we have a charge to represent, fairly and equally, the people who voted for us and the people who will never vote for us, some 600,000 per district, and we take that charge seriously, and we execute it, I think, diligently to a Member. But in our own organizations, on both sides of the aisle, we staff with people who believe as we believe, and we would never consider putting together a paid staff of people who didn't vote for us, voted for our opponent and still don't agree with us.

Mr. WEINER. Okay. If you'll permit me to reclaim the time, that's not what title VII says. You're not covered under title VII. You've got to be a religious organization exercising a religious, a predominantly religious function in order to qualify for title VII. We're now

taking a nonreligious function, by the testimony of everyone, by the words of the bill, and we're extending—we're extending Federal dollars for this non-government program operating under religious umbrella. I'm with you, tentatively, for now, for the moment.

And all we're saying is, for those purposes, you can't discriminate based on religion. I'm not talking about based on your views on the world. You can probably discriminate based on that now. I'm not saying based on whether you think it's a good or bad thing to have a drug treatment program. You can discriminate on that based on now. Why do you want to discriminate based on religion? Answer that question.

Mr. FRANK. Would the gentleman yield?

Mr. WEINER. Certainly, sir, even though I'm not sure you're the best person to answer.

Mr. FRANK. No, I said—but you've the hit—— [Laughter.]

Mr. FRANK. You've hit the point that I think is so disturbing about this. The assumption against this amendment is that there is somehow something unpleasant or debilitating about asking religious people to associate with someone of another religion. My friend from South Carolina said, "Well, they're motivated by their common religion, and you don't want to take that away." What is it about associating with someone of good faith of a different religion that so drains you of your motive to be helpful? It's that very notion that somehow forcing you—forcing a Jew to associate with a Protestant or a Protestant with a Muslim or a Muslim with a Catholic that somehow this is disorienting.

Mr. WEINER. Will the gentleman yield?

Mr. FRANK. You are promoting a sense of religious exclusivity and hostility. Yeah, I do not want Jews and Protestants to treat each other as I treat people who run against me in an election. [Laughter.]

Chairman SENSENBRENNER. The time of the gentleman from New York has expired.

Ms. WATERS. Mr. Chairman?

Mr. BACHUS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Alabama, Mr. Bachus, seek recognition?

Mr. BACHUS. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BACHUS. Earlier in this debate, the Nation of Islam was brought up by the gentleman from Massachusetts and the gentleman from North Carolina in that agreements they had to—with certain public housing communities. And it was said earlier in this hearing that the problem with the Nation of Islam that we objected to was that they were hiring people based on their religion.

Now, in fact, that wasn't, if it was raised, it was raised only incidentally, because the Baltimore Sun and several other—I conducted those hearings, as Chairman of the Oversight Committee, some of them that we participated in. I wanted to tell you my recollection. I've gone back and read during the break what some of the news coverage of the day was. What they were accused of doing was roughing up residents, of coercing the residents, of even the word "racketeering" was used, of people that had businesses, intimidating people that had businesses in the community——

Mr. WEINER. Would the gentleman yield——

Mr. BACHUS. And of violating people's civil rights by holding and—let me get this right, I don't want to—by strong-arming and holding people suspected of breaking laws——

Mr. WEINER. Would the gentleman yield on the point just——

Mr. BACHUS.—and interrogating them.

Mr. WEINER. Would the gentleman yield?

Ms. WATERS. Would the gentleman yield?

Mr. WEINER. I might be able to shed some light on that.

Mr. BACHUS. I will yield in——

Mr. WEINER. I was the——

Mr. BACHUS.—of disseminating anti-Semitic literature, which actually calls for—called for acts of violence and also anti——

Mr. WEINER. If the gentleman would yield, I might be able to shed some—I was, at the time, in the City Council, and I was the Subcommittee Chairman of Public Housing. The fact is that largely what got people's goat is the fact that it was the Nation of Islam and their core beliefs. That's what made it—now, there were other issues that were raised, but at the crux of the issue was because they were the Nation of Islam, a virulently anti-Semitic organization, and a lot of people were offended by that.

Ms. WATERS. Would the gentleman yield?

Mr. WEINER. I will gladly yield back.

Mr. BACHUS. But what I'm saying is what was—and the hearings were about things they were saying—they were actually advocating violence, and——

Ms. WATERS. Will the gentleman just for a moment?

Mr. BACHUS. I will yield.

Ms. WATERS. And since you bring it up, I just kind of want to set the record straight. For those of us who have the very, very serious problems in public housing of drugs and crime, et cetera, the Muslims were—were absolutely effective in helping to deal with those problems. Yes, there are other problems, and I was more interested in what people had to say about them proselytizing, but I want to tell you, they did not—there's never been any history of roughing up people, of creating harm. That's not what they were doing. They were taking very young men who didn't have a sense of themselves and helping them to stay out of jail and to go to school and keeping those projects safe for all of the residents.

Mr. BACHUS. And there was a—and there was a serious debate as to whether they were breaking the law or not, and——

Mr. FRANK. Mr. Chairman, a parliamentary inquiry.

Mr. BACHUS. But there were people with other organizations which said they were——

Chairman SENSENBRENNER. The time belongs to the gentleman from Alabama.

Mr. BACHUS. But what I'm saying, the discussion did not focus on the fact of them hiring——

Mr. FRANK. Will the gentleman yield for a parliamentary inquiry?

Mr. BACHUS. I never remember that being mentioned.

Mr. FRANK. Will the gentleman yield for a parliamentary inquiry?

Mr. BACHUS. I will yield, but I——

Mr. FRANK. I thank the gentleman. Does the fact that none of this discussion relates to the amendment under consideration bother anybody but me?

Mr. BACHUS. Well, it does in the——

Chairman SENSENBRENNER. The Chair does not make subjective evaluations of Members' debates.

Mr. BACHUS. It was brought up——

Chairman SENSENBRENNER. You wouldn't want me to do that, would you?

Mr. FRANK. On relevance, I definitely would.

Mr. BACHUS. It was brought up——

Mr. FRANK. I would just like to make a point of order this is not germane to the amendment under debate.

Mr. BACHUS. I'll take back my time. It was brought up that the objection to the Nation of Islam and their contracts with the public housing——

Mr. FRANK. If the gentleman will yield, but not in the context of this amendment.

Mr. BACHUS.—because they were hiring people of their own religion. That's not what the newspaper accounts say, and that's not why my recollection was.

Chairman SENSENBRENNER. The gentleman yields back.

The question is on——

Ms. WATERS. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. The question is on the amendment——

Ms. WATERS. Mr. Chairman? Mr. Chairman? [Laughter.]

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters, for what purpose do you seek recognition?

Ms. WATERS. Strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. So much has been said here today. I think it's going to take us a while to be able to deal with the misinformation that is being disseminated here.

First of all, I keep hearing that there are—there is some bias against religious organizations seeking Federal funds. I do not believe that to be true. As a matter of fact, I think if we take a look at the Catholic charities, many of our Jewish organizations, we will find that they do very, very well in responding to requests for proposal, and they have child care centers, they have senior citizens operations, they have all kinds of operations. In my district, we have churches, even small churches who have done quite well in competing for Government money.

So I wish, unless there is some documentation or information that somebody can bring forward to show that there's some bias that religious organizations are not able to compete, I wish we would just get that off the table because that simply is not true.

Secondly, it was said earlier that many of the cults or more bizarre religious organizations that some people have some concerns about—Mr. Gekas, for one, who was trying to figure out would they be able to get Government funding. I think we tried to make it clear that all, all religious organizations, be it cult or not, will be eligible to compete for funding under this legislation.

Someone said, "Well, you don't have to worry about that because if they were interested, they would be doing it today, and many of those cults that you're worried about are not doing it." But I have to bring to your attention, they would not receive the kind of exemptions that we are promoting in this legislation if they competed today. If they compete, if this bill is passed, they will find it much easier, and they will want to be more involved because they will not be prohibited from discriminating in any shape, form or fashion that they would like to if they describe that as part of their religion.

What really worries me, I'm not so worried so much about even whether or not people are going to discriminate based on race. I mean, as much as we work at it, that happens today. But what I'm worried about is the expansion of the discriminations. If your religion says you do not accept women who are divorcees, you do not accept a person who's had a child out of wedlock, that it's against your religion to allow a gay person to be a part of your operation, we're just expanding the opportunities for discrimination. Where does it stop?

There are all kinds of religions. Someone just brought me this religion that is organized around Satanism and talking about what they believe in, and they would be free to exercise their beliefs under this bill. So I am supporting this amendment, and I'm hopeful that we can start to speak in ways that we can document, as we move forward, so that we can roll out the truth about what we're doing. The fact of the matter is, if we do not exclude from this legislation the ability to discriminate, we will be opening up Pandora's box to expand discrimination beyond what we know and understand about discrimination today.

So I would ask my colleagues to please support the amendment.

Mr. SCARBOROUGH. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Florida, Mr. Scarborough, seek recognition?

Mr. SCARBOROUGH. To strike the last word. There have been——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCARBOROUGH. There have been a lot of sort of hysterics going on here, the free exercise of bigotry and other things, people talking about that, a lot of show-boating, but I do want to talk to Mr. Weiner.

And, Mr. Weiner, you've asked the question repeatedly, and I'm not speaking for the Chairman, I'm not speaking for anybody, but let me take a crack at this thing, and maybe we can have a little back and forth here to see if you—because I understand what the gentleman from California was starting to get at, where we've heard it said over and over again that Members' offices, the culture of Members' offices reflect the Member himself or herself. Likewise, we've, you know, we've heard about the culture of IBM, the culture of Microsoft. There, I mean, there is a culture to each organization which either makes that organization effective or makes it fail.

Now, I think it's safe to say, and there may be some people that disagree with me on this Committee, but the majority of Americans do believe that, by their inherent nature, faith-based organizations can effectively deliver a service to their communities in need in a way that the Department of HHS cannot. If that were not the case,

then obviously Al Gore, and George W. Bush, and just about every other politician wouldn't be talking about how great faith-based organizations are in delivering services to the most needy.

I do believe, although it has not been articulated well, and I'm not trying to persuade you, I'm just merely saying that there are some of us that believe this that may not be able to articulate it very well, that there is a culture in, let's say, rural Protestant Church that is separate from a culture in, let's say, an urban synagogue or in a Catholic Church that is separate from another.

And I see Ms. Waters. She's about to explode, and I'm sure I'm going to be a bigot, and this, that, and the other, but I'm just saying there is——

Chairman SENSENBRENNER. The Chair is prepared to declare a 30-second recess.

Mr. SCARBOROUGH. Why is that?

Chairman SENSENBRENNER. So that nobody explodes. We don't want that to happen.

Mr. SCARBOROUGH. I love Ms. Waters—— [Laughter.]

Mr. SCARBOROUGH. I love Ms. Waters, and Ms. Waters loves me. She hugs me on the floor every chance she gets. That's why she got up. She couldn't resist herself. [Laughter.]

Mr. SCARBOROUGH. But there is a culture, seriously, there is an inherent culture in these organizations, like, for instance, and I'll talk about my church. I'm Southern Baptist. I disagree with a lot of things they believe about people who are divorced not being able to be deacons or, or women not being able to preach, all right? But I do know that there are Southern—and if that offends me, I can, I can take a hike. But there are, even though I disagree with some of the things that people in the Southern Baptist Church believe in, they can effectively deliver services because of the culture of whether it's First Baptist Church of Pensacola or——

Mr. WEINER. Will the gentleman yield on that point?

Mr. SCARBOROUGH. Yes, sir, I will.

Mr. WEINER. Would the gentleman yield on that? And I'm convinced the Southern Baptist Church can deliver those under this bill.

Perhaps you can enlighten me, and using the example of the Southern Baptist Church or whatever you referred to, someone coming in for a job interview to work in a job training program to teach typing to someone who had been laid off——

Mr. SCARBOROUGH. Right.

Mr. WEINER. Why is it, give me an example, just so I can fully get my mind around it, why is it necessary that they be Baptist and why is it not only necessary, why is it so important to this program that it means offending 35 or 40 Members around here who might be willing to make this a bill that 300 people can vote for?

Mr. SCARBOROUGH. Yeah, well, I don't think it's—reclaiming my time—I don't think it's necessary. And, obviously, I think most of us on this panel, I would hope, would agree that it would be extraordinarily bigoted for any, any organization, be it a faith-based or secular organization, to prevent people from being hired. But I think the biggest concern is compelling, for instance, a synagogue in a certain area to hire a fundamentalist, right wing, religious, whatever, that would, after all——

Mr. WEINER. Typing teacher?

Mr. SCARBOROUGH. Hold on a second. Hold on a second.

Mr. WEINER. What does a right-wing typing teacher do, only type with the right hand?

Mr. SCARBOROUGH. We're talking about, and again—— [Laughter.]

Mr. SCARBOROUGH. Again, if you want to get laughs, that's fine, but, for instance, delivering soup, let's say, for instance, in an area that's heavily served, let's say a synagogue in an urban part of the area, listen, they want to get their soup. They don't want to hear somebody with views that's completely different from their own views. And I understand, I understand what the bill says that they're not allowed to do that. But, again, if you compel these organizations, again, whose culture, many Americans believe, allow faith-based organizations to deliver services more effectively than, say, the Department of HHS——

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. SCARBOROUGH.—there's a risk of changing the very culture of those organizations.

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. SCARBOROUGH. Thank you.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California, Ms. Lofgren, seek recognition?

Ms. LOFGREN. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I—I was fascinated by the last exchange because, apparently, even though there is a prohibition on proselytizing, the reality would be that there would be proselytizing, and therefore we need to make sure that religious institutions can discriminate against people who are not of their religion so that they can violate this statute, which I think is a very odd proposition.

But I would just, going back to my experience in local government, I would just like to say I think this bill is a, is a solution in search of a problem. I mean, we used all kinds of contracts with religious-based organizations. Catholic Charities ran the Immigration Counseling Center. The only instance in my 14 years on the Board of Supervisors that ever came to my attention that someone, a religious group felt that they might not be—having treated fairly, was an evangelical church who wondered were they being treated fairly, and I met with them, and we made sure that they were brought into the opportunity to provide food through the food service, the largest faith-based group in Santa Clara County, PAC, which has, I think now, 17 parishes and churches. They provide homework centers, the biggest homework centers for all the kids after school. They wouldn't even consider discriminating against a tutor based on their religion, and Catholic Charities wouldn't even consider discriminating against a psychologist in hiring for one of the programs, the mental health programs they run. It would be inconceivable.

So I really strongly believe that Mr. Scott's amendment is necessary and that this bill is probably not, but I would like to yield to Mr. Scott, at this point.

Mr. SCOTT. Thank you, and I thank the gentlelady for yielding.

I just want to make a couple of points. First of all, a lot has been said about Welfare Reform. What has not been said is that when President Clinton signed the bill, he indicated that he thought that portion of the Welfare Reform Bill was unconstitutional, rules were not implemented to promulgate that portion of the legislation.

It was also suggested that this is the same old language that we have in Welfare Reform—not true. The provision in Welfare Reform has the ability to discriminate, but it specifically said that nothing in this section shall be construed to preempt any provision of a State Constitution or State statute that prohibits or restricts the expenditure of State funds in and by religious organizations. So, if you have commingled funds, and it's illegal to discriminate under State law, you can't do that. But under this, under the manager's amendment, you waive all State laws.

The gentleman from New York really hasn't been given a good answer to his question. If you have a—if you have a person of faith running a secular program, the present law in America is that they are subject to civil rights laws, whether they like it or not.

Mr. GEKAS. Mr. Chairman?

Mr. SCOTT. That has been the policy for years. If they receive Federal money, if they're running a large organization and hire people, whether they like it not, we've set the policy that they cannot discriminate against people based on their religion.

What we're doing in this bill is saying, well, maybe that was a bad idea. I think that was a good idea, and we ought not change it.

I yield back the balance of her time.

Mr. GEKAS. Mr. Chairman?

Chairman SENSENBRENNER. Let me try to put the question. The question is on the Scott amendment to the Chairman's amendment. Those in—well, I recognize somebody on the Republican side next.

For what purpose does the gentleman from Pennsylvania, Mr. Gekas, seek recognition?

Mr. GEKAS. For the excellent reason of yielding to the gentleman from South Carolina.

Chairman SENSENBRENNER. Well, you can strike the last word. You're recognized for 5 minutes.

Mr. GEKAS. And I yield to the gentleman from South Carolina.

Mr. GRAHAM. I would like to—Mr. Scott maybe can help me with this. I think the law is pretty clear, as I understand it, and maybe my understanding is wrong.

Title VII that exists today in Federal law has an exemption, as I understand it, for religious organizations, that they're not required under title VII to change their hiring practices, but they are required not to discriminate on the basis of race, color, national origin, sex, age, and disability, and that there are several cases that maintain that you do not lose that ability to hire, based on your religious principles, if you receive Federal funds.

There are several schools that—St. Francis College in Brooklyn, Mary Grove College in Detroit, the Baptist Theological Seminary in Richmond—maintain the religious character of their schools through hiring practices. They offer child care services, Pell grants and other Federal aid is provided to students attending those schools, and there's a line of cases that say that if you're a religious

organization, you can, in fact, receive Federal support and funding and not change your religious hiring practices, but you can't discriminate otherwise.

I would argue that that logic applies here, that we're—that we're allowing people to participate in providing services in a secular way. We're requiring them to leave their religious practices at the door, but we're not going to require them to change their hiring practices because to do so would undermine the character of the organization, and there is many cases that seem to uphold that concept.

Mr. FRANK. Would the gentleman from Pennsylvania yield?

Mr. GEKAS. Yes, I will yield, but only to the gentleman of Illinois first, and then receive the rest of the time that I might yield to the gentleman from Massachusetts.

Mr. FRANK. Hope will spring eternal. [Laughter.]

Mr. HYDE. I have been listening to this with great attention all afternoon, and I—at the risk of oversimplifying, I would like to cut to the chase. What we're talking about in the, in the whole, is an army of people out there motivated by spiritual impulses who want to do good, who want to help solve poverty, disease, violence in the community, homelessness, hunger, and some of them are clergy, some of them are not. They are religiously motivated, and we've spent all afternoon finding ways to keep them out. We've got enough help. We don't need—there's too much God out there. We suffer from an excess of God, for some crazy reason.

Discrimination. If the First Baptist Church wants to do something as the First Baptist Church, take care of some homeless people, the fact that they want to retain their identity and not become another local United Fund operation, there's nothing wrong with that. There's nothing wrong with the Black Caucus saying, "You want to join us, you've got to be black."

Ms. WATERS. We don't say that.

Mr. HYDE. Oh, well, Pete Stark didn't get in, did he? Am I welcome?

Ms. WATERS. Yes.

Mr. HYDE. What are the dues?

Ms. WATERS. Huh?

Mr. HYDE. What are the dues? [Laughter.]

Ms. WATERS. Mr. Chairman——

Chairman SENSENBRENNER. Yes?

Ms. WATERS. I must correct the record. You do not have to be black to be a member of the Black Caucus.

Mr. HYDE. You mean an associate member.

Ms. WATERS. No, I do not mean an associate member.

Chairman SENSENBRENNER. The time belongs to the gentleman from Pennsylvania.

Mr. HYDE. All right. I'm sorry. Let me finish.

There is discrimination and there is invidious discrimination. I don't think it's discriminating for Baptists to want to hire Baptists to do something as the Baptist Church is going to do. I think that's fine. That's not invidious discrimination. So, as far as I'm concerned, we ought to figure out ways to facilitate the exploitation, the benign exploitation of these wonderful people who want to help us with our very human problems, instead of finding ways to say

no because, for fear, some God might sneak in under the, under the door.

Thank you.

Mr. FRANK. Will the gentleman yield?

Chairman SENSENBRENNER. The time of the gentleman is about to expire in 5 seconds——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The question is on the amendment of the gentleman from Virginia, Mr. Scott, to the Chairman's amendment.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. Those in favor, will say aye.

Mr. WATT. Mr. Chairman, you are passing over a Member down here.

Chairman SENSENBRENNER. For what purpose does the gentleman from California seek recognition?

Mr. SCHIFF. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. The very narrow question that's been presented by this amendment is simply whether religious institutions should be allowed to discriminate on religious grounds in providing secular services with Federal dollars.

Now, the point has been made that this is already the law, but the fact of the matter is this is not already the law. There is no provision of the law that allows direct Federal funding of religious institutions for secular services with a provision allowing religious discrimination and the provision of those services or in hiring decisions. So this is new law.

Now, the point is also made that why should we preclude religious institutions from entering the war on poverty.

Mr. GRAHAM. Would the gentleman yield?

Mr. SCHIFF. When I'm finished, I will be glad to yield. Why should we preclude religious institutions from entering the war on poverty? Well, of course, we're not. Religious institutions are involved in the war on poverty. They've been vital in the war on poverty for all of the reasons that the gentleman from Illinois has also mentioned, and that's a good thing. The question is whether they should be able to receive Federal funds and discriminate on religious grounds. That's a very different question than whether they should be involved in the war on poverty.

I would ask can a secular organization discriminate on religious grounds? Would we allow a secular organization that's providing soup or food or other services to discriminate on religious grounds? No, we would not. Aren't we then preferring religion by allowing religious organizations to discriminate when providing secular services, where we do not allow secular organizations to do the same thing?

Now, some of the Members have made the I find astounding point, as the gentleman from California did, that, well, in our congressional offices we can choose people of like political mind. But, plainly, we cannot in our political offices decide that we will only hire people of a certain religion. Indeed, it would be inappropriate for us to ask, in our congressional offices, what the religious views are of potential job applicants. That would be completely inappro-

priate, and I think it no more appropriate, when we're talking about the provision of purely secular services for religious organizations, to ask the same question.

The only, I believe, real objection to this amendment was made by the Chairman, and it's a very real concern and a practical one, and that is that many of these religious organizations are small, they have small staffs, and it is the same people who would be desired to provide the religious service and, in a separate context, the secular service, and that's a real problem.

But, ultimately, the question then becomes what is more important, that we allow, out of desire to accommodate those smaller institutions, that we allow the commingling of functions of that individual and the potential of commingling of dollars in support of that individual, that we allow the discrimination in the hiring of that individual as an accommodation, whether that ought to outweigh the issue of being able to discriminate on religious grounds and the use of Federal dollars.

And I must say that when you weigh the two, that very real and understandable practical concern, against the very strong desire not to discriminate on religious grounds, the practical concern must give way.

Mr. GRAHAM. Would the gentleman yield?

Mr. SCHIFF. I will in just one moment.

I think that the reasons this bill has been offered, most eloquently expressed by the gentleman from Illinois, are very well-founded and understandable, and the opposition has nothing to do with a desire to take God out of public life or charitable institutions. I think, rather, the concern is out of a desire to strengthen and keep strong those institutions, and at the same time recognize that, in circumstances where we're talking about purely secular services, there is no need, and every desire not to discriminate.

I would be happy to yield the balance of my time.

Mr. GRAHAM. Just to give you my interpretation of the law, I disagree with the gentleman's interpretation of current law. Section 702(a) of the Civil Rights Act of 1964 exempts nonprofit private religious organizations engaged in both religious and secular nonprofit activities from title VII's prohibition on discrimination of employment on the basis of religion.

The United States Supreme Court in The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints versus Amos held that no provision in 702(a) states, "By receiving Federal funds, that the prohibition—that the exemption is waived. Title VII's prohibition on discrimination in employment is not forfeited when a faith-based organization receives a Federal grant."

I believe that's the law, and this amendment would change the law.

Chairman SENSENBRENNER. The gentleman's time has expired.

The question is on the Scott amendment to the Chairman's amendment.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. Record vote is ordered. Those in favor of the Scott amendment to the Chairman's amendment will, as your names are called, answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Scarborough?
Mr. SCARBOROUGH. No.
The CLERK. Mr. Scarborough, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?

Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members in the room who desire to cast their vote or change their vote?
The gentleman from Arizona?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Chairman SENSENBRENNER. Further Members who wish to change or cast their votes?
If not, the clerk will report.
The CLERK. Mr. Chairman, there are 11 ayes and 19 nays.
Chairman SENSENBRENNER. The amendment is not agreed to.
Are there further amendments?
Mr. WATT. Mr. Chairman?
Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?
Mr. WATT. Mr. Chairman, I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
Mr. WATT. It's the one that starts, "Page 13, line 19."
The CLERK. Amendment to the Sensenbrenner amendment to H.R. 7 offered by Mr. Watt.
Mr. WATT. Mr. Chairman, I ask unanimous consent the amendment be considered as read.
Chairman SENSENBRENNER. Without objection, so ordered.
[The amendment follows:]

Amendment to the Sensenbrenner Amendment to H.R. 7

Offered by Mr. Watt

strike

~~Page 13, line 19 strike "and any" and all that follows through line 23 and insert instead the following:~~

insert after line 23

N "~~provided, however, that~~ nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions of Title VII of the Civil Rights Act of 1964 in the receipt or use of funds from programs described in subsection (c)(4)."

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I hope this doesn't set off a repeat of the same debate again that we just had on the Scott amendment.

The concerns, although I voted for the Scott amendment, that I thought were going to be raised about the Scott amendment was that his amendment was too broad, and basically wiped out the religious organizations' exemption under the Civil Rights Act of 1964, which I believe is, as Mr. Weiner has indicated, an important exemption to have for the religious activities of a church or religious organization.

Where I think we run into problems is the language on Page 13, starting on lines 19 through 23, which says, "and any provision in such programs that is inconsistent with or would diminish the exercise of an organization's autonomy, recognized in section 702 or in this section, shall have no effect."

I think the Chairman's language walks both sides of this. It says, on one hand, that religious organizations have an exemption. It says, on the other side, that basically they can do anything that they want to do, whether it's with their own funds or with Government funds, and this amendment would simply make it clear that the religious exemption for religious activities under title VII is protected, but that nothing in this section would alter the duty of a religious organization to comply with the nondiscrimination provisions of title VII of the Civil Rights Act of 1964 in the use of funds from programs described under this bill.

I think it's absolutely important to be clear that religious organizations are not required to hire members of other faiths to perform their core religious functions, but I also think it is absolutely imperative that we make it crystal clear that in the use of Federal funds we will not tolerate employment discrimination, and I am hopeful that my colleagues will agree with that proposition and will support this amendment, and I yield back the balance of my time.

Chairman SENSENBRENNER. For what purpose does the gentleman from Ohio seek recognition?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I must oppose the amendment. The only reason the language of E(e) is in there is because when the 1996 Welfare Reform Act passed, it created an en-

tirely new Federal program. It replaced AFDC with TANF, so there was no need to make sure any inconsistent Federal provisions were preempted, but H.R. 7 applies the same title VII exemption to these existing Federal programs, so we have to make sure that preservation is consistently applied. The bottom line is, is the recommended insertion is redundant. Nothing in the bill does anything to prevent the enforcement of other Federal civil rights laws. These laws already apply of their own force.

I yield back the balance of my time.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. Mr. Chairman, I speak in—I ask to strike the requisite number of words for the purpose of——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK.—speaking in favor of the amendment.

I must say, as a general principle, I rarely, I don't think ever, have found redundancy to be a good reason for rejecting something. If there is any ambiguity, we ought to clear it up.

I do not think there are professions in the world less opposed to redundancy than that of legislators and lawyers. And when any of us objects to something on the grounds of redundancy, I am inclined to think that it is not a full explanation. And I want to talk about the importance of the gentleman's amendment and respond to some of the things that were said before.

The gentleman from Illinois, the former Chairman, spoke with his usual eloquence, but I have to say not with his usual relevance. Of course, we welcome the religiously motivated people who want to help. I want to be very clear. I have, throughout my public career, benefitted enormously, and I'm proud of my work with them. The archdiocese of Boston has had a housing program for as long as I can remember that's extraordinarily successful, and I'm very pleased, now that I'm the ranking Democrat on the Housing Subcommittee, to be able to work with them even more. Of course, they do good work, but they have never felt that they had to discriminate in the hiring of architects. They never felt that they had to discriminate in the hiring of developers, nor did they think that having to hire architects without regard to the architect's religion somehow destroyed the cohesion of the Catholic Church, somehow undermined the ability of the archdiocese to be a faith community, and that's what I find troubling about this. There are two aspects of it.

First, this bill assumes, it seeks a significant expansion of the extent to which faith-based organizations are the vehicle for Federal funding. Let's be very clear. The notion is that they are an underutilized resource. The problem is that if you simultaneously substantially increase their role in the provision of the services and allow them to discriminate based on religion in hiring people to perform those services, you now have a significant impediment to people who may not be religious or who may be of a very minority religion to getting hired. You're no longer talking about some incidental thing. The goal of this is to make faith-based institutions a major source of service delivery, all the more reason than not to

tell them to discriminate in the hiring for the nonreligious aspects of this.

Secondly, I'm disturbed by the implications of what we've heard. The suggestion is—the statement is that somehow it is deleterious to the very purpose of a religious organization for its members to have to hire nonbelievers in their religion to do nonreligious things. I urge my colleagues to think about this. What we are doing is encouraging a kind of religious segregation that does not serve religion well.

Yes, people of common religion ought to be able to come together undisturbed in their worship services. They ought to be able to hire people to perform these religious services undeterred by any law. They ought to be, when motivated, coming together to provide this service. But the notion that somehow, when they come together, when they use their institution as the locus with Federal funding providing, providing this service, if they are joined by people of different religions, that somehow is deleterious to them, is a very troubling thought.

Now, people have said, "Well, suppose it's someone who is hostile." That's a different story. If you came in with a tailored piece of language that said, "People need not put up with people who are going to be in total disagreement," that's a different set of circumstances. That's not this bill. This bill says, and we've heard justifications, well, you know, if you're a Baptist, you shouldn't have to associate with a Catholic or an Episcopalian in providing the social service. If you're a Jew, people have said, "Well, a Jew shouldn't have to have a right wing fundamentalist serving the soup." No, I think that's quite wrong.

Indeed, people talk about our congressional offices. Our congressional offices, of course, are different than religions, but even there I would think it wrong, when my office was hiring someone, to perform a service unrelated to my election, cleaning my office, doing these sorts of things, no, I don't believe I should be allowed to impose a political test.

Mr. HYDE. Would the gentleman yield?

Mr. FRANK. I'll yield to the gentleman.

Mr. HYDE. The gentleman is perfectly correct. In large-scale undertakings involving architects and other professional people, I certainly agree with the gentleman, but you have a small operation. The institution performing the service is entitled to its identity without being accused of being bigoted.

Mr. FRANK. No, I didn't use the word "bigoted." The gentleman from Florida did, at some point, he said he thought it would be bigoted. But this amendment, this language in the law does not say it only applies to small organizations. It applies to large ones, as well, and I do not think, and here's where I differ with my friend from Illinois, I do not think it destroys your identity——

Chairman SENSENBRENNER. The time of the gentleman——

Mr. FRANK.—to have to share your space with someone of a different religion.

Chairman SENSENBRENNER.—has expired.

Ms. HART. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Pennsylvania seek recognition?

Ms. HART. Move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. HART. Thank you, Mr. Chairman. This amendment really does, in my opinion, attempt to do similar damage to the legislation that the prior amendment attempted to do, and when I call it damage, I do so for a reason.

The reason this bill is being advanced in the first place is to allow churches to continue to provide these services and get some help in providing those services as a contractor, not to change the character of the church, but to allow this church to participate in something they were heretofore forbidden from participating in.

If we accept these amendments, we do one thing that I think is completely wrong, and that is we don't allow them to retain the character which makes them so attractive as a service provider to begin with. There's a lot of assumptions being made by those who support these amendments that these churches are going to go out and hire a whole bunch of people to provide these services, when, in reality, anyone who's ever worked with any of the churches that provide these kinds of services are mostly very small, small groups of congregants, some who are paid, most who are volunteer, who are driven to provide this service from their hearts, from a spiritual desire to serve. Some of them will do it as a profession. These churches are not going to be spending money wildly, hiring a whole bunch of new people just to provide a separate service. That's my first point.

My second point is that the Supreme Court, as I know Mr. Graham mentioned earlier, upheld the opportunity or the decision of these churches to hire whom they please and to make the decision to hire people of their religion in The Presiding Bishop versus Amos. But the Supreme Court also stated, in Rendell Baker versus Cohen, that just because a faith-based organization is providing a service as a contractor to the State, they do not become State actors. They do not, therefore, lose the status that they enjoy as a private religious organization simply because they're getting Government money.

So those who support this amendment are asking that we completely change the law and, in two cases, and I'm sure many more, where it was upheld by the Supreme Court that we don't need to require that change because if we did require that change, there would be no reason to have this bill.

Mr. NADLER. Mr. Chairman?

Ms. HART. Is he asking me to yield? Is that a yes?

Mr. NADLER. No.

Ms. HART. Okay. And, finally——

Mr. NADLER. Will the gentlelady yield?

Ms. HART. I'm just going to finish because I'm almost done.

If a Catholic School hires a teacher, they have every right, I think most people would agree, to hire a Catholic teacher. Many of those Catholic Schools have been also given Government money to provide services that could be provided someplace else. That has also been upheld. They are not forced, then, to hire an additional teacher and not discriminate in their hiring, that they could use the same teacher that they have or hire another Catholic teacher. There is nothing wrong with that. It's been supported over and over again, and I stand by that the bill, as it's written, I think it

stands by the Constitution, it stands by decisions of the U.S. Supreme Court, and I would reject this amendment.

Thank you, Mr. Chairman.

Mr. NADLER. Would the gentlelady yield?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York, Mr. Nadler——

Mr. NADLER. Strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you.

I have listened very carefully to what Ms. Hart just said, and I'd like to make a comment on it. It really illustrates, the discussion really illustrates the basic problem with this bill.

As far as I can understand this bill, and I've been thinking about it and listening, through hearings and hearings, there are two problems, and only two problems the bill addresses. Both are perhaps valid problems. Both could be addressed by very narrow changes in the law, and the problem with the bill is that you take huge changes, way overbroad, which raise real problems, in order to deal with the narrow problem.

For example, let's take this question of religious discrimination in employment. If a church, small church, large church, whatever, gets a $20-million grant, and they're going to hire a corps of people to administer the grant for secular purposes, then those people should not be subjected to religious discrimination, and you know it's for secular purpose to run a soup kitchen or whatever, et cetera.

But we are told, what about the small church? We don't want to change the character of the church. And what it really comes down to is let's say you have a small church, and you get a small grant, and the grant is going to be used for material things, but the existing employees of the church are going to administer the grant, are going to run the soup kitchen. The minister, his wife, the assistant minister are going to run it, and what they're really saying is you should not be required by the civil rights laws, under such a condition, to say, "Well, we can't automatically use the existing employees of the church. You have to conduct a job search in accordance with title VII." And to that I would agree.

And this whole problem could be dealt with by a simple amendment or a simple law that said that, if a faith-based institution was receiving funds for a secular purpose, and if they were not going to hire new people for that to administer that, they could use their existing people, and that that wouldn't constitute an exception to—that wouldn't constitute a title VII problem, but if they hired new people, they should have to follow whatever the requirements of nondiscrimination, if it's for the secular purpose, but if it's not for a secular purpose, you shouldn't be funding it in the first place.

And so I think that this whole question of employment discrimination is way overbroad, and to the extent that there's a real problem that's raised and that still could be addressed by this, it can be dealt with simply by saying, as I said, and I'm drafting such an amendment now or I hope my staff is busy doing so, that a faith-based institution that receives a Federal grant and that is not—can use its existing, preexisting employees and that that would not constitute religious discrimination because you didn't open it up for a

brand-new job search. But insofar as you do open it up to a new job search, you shouldn't discriminate in employment.

The second question, really, is not on this amendment, but is on the question of why we need this bill in the first place, and that is—and I'll address it more with an amendment I have coming up—but, basically, small churches don't have the resources, allegedly, or the expertise to organize 501(c)(3)s and so forth, provide the expertise, provide assistance for small searches—small churches, rather, and if you do those two things, I think you've really accomplished the entire purpose, the entire proper purpose of the bill. I don't think anybody would oppose it.

Now, if there is an improper purpose of the bill, if the real—if some people have a purpose of encouraging religious proselytization with Federal funds, that would not be served. But except for that—and it shouldn't be served—but except for that, all we need is two small changes in the law that takes care of two problems, that when you get down to it and you listen to everything, that's what they ultimately come down to: How do small churches participate with Federal grants——

Ms. LOFGREN. Would the gentleman yield?

Mr. NADLER.—and for the protection of the small church, require the 501(c)(3), but give them help in forming it, give them help in making it.

And, second of all, let the existing staff work on it without having to go through a job search. And you do those two things, you don't really need anything else.

Ms. LOFGREN. Would the gentleman yield?

Mr. NADLER. I think Mr. Hutchinson wanted—are you asking to yield?

Ms. LOFGREN. Actually——

Mr. NADLER. Maxine?

Ms. LOFGREN. I was.

Mr. NADLER. I yield to the gentlelady. I will yield to the gentlelady.

Ms. WATERS. I'm not on this one.

Chairman SENSENBRENNER. I believe that the gentlelady from California, other gentlelady from California, is trying to get your attention.

Ms. LOFGREN. I was. Just a quick point. I think that the suggestion you've made is a useful one and addresses an issue that we've not yet discussed here, at least so far as I can recall, which is where you have a small grant, and absent an ability to prevent discrimination on the basis of religion, you might have a small church that essentially is going to subsidize its religious mission with Government funds by hiring the person they could not afford to hire as pastor to run the soup kitchen to relieve the need to pay the pastor.

That is an important issue because behind all of this is our concern, I think, I hope that it's universal about not becoming involved in the establishment of religion. And if you think about the tremendous diversity of religious thought in the United States, I think it's important to all of us that we are very careful about that. For example, in my won district, I have many Hindus, Sikhs, Buddhists, Jane, the largest Jane temple in North America——

Chairman SENSENBRENNER. The time of the gentleman from New York has expired.

Mr. HUTCHINSON. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Arkansas seek recognition?

Mr. HUTCHINSON. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. HUTCHINSON. Thank you, Mr. Chairman. I was just reviewing the amendment that's offered by the gentleman from North Carolina, and the debate is being centered around the debate on the last amendment, which is the employment discrimination exemption under title VII. The amendment, it appears to me, goes to the use of funds from the programs which we acknowledge in the underlying bill is not exempted and should be offered on a nondiscriminatory basis.

It appears to me, if I'm understanding this correctly, that the amendment is consistent with the underlying bill. The problem is that you're asking to strike a portion of Subsection E that is important, and if the amendment was offered, if the language was offered at the conclusion of that whole section, that it might be fit because I don't see it as inconsistent, and I just wanted to——

Mr. WATT. Would the gentleman yield?

Mr. HUTCHINSON. I would be happy to yield to the gentleman from North Carolina to see if I have the correct understanding.

Mr. WATT. I think you do not have the correct understanding. What I'm trying to do, and maybe I didn't do it artfully, but what I'm trying to do is retain the religious exemption for core religious purposes, but prohibit discrimination in employment, which is what title VII is, title VII, not title VI, retain the prohibition against discrimination in employment with Federal funds. That's the purpose.

Mr. HUTCHINSON. Reclaiming my time, I will be voting against this amendment for the reason that it strikes a portion of the bill that is important for consistency purposes in maintaining the exemption, but I do not see a particular problem in the language itself that you have provided in there because I do not believe there should be discrimination in the use of funds from the programs——

Mr. WATT. Would the gentleman yield?

Mr. HUTCHINSON. Yes.

Mr. WATT. The gentleman is indicating he would support the language if I put it at the end?

Mr. HUTCHINSON. If I have the correct understanding, that is, I would, yes.

Mr. WATT. So what, what does the gentleman understand that the language starting with the word "and" and ending with "effect" on lines 19 through 23, what purpose does the gentleman think that that language serves?

Mr. HUTCHINSON. Reclaiming my time. That language refers to any provision in such programs, and so this would be programs that would be subject to grant application by faith-based organizations and it's making it clear that, despite the language of those specific programs, the religious organization exemption, under the Civil Rights Act, is still applicable.

Mr. WATT. Would the gentleman say that one more time.

Mr. HUTCHINSON. When it says that any provision in such programs, those programs are the substantive programs that the faith-based organizations can make application to for grant money. And so it's, it's making it clear if there was an error in the language of those programs, that the religious organizations' exemption, under the Civil Rights law, still applies.

Mr. WATT. Okay. Would the gentleman yield further?

Mr. HUTCHINSON. I would be happy to yield further.

Mr. WATT. Would you yield to me for the purpose of a unanimous consent request?

Mr. HUTCHINSON. I would be happy to yield.

Mr. WATT. I ask unanimous consent that my amendment be revised to leave in the language on Page that it now provides be stricken and that this language, the additional language, be added at the end of line 23 instead.

Chairman SENSENBRENNER. Well, the Chair would like to have a clarification. If the language you are proposing to be added at the end of line 23, just to make sure that the bill is properly drafted and not inconsistent, wouldn't it be better to start with nothing in this section and then continue with the language; in other words, striking out "provided, however, that"?

Mr. WATT. I'm sorry. Say that again, Mr. Chairman.

Chairman SENSENBRENNER. To strike "provided, however, that," and begin—capitalize "N" for "Nothing," and then insert the rest after line 23.

There would be nothing stricken, and in addition, I would say nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions——

Mr. SCOTT. I accept the Chairman's friendly amendment.

Chairman SENSENBRENNER. Okay, without objection, the modification is agreed to. Without objection, the amendment as modified is agreed to.

Are there further amendments?

For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. NADLER. Madam Clerk, the amendment that I'm offering is the amendment by Mr. Conyers, Scott, and Nadler. I'm offering it on behalf of Mr. Conyers, who is not here.

The one that starts, "On page 20 at the end add the following."

The CLERK. Amendment by Mr. Conyers, Scott, and Mr. Nadler to the amendment offered by Mr. Sensenbrenner.

On page 20 at the end add the following (o) Enforcement of individual——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

Amendment by Mr. Conyers, Scott and Nadler to the Amendment
Offered by Mr. Sensenbrenner

On page 20, at the end, add the following:

(o) Enforcement of Individual Rights Under the First Amendment.--A party alleging that the rights of the party under subsection (f), (g), or (i) have been violated may bring a civil action seeking any form of legal or equitable relief, including a writ of mandamus, injunctive relief, or monetary damages, in a State court of general jurisdiction or in a District Court of the United States, against the responsible party, religious organization, official or government agency. In any action or proceeding to enforce the foregoing rights specified in subsection (f), (g), or (i), the court may allow a prevailing plaintiff reasonable attorneys' fees as part of the costs, and may include expert fees as part of the attorney's fees.

Chairman SENSENBRENNER. And the gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

This amendment is—this amendment is simple and straightforward. Where the bill offers——

Chairman SENSENBRENNER. Will the Democratic staff allow Mr. Nadler to be heard?

The gentleman is recognized.

Mr. NADLER. Thank you, Mr. Chairman.

This amendment is simple and straightforward. Where the bill offers language designed to protect individual rights and liberties, those persons whose rights and liberties are supposed to be protected should be given the ability to enforce those rights in a court.

I hope this will be noncontroversial and the majority will choose to accept it in the spirit in which it is offered.

For weeks and weeks, this bill has been hung up over the issues concerning separation of church and state. The Chairman, to his credit, identified the very difficult and complex problems that emerge when government funds religious organizations. To his credit, he has insisted on critical provisions protecting beneficiaries so they have the rights to a comparable secular alternative and the right to opt out of any religious activities.

The problem is, while the bill specifically authorizes religious organizations to seek redress in court if their rights under the bill are violated, there is no comparable provision protecting the religious rights of individual beneficiaries. So we are concerned that all of the protective language added at the behest of the Chairman could turn out to be an empty promise, existing in theory but not in practice.

As a result, this amendment gives individual beneficiaries the right to seek to enforce these rights in court.

We also add the right of harmed parties to obtain reimbursement of their attorneys fees. Obviously, most individuals will have little ability to bring an expensive lawsuit if they're not able to recover their legal fees. I know of few homeless people who can afford to

bring a lawsuit where there is no secular homeless shelter available.

Now, as will all legal rights, I'm hopeful it will not be necessary to resort to court action to obtain compliance. As the Members know, very often the knowledge that a right is legally enforceable itself guarantees its compliance.

There are few rights more important to this country than religious freedom. If the right is important enough to include in the bill, it should be important enough to be enforceable in court.

I urge my colleagues to support this common-sense amendment. And I yield back.

Chairman SENSENBRENNER. For what purpose does the gentleman from Ohio, Mr. Chabot, seek recognition?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I won't use all the time.

But this amounts to a lawyers' full-employment bill. We want the funds to be used to improve the lives of people who need services, whether it's for homeless people or whether it's for domestic violence, whatever it might be that the faith-based organization is providing.

We prefer the money to go to help people in need rather than to line trial lawyers' pockets. For that reason, I oppose the amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. Will the gentleman from Ohio yield to me?

Mr. CHABOT. I'd be happy to yield to the Chairman.

Chairman SENSENBRENNER. If you look at the amendment that has been offered by the gentleman from New York, the defendant in these cases would be the responsible party—religious organization official or government agency.

This would have a chilling effect on religious organizations signing up to provide the services that are intended to be funded in H.R. 7, because now some trial lawyer could file a lawsuit alleging a violation under the First Amendment and literally bankrupt the organization before the case even goes to trial.

I don't think we want to put in a liability section that has every faith-based organization running away from this program. The effect of this is extremely crippling, in terms of broadening the base of people who can provide social services.

And I agree with the gentleman from Ohio that this very pernicious amendment should be rejected.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. Will the gentleman yield back now?

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. Will the gentleman from Ohio yield back now?

Mr. CHABOT. I yield back the balance of my time.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. I yield to the gentleman from New York.

Mr. NADLER. Thank you. Thank you. I thank the gentleman from Massachusetts.

Let me make two comments.

First of all, any trial lawyer recognizes who has the deep pockets. He's not going to sue the church; he's going to sue the local government.

They have the deep pockets in this situation, so I wouldn't worry terribly much about the churches being bankrupted, because they're not going bother suing the church. They're going to sue the local government or the government agency under whose aegis this was done.

Secondly, if, as Mr. Chabot says, we're worried about using the funds—the funds being used up on lawsuits and it being a trial lawyer's haven, why do we give the right to bring a lawsuit to the churches? The fact is that rights are only real if they're enforceable. And the churches, if their rights are violated, need the power to bring a lawsuit to enforce their rights.

But at the same, a beneficiary whose rights established in this bill—to an alternative, a nonreligious alternative, for example, or to various other things, not to be proselytized—if those rights are going to be enforced and not merely be worthless, needs the right to be able to go into court to enforce his rights.

So it's the same on both sides. Either the churches shouldn't have the right and neither should the beneficiaries, to bring a lawsuit. In which case, all the provisions of the bill would not be very important, because they would not enforceable in law, or the churches and the beneficiaries should have the rights to enforce their respective rights at law lest they be merely hortatory rights.

And, again, I wouldn't worry about the churches because—being defendants because the trial lawyers are going to sue the jurisdiction and the—either the Federal Government or the local government because they have the deep pockets, not the church.

Mr. CHABOT. Mr. Chairman?

Mr. NADLER. I yield back.

Mr. FRANK. Is the gentleman from New York finished?

Chairman SENSENBRENNER. The time belongs to the gentleman from Massachusetts.

Mr. FRANK. Did somebody want me to yield?

Mr. CHABOT. Will the gentleman yield?

Mr. FRANK. I'll yield to the gentleman from Ohio.

Mr. CHABOT. I thank the gentleman for yielding. The bill already provides——

Mr. NADLER. Can't hear you, sir.

Mr. CHABOT. The bill already provides for lawsuits against States and local governments for injunctive relief only. And if—and that's, in essence, if somebody is alleged to have violated the law. And that was on the request of county associations, the Conference of Mayors, and other local government entities.

And I thank the gentleman for yielding.

Mr. FRANK. Does the gentleman want to me yield further?

Mr. NADLER. Yes.

Mr. FRANK. I'll yield further to the gentleman from New York.

Mr. NADLER. Well, the fact of the matter is that that's—I think—reading that section, it says: when the rights of the party under this section have been violated by State or local government, may bring a civil action for injunctive relief.

That's fine as far as it goes. But, in effect, the rights may have been violated by the people administering the grants, and there, in that case, agents for the State or local government. And the purpose of this amendment is to make sure that you can sue the State and that you can get relief in that section, too.

And by the way, if a church breaks the law, they should be liable, although, as a practical matter, you are going to sue the State not the church because they don't have the money.

But no one should be able to break the law and not be subject to an enforcement action.

I yield back to the gentleman.

Mr. FRANK. Mr. Chairman, having addressed what I had to say on this subject, I yield back.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Wisconsin, Mr. Green, seek recognition?

Mr. GREEN. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Mr. Chairman, briefly, I wanted to commend you for your recent statement in opposition to this amendment. I think you put it very, very well.

This bill already provides for injunctive relief, which will protect the rights of the aggrieved.

I think that this amendment would lead merely to an operation of harassing faith-based organizations. This is an effort, I think, by some, who do not believe that they can defeat this bill, to make it as ineffective as possible by discouraging the very organizations that we hope will take this up.

This is to put fear into them, to make them cringe because of the potential wide-open liability of trial lawyers, of lawsuits. This is the last think I think we need as we're trying to make—to reach out to community organizations and have them be partners with us and take on so many of these challenges that we all agree are affecting so many neighborhoods and communities all across the country.

And, Mr. Chairman, with that, I yield back my time.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas, Ms. Jackson Lee, seek recognition?

Ms. JACKSON LEE. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, I'm going to use this time to make some general observation and comment on the basis of Mr. Nadler's and Mr. Conyer's and Mr. Scott's amendment, as I understand it.

And it is—it is interesting that what we're doing here in this room is, in essence, codifying a relationship between the State and religion that we've never done in the time of our existence as a de-

mocracy. And so the proliferation of amendments is simply to take us back to the purity of our origins, which is the separation of church and state, and not creating an established religion.

This is not to say that our religious entities have not been coddled and nurtured and respected in this country. That is why they have proliferated.

But what we're asking to have done here in this legislation is to be able to establish religious entities as substitutes for governmental social services responsibilities. All to the best, if you will.

But as they step into the shoes a governmental entity, they are then—and that is why you have these requests from the national League of Cities and National Association of Counties, because what they're suggesting is, if you're going to place religious so-and-so to do my welfare-to-work, to do my job training, then the question has to be, if they are substituting for these broad-based social services, which I welcome the concept of the good Samaritan, but then, as well, they will be responsible, as government is responsible, in protecting the rights of anyone who walks through their doors.

When you have a Catholic school doing the business that it traditionally does, teaching children in the way that they teach them and the religious beliefs that they teach them, they are not stepping into the shoes of a governmental entity, attempting to take the responsibilities away from the public school system.

So this amendment speaks to the question of the rights that anyone has in coming under the First Amendment in any aspect of this society.

And what we're suggesting here is, because you have codified religion, because you have put forward a legislative initiative that establishes the involvement of the religious community with Federal funding, the Federal Government, and government, you now have to be subjected to the protective rights that citizens have, be it that they are poor, that they are homeless, that they need welfare-to-work training, they are addicted, whatever they might be.

We have never extended the long arm of reach of the Federal Government to the hallowed halls of sanctuaries when we have either prayed or bowed or said our prayers on Friday night or Saturday or 12 noon on Wednesday or high noon on Sunday. The Federal Government has not done that.

But when you begin to codify—and I have the greatest admiration for the spiritual, the religious community, and have fought for their existence and their survival and welcome their interest in being the new good Samaritan, if you will, in the sector that deals with secular issues, such as welfare reform and such as the addicted and HIV/AIDS. I welcome that.

But my concern is, do we realize that in the rush to make good on campaign promises, that we're literally codifying?

I think what my dear friends on the other side of the aisle are saying to me is that, "No, we're not, because we're not establishing the Muslim faith as an established religion, or the Catholic faith." No, we're not, but we're giving governmental strength, if you will, to the religious body by its utilization of Federal tax dollars.

And, therefore, even though there is sensitivity to this, you're opening yourself up to the responsibilities of adhering to the Bill

of Rights, to the Civil Rights Act, and to the First Amendment and others, that governmental entities equally have the responsibility.

If we can understand that, maybe these amendments will bring forward the unity of purpose and we can get a resolution of H.R. 7 that would answer the concerns of those who want to be the good Samaritan, which I applaud and welcome.

But at the same time, there is a sense of acceptance that we're doing something extremely extraordinary and out of sync, if you will, with the historical and constitutional basis of this country. We have never sought to codify religion in this nation.

And I would argue——

Chairman SENSENBRENNER. The gentlewoman's time——

Ms. JACKSON LEE.—with those who say that we are not——

Chairman SENSENBRENNER.—has expired.

Ms. JACKSON LEE.—establishing religion.

Mr. WEINER. Mr. Chairman?

Ms. JACKSON LEE. I yield back.

Ms. LOFGREN. Mr. Chairman?

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York, Mr. Weiner, seek recognition?

Mr. WEINER. To strike the last word.

And in particular——

Chairman SENSENBRENNER. Recognized for 5 minutes.

Mr. WEINER. And I would like to ask you, Mr. Chairman, as the author the bill—I'm inclined to vote against this amendment because I believe the compliance section is sufficient to ensure compliance.

But I believe the place where the compliance is going to be most handy is when enforcing a person's ability to opt out. And I just, for the purposes—so I can understand if I'm correct about that.

The way I read, on page 14, the rights of beneficiaries, it says that anyone who wishes to opt out, the appropriate Federal, State, or local government entity shall provide—it says "shall provide"—to such individual if otherwise eligible for such assistance, within reasonable period of time after the date of such objection, assistance that is accessible and is of the same value.

Am I correct in interpreting the compliance section as allowing an individual beneficiary, if they've been denied that right, to then sue the government agency or file a civil claim against the government agency, meaning the city or State, to enforce that right?

Chairman SENSENBRENNER. If the gentleman would yield?

Mr. WEINER. Certainly.

Chairman SENSENBRENNER. The answer to the question is yes, but the relief is limited to injunctive relief only, to obtain the same right pursuant to this section, and not for damages.

Mr. WEINER. Understood. And I think, frankly, that this is appropriate.

But it does raise the question, and just so I'm sure that I understand, if we have the following dynamic: Let's say in a corner of rural Idaho, a church sets up a job training program. Someone walks into that church, says, "I don't like this job training program because of my religious beliefs," it then requires the State of Idaho, if that person is entitled to benefits, to then set up another job training program for that individual. Is that correct, sir?

Chairman SENSENBRENNER. If the gentleman would yield?

Mr. WEINER. Certainly.

Chairman SENSENBRENNER. The program does not have to be identical to the faith-based organization, but it is required to have a value that is not less than the value of the assistance that the individual would have received from such organization, meaning the faith-based organization. And this is page 15, lines 4 through 6.

Mr. WEINER. So if—and I appreciate that.

So if—if a State or a locality does chose to set up one of these programs, they better have allocated fundings to at least set up two, because they might be in the circumstance that—we've set up now an entitlement under this law for that person to then get a separate and distinct program at least of the same value.

Chairman SENSENBRENNER. Yes. If the gentleman would yield?

Mr. WEINER. Certainly.

Chairman SENSENBRENNER. The answer to that question is yes, but again emphasizing that it does not have to be the identical program——

Mr. WEINER. Understood.

Chairman SENSENBRENNER.—that is provided in the basement of the Baptist church in Idaho.

Mr. WEINER. Right. But it does have to be a separate and distinct program, meaning that when you agree to set up—or the State of Idaho agrees to set up one, they'd better have a few shekels in their pocket to get ready to set up the second in every case because all it takes is one objector to require the creation of a second program.

Chairman SENSENBRENNER. The answer to the gentleman's question is yes.

Mr. WEINER. Got it. Thank you very much. I yield back my time.

Ms. LOFGREN. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California——

Ms. LOFGREN. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I am interested in the compliance section as well, and understanding that probably all of the recipients—or at least the great majority of the recipients of services funded under this initiative will be poor people, how these poor people will gather the resources to bring the action to gain the rights that are theirs under this act——

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. LOFGREN. Yes, I certainly will.

Chairman SENSENBRENNER. The Legal Services Corporation is ready and eager to enforce those rights.

Ms. LOFGREN. Well, what they're——

Chairman SENSENBRENNER. The Appropriations Committee has given them an increase in their appropriation.

Ms. LOFGREN. The—reclaiming my time, the Legal Aid Society is so poorly funded that they are swamped and unable to take hardly any new cases, at least in the area where I represent.

Without the ability of attorneys fees, I think that this is a—for most recipients—an illusory remedy.

And I think there are questions. If this bill becomes law, there will be questions that need testing.

I was thinking, who will apply in Santa Clara County for funds under this act? And I have no idea, but one of the churches—the Metropolitan Church in downtown San Jose is—it's a gay church, it's Protestant.

And if they do the daycare and a welfare mother objects, it won't be because they're Protestants; it's because the welfare mother may be biased against gay people.

Well, does that qualify for an exemption? I don't think so, because it's not about religion; it's about one's bias against gay people.

But that's going to have be tested——

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. LOFGREN. Certainly.

Chairman SENSENBRENNER. The decision on where to go to get these social services rests with the individual seeking the social services, whether it is getting social services from a grant organization or one that accepts voucher funds.

So if the welfare mother that you're talking about doesn't want her kids at a daycare in the basement of a church that is predominantly gay, she just sends them someplace else.

Ms. LOFGREN. Reclaiming my time, that is certainly not the case in Santa Clara County. We have a dramatic shortage of daycare facilities and the Department of Social Services does provide a direction to the TANF program recipients on where to go and where to enroll their children.

There's a huge backlog——

Chairman SENSENBRENNER. Will the gentlewoman yield further?

I believe this bill would broaden the types of choices available to qualified people in Santa Clara County on where to go to receive social services because there would be more qualified organizations providing them.

Mr. FRANK. Would the gentlewoman yield?

Ms. LOFGREN. Certainly.

Mr. FRANK. Well, I think that points out what I think is a somewhat empty promise. Yes, if you took that part of the bill seriously, it would require a very significant expansion of Federal funding. That is true.

To make that work, anytime the Federal Government funded a faith-based program anywhere, it would have to fund equally in that same area a non-faith-based program.

In other words, we've got a new doctrine here. Instead of separate but equal, we're going to create the doctrine of secular but equal. And anytime the Federal Government funds—to make that work, what the gentleman just said, it promises a great expansion.

Anytime the Federal Government funds a faith-based program, it will, to comply with this bill, have to fund a secular and equal other program. And I am very skeptical that the money to do that is here.

But as one of the witnesses brought forward by the majority said, to make that work will require a very substantial increase in Federal funding, which I guess the biggest faith-based initiative is to think that that Federal money is coming. [Laughter.]

Ms. LOFGREN. Well, reclaiming my time, I do believe that we are—without an opportunity for the poor to assert their rights, with either this amendment or something like it, that we are going to end up with a series of very unfortunate circumstances that will arouse the American public and their ire.

And I see that my time is about to expire, so I yield back what remains of it, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the Nadler amendment to the Chairman's amendment.

Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. NADLER. Nadler No. 1.

The CLERK. Amendment to the amendment to H.R. 7 offered by Mr. Nadler. On page 16, strike line 9 and all that follows through line 12 on page 17 (h) Additional protection for organizational autonomy and accountability.

Mr. NADLER. Mr. Chairman, I ask unanimous consent to waive the reading.

Chairman SENSENBRENNER. Without objection.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT TO H.R. 7
OFFERED BY MR. NADLER
(Nadler #1)

On page 16, strike line 9 and all that follows through line 12 on page 17

"(h) ADDITIONAL PROTECTION FOR ORGANIZATIONAL AUTONOMY AND ACCOUNTABILITY. – A religious organization shall be eligible to provide assistance under a program described in subsection (c)(4) only through an entity incorporated separately from its pervasively sectarian parent or affiliate under section 501(c)(3) of the Internal Revenue Code of 1986. Assistance provided under subsection (n) shall be available to a religious organization to carry out the requirements of this subsection."

Chairman SENSENBRENNER. And the gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

A great deal has been said about protecting the autonomy of religious organizations and about ensuring that these organizations can participate in the delivery of Federal programs without giving

up that autonomy and without undermining the delivery of those services.

The most simple way to do this and to ensure accountability in the use of the Federal funds is to do what religiously affiliated organizations have done for years: set up a separate 501(c)(3) corporation for the purposes of delivering those services.

Setting up such an organization prevents any danger that funds for distinctly religious purposes and taxpayer money that is to be used to provide needed service, needed secular services in the community, will be commingled and will be diverted to an inappropriate use.

It also ensures that the governmental agency administering the program can fully audit the activities of the grantee without the specter of government authorities combing through the church's books and quizzing the choir master or the minister over the use of funds.

I think that a committee dominated by attorneys should well understand why a separate entity is in the interest of both autonomy and accountability and certainly in the interest of the church.

Does anyone here think that an attorney who commingled trust accounts with firm accounts would stay in practice very long? We have rules against this sort of thing for very clear and understandable reasons.

Similarly, as every Member of this Committee knows, we are not allowed to use our office funds and any private funds in the same activity. This would include a community event that we may want to sponsor to promote local businesses. But once we have started using our office funds to pay for part it, we cannot use other funds to pick up the rest, even to pay for those items on which we cannot spend our office funds.

That's a very strict rule. We all live by it—at least I hope we all live by it—and for very good reason.

Does anyone here believe that setting up an additional church bank account and then forbidding government activities from looking beyond that account, as this bill does, could possibly fail to lead to mischief?

People of faith are good and honorable members of our community. But there have also been those who have abused their standing as religious leaders. And we have no right to play fast and loose with millions of dollars of the taxpayers' money by ignoring the fact that some people are tempted to abuse the trust when money is involved.

We need to legislate for the real, not the ideal, world. Already there's been a suit filed alleging that public money has been used to purchase Bibles for religious instruction. I do not think any Member of this Committee would condone that.

Separating out the publicly funded activities from the specifically religious activities has always served to protect against this sort of problem.

Religious organizations in my district and all over the country do this all time. We work with them to obtain public funds for them, and they do outstanding work for the communities that we represent.

I have heard only two arguments why we should not require a separate entity. The first came from a minister who testified before

the Constitution Subcommittee about her community activities. She told us that they had become the process of setting up a 501(c)(3), and had even obtained legal assistance to do so, but dropped the whole thing because they felt uncomfortable with the idea.

Let me stress, her testimony was not that doing so violated a sincerely held religious belief of her congregation.

Is that a reason to change the law and risk lack of accountability in the use of public money?

No one is telling this church to stop engaging in their religiously motivated efforts to do good works. No one is telling the church that they cannot receive public money to do so. But feeling uncomfortable with requirements of accountability in the administration of public money is no reason to waive those requirements.

The other reason that has been given for opposing this requirement is that it is just too darn hard to draw up the incorporation papers and file them with the Secretary of State. Mind you, I've never heard this argument made by an actual religious organization. Indeed, many of the religious organizations that support this legislation have been setting up 501(c)(3)s for many years.

We are told that there are small congregations out there that just cannot muster the resources to do what daycare centers and newsstands and other small businesses and charities do all the time. This may be true, but my experience is that they do just fine and usually receive volunteer legal services from their community, just as they might receive free electrical work from a member of the congregation.

It also raises a red flag in my mind. If an organization cannot do the simple paperwork to set up a separate 501(c)(3), why is the Federal Government so confident that they can administer large sums of public money? I would take that as a warning sign.

I do, however, agree with the Chairman, who has added a new subsection in his mark, providing for technical assistance to those small organizations that may have trouble complying with this or other requirements necessary to administer a public program.

For that reason, my amendment makes clear that they shall be entitled to receive that assistance specifically for the purpose of complying with this new subsection. We should be encouraging people to do things the right way and people who are able to deliver needed social service should not be prevented from doing so because they lack the administrative know-how to work their ways through the rules.

My amendment addresses that problem so that simple but important requirement will not become an obstacle to participation.

Chairman SENSENBRENNER. The gentleman's time has expired. And I yield myself 5 minutes in opposition to the amendment.

This amendment is not necessary. And I believe that it is important that the religious organization have the choice on whether or not to set up a separate 501(c)(3) organization to operate its faith-based initiative activities or not. There is no requirement in the Constitution.

And let me explain what the bill does.

First of all, the bill provides for limited audits by the government agency administering the grant covered by the bill, and these are the grant recipients under that part of the faith-based initiative.

Religious organizations receiving funds directly from the government must establish separate accounts for deposit of the government funds received pursuant to a program established by H.R. 7. Only the separate accounts consisting of funds from the government shall be subject to audit by the government.

And that addresses the gentleman from New York's concern that the IRS would be snooping around in the private funds that the church uses for its religious activities.

Secondly, religious organizations providing assistance through indirect assistance may establish a separate account for deposit of the Federal funds. If the funds are so segregated, only the separate accounts consisting of funds from the government shall be subject to audit or review by the government as a result of accepting the indirect funds.

Because indirect aid to a faith-based organization is, quote, "akin to the government issuing a paycheck to an employee who in turn donates a portion of that check to a religious institution," unquote, and that comes from Justice O'Connor's concurring opinion in *Mitchell* v. *Helms*. Such aid is permissible under the Establishment Clause and need not be segregated into a separate account.

These are the same types of audits that the government agency can conduct of nonreligious organizations receiving the funds from programs covered by H.R. 7. The purpose of the audit is to determine that the funds are being accounted for appropriately without subjecting the church accounts that do not contain Federal funds to government rummaging.

So the bill as drafted is consistent with the Constitution. It is consistent with the Supreme Court decision. There should not be a requirement that the church set up a separate 501(c)(3) in order to receive either the direct funds or the indirect funds. But if they should choose to do so, there's nothing in this legislation stopping them.

And I yield back the balance of my time.

For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I rise in support of Mr. Nadler's amendment, but I do want to applaud the Chairman for his effort to dramatically improve what was in the original bill, H.R. 7, and at least require, at a minimum, a separate account, because that was not in the original bill. And I think the Chairman certainly recognized the problems with that.

But I think we really need to go further for a couple reasons. Last week, about 50,000 Baptists descended on the city of Charlotte in my congressional district. And they had a discussion about the faith-based initiative, but unfortunately I was in Washington and not able to attend.

But I sent a letter, and this is one of the two points that I made in my letter to the ministers and other religious people who attended that conference, that commingling of taxpayer funds with church funds, instead of requiring a separate nonprofit, would be dangerous for two reasons. First of all—and I'm reading now from

my letter, which I will ask unanimous consent to submit for the record, so that you'll have the entirety of the letter in the file.

[The letter of Mr. Watt follows:]

HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

MELVIN L. WATT
12TH DISTRICT, NORTH CAROLINA

An Important Message from Congressman Mel Watt
About President Bush's Proposed "Faith-Based Initiative"

Dear Christian Friends:

With great pride I welcome you to the 12th Congressional District of North Carolina. As so many of you gather this week in my district, I thought this would be an ideal opportunity for me to clarify the concerns that I and the Congressional Black Caucus have expressed about President Bush's proposed faith-based initiative. As you carefully consider our concerns please be assured that, contrary to what some would like for you to believe, they have nothing to do with either religious bias or partisan politics.

Religious institutions have always been at the forefront of addressing our country's most pressing social problems. They provide food for the hungry and shelter for the homeless and they have a long history of fighting injustice, from slavery to racial and other forms of discrimination. Faith-based organizations continue to do these things today, not to get government grants but as part of their fundamental religious mission to help others.

Many religious organizations already sponsor federally funded programs. Many of these organizations, such as Catholic Charities and Lutheran Services of America, receive substantial amounts of federal funding without any of the controversy associated with the President's proposal. They are funded like all other organizations and are subject to the same rules: **1) they are prohibited from using taxpayer money to advance their religious beliefs because the Constitution requires the separation of church and state and 2) they must comply with civil rights laws that prohibit them from discriminating in employment.**

Unfortunately, President Bush has failed to inform the public that his proposed faith-based initiative includes new, controversial "charitable choice" provisions which would substantially change existing law. We strongly oppose two controversial features of his proposal:

- **The President's proposal would allow co-mingling of taxpayer funds with church funds instead of requiring a separate non-profit entity.** We believe this is dangerous for two reasons. First, it will make it more difficult, if not impossible, to separate the church's religious activities from the activities being undertaken with government funds and this will severely threaten the required separation of church and state. Second, we think this co-mingling of government and church funds will lead to serious legal (perhaps criminal) problems for some churches in the future and that the most likely victims of these legal problems will be small or minority churches or churches unwilling to support the President's political agenda.
- **The President's proposal would allow sponsors of federally funded programs to discriminate in employment on the basis of religion (and possibly even race) for the first time in 60 years.** Frankly, we are shocked to be engaged in a debate today about whether basic civil rights laws should apply to sponsors of federally funded programs. We recognize that support for anti-discrimination laws was not unanimous when these laws were passed in the 1960s. But we strongly believe that publicly funded employment discrimination was wrong in the 60s and it is still wrong today. While we are confident that most churches would not discriminate, we strongly object to churches being asked to sanction religious or racial discrimination in employment as the price for federal funds.

I fully support faith-based organizations continuing to be involved in solving social problems. However, the two components of the President's faith based initiative described above are too high a price to pay for something you and your churches have been doing for years, with no government funding. I, therefore, hope you will join me, the Congressional Black Caucus and a growing list of religious organizations in telling the President to remove these controversial provisions from his faith-based proposal. If he refuses to do so, I hope you will join us in opposing the President's proposal.

Sincerely,

Melvin L. Watt

Mel Watt
Member of Congress
12th District of North Carolina

Mr. WATT. First, it makes it more difficult, if not impossible, to separate the church's religious activities from the activities being undertaken with government funds, and this will severely threaten the required separation of church and state.

Second—and really, this is more of a concern to me than even the first one. Second, we think this commingling of government and church funds will lead to serious legal, perhaps criminal problems for some churches in the future, and that the most likely victims of these legal problems will be small or minority churches, or churches unwilling to support a President's political agenda.

So basically, what I think we're on the verge of 5 years down the road if we allow funds to go directly into church coffers, either in

separate accounts or in commingled accounts, is a bunch of ministers and church people are going to run the risk of being indicted, and I've expressed this opinion in the hearings, and I think those indictments are more likely to be against people in smaller minority, probably churches that are not mainstream churches, because this will be used as a mechanism for—for kind of separating the good guys or the bad guys, possibly even separating the guys who support some political agenda from those who don't support a political agenda.

If we have these funds separated in a separate 501(c)(3) organization, I think we have minimized the prospect of that happening.

I'm the first to concede that there is not a legal constitutional requirement to do this, but I think the practical reasons for doing Mr. Nadler's amendment are just powerful, and I hope that my colleagues will support this amendment. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. Okay. The question is on the amendment by Mr. Nadler to the Chairman's amendment. Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. I have another amendment at the desk.

Chairman SENSENBRENNER. The clerk will report another amendment.

Mr. NADLER. The undesignated amendment, the one without the number.

The CLERK. Amendment to the amendment to H.R. 7. Offered by Mr. Nadler, Mr. Conyers, Mr. Frank, Ms. Jackson Lee and Mr. Watt.

On page 18, line 1, insert before the period, "or shall such organization engage beneficiaries in such worship, instruction, or proselytization while they are receiving such assistance."

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered By Mr. Nadler, Mr. Conyers, Mr. Frank,
Ms. Jackson-Lee and Mr. Watt

On page 18, line 1, insert before the period, "or shall such organization engage beneficiaries in such worship, instruction, or proselytization while they are receiving such assistance."

Mr. NADLER. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5——

Mr. NADLER. Can I ask unanimous consent that the first word in the quote should read "nor" not "or?"

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. Mr. Chairman, this amendment makes clear that the program cannot seek to engage participants in proselytization while they're participating in a program. Obviously, religious organizations are free to engage in any

religious activity they wish, and participants are certainly free to participate in religious activities voluntarily. It is not enough to say that no funds may be used for this—for the proselytization. If this program will allow the program to be held in the religious institution, and allow the program to exist side by side with other religious activities, it would be easy to bring in someone to lead a prayer or proselytize who is not being paid for with the public money. We need to make clear that it simply cannot a part of the publicly-funded activity.

We also need to make clear that voluntary participation means just that, voluntary. There can be no cajoling or other forms of coaxing or coercing of participants to come to the meeting, or participate in the religious activity. If they want to, that's fine, but I can tell you that the communities I represent are not pleased by the idea that someone who comes in out of the cold for help might become the target of someone who thinks they need to be spiritually completed. I, for one, am happy to remain incomplete and so are most of my constituents.

The idea of using government programs to convert people is repugnant, and we should be clear that it is not permitted. No one should have to run a gauntlet or experience the pressure of a so-called voluntary prayer or proselytization session when they go to receive a public service or a publicly-funded service. What should they do, leave the room, leave early? Let the church do its business. Let the program, the federally-funded program do its business, and leave the participants out of it. If they want to go to a church session, they're obviously free to do it.

This language should discourage subtle coercion, because, obviously, as I said before, it would be—the legislation now prohibits the use of the Federal funds for—itself for proselytization, but it really doesn't prohibit other funds from being used to subject the subjects of the program to proselytization, and they ought to. I think it's saying that such organizations shall not engage beneficiaries in such worship, instruction or proselytization while they're receiving such assistance, is eminent common sense, and should be accepted, I hope, by the majority.

I thank you. I yield back.

Chairman SENSENBRENNER. For what purpose the gentleman from Ohio seek recognition?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman, I'll be brief.

This is, again, it's an amendment which we consider to be unnecessary, and therefore I oppose it. The so-called opt-out provision allows a beneficiary to, in essence, take a pass on any parts of a social service that may include religious instruction, worship or proselytizing, and it's already clear. The opt-out language in the amendment reads, and I quote: "If the religious organization offers such an activity"—referring to religious instruction, worship or proselytizing—"it shall be voluntary for the individuals receiving services and offered separate from the program funded under Subsection (c)(4)." So it's been——

Mr. NADLER. Would the gentleman yield?

Mr. CHABOT.—I think crystal clear——

Chairman SENSENBRENNER. Would the gentleman yield to me?

Mr. CHABOT. I'd be happy to yield to the gentleman from Wisconsin.

Chairman SENSENBRENNER. This amendment goes even further than that, because if you read the text of the gentleman's amendment, a person who is a member of the church, who seeks social services that are funded through H.R. 7, can't go to church any more, because it said, "nor shall such organization engage beneficiaries in such worship, instruction or proselytization while they are receiving such assistance." So one could be an existing member of St. Anne's Catholic Church or the First Baptist Church, qualify for social services programs that are funded through H.R. 7 at their own church, and then the church can't engage the beneficiaries, even though they happen to be a pre-existing member of the church, in worship, instruction or proselytization.

Mr. NADLER. Would the gentleman yield?

Chairman SENSENBRENNER. I would hope that this amendment would be rejected for that reason as well.

Mr. NADLER. Would the gentleman yield?

Mr. CHABOT. Reclaiming my time, I'll yield to the gentleman from New York.

Mr. NADLER. Thank you. I think Mr. Chabot is correct in thinking that my amendment was incorrect and thinking that my amendment simply says the same thing as the bill. It does go further than the bill. I want to commend the ingenious legal mind of the Chairman for conjuring up an extreme interpretation of the amendment, way beyond what I intended or anybody else would ever conceive of, and so his interpretation goes way beyond the bill and the amendment.

All the amendment says, all the bill says, I should say, the bill says you can opt out, if they're engaging in a religious proselytization in the public service, you can opt out and go to a different public service which doesn't engage in that. You can leave the room. What the amendment says is that they may not engage in proselytization or worship during the provision of the social service. Whether or not that particular proselytization is paid for—in other words, the minister can't come into the room where they're doing the drug detox and lead a prayer.

It does not say—as the Chairman implies it says—that a member of the church who wants to go to the hot lunch program or the drug detox program can't do so or can't go to church again. All it does say——

Mr. CHABOT. Reclaiming my time.

Mr. NADLER. Can I say one more——

Mr. CHABOT. Reclaiming my time. All right, go ahead.

Mr. NADLER. All it says, a member of the church certainly could go to the hot lunch program or the detox program, and he can certainly continue to go to church. All this says is that at the hot lunch program, they cannot bring in someone to say—to lead the group in prayer. They can certainly lead the group in prayer upstairs in the church. I yield back.

Mr. CHABOT. Reclaiming my time, I'll yield to the other gentleman from Wisconsin, Mr. Green.

Mr. GREEN. I thank my colleague for yielding. I don't know who to believe here, my good friend from Ohio, or my good friend, the

Chairman, from Wisconsin. Why not just remove all shadow of doubt and defeat the amendment, and we won't have to deal with such problems.

Mr. CHABOT. Reclaiming my time, I continue to oppose the amendment for the reasons that I stated and the reason that the Chairman—and I'm going to go with my Chairman, and I yield back the balance of my time.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. Well, first, Mr. Chairman, I do want to note that while I——

Chairman SENSENBRENNER. Do you want to strike the last word?

Mr. FRANK. I want to strike the last 5 minutes, Mr. Chairman. [Laughter.]

Mr. FRANK. What I——

Chairman SENSENBRENNER. Without objection, the clock is turned back and the gentleman's recognized for the next 5 minutes.

Mr. FRANK. I am aware that in our profession we give ourselves in court the privilege of what is called pleading in the alternative, in which you can submit to a judge two entirely opposite theories and hope he'll pick one of them. I want to congratulate the majority for extending that, and in the previous amendment, arguing in the alternative, and opposing the gentleman from New York with two totally contradictory and opposing arguments. I guess anything that wins.

What bothers me is—and I think the language could use some tightening. I think the gentleman from Wisconsin made a point that wasn't intended, probably isn't the interpretation, but I agree that we could tighten it up a little.

And I want to get to that, to a procedural point, Mr. Chairman. It's been my understanding that it was the intention to complete this bill today. If that is the case, I want to object very strenuously, and this is an example. We have not been filibustering. We started on this very complicated subject early. We had a break for a vote. We came back again about a quarter to 2:00. No one thinks this bill is going to be on the floor as soon as we come back. Rushing through this extraordinarily complicated subject, on which a lot of people are sort of torn, and where there are a great number of difficult issues to deal with, in a couple of more hours on a day like today, when we're going to be further interrupted for votes, really does a disservice to this concept. I think people are trying seriously to work out how we can best tap the willingness of faith-based organizations to make an even greater contribution to the service of social problems.

And if you insist on using the majority to force the pace of this today, I think you will be making it harder rather than easier. And I'll show you why I am not fully ready. We didn't see this bill until late yesterday. It's a lot to try and deal with in a day. I think people are making a serious set of good-faith efforts to improve it. There are a whole lot of problems with beneficiary discrimination that we're going to get to. I have a problem with the opt out. I understand that. And certainly we don't want to say that if you are a member of the congregation and you're getting the service, you

can't participate. The Chairman has raised a point that I think has to be clarified. But I have problems with the opt out.

Again, I talked before about separate but equal. I mean we had a period in American history where we tried to maintain two separate sets of institutions, one for white people and one for black people. Now, nothing quite so invidious is being maintained here, but we are being told that we're going to have two separate sets of social programs. We're going to have the religious and the secular. And, again, it was a witness brought forward by the majority, Professor Laycock, who said this program will be a fraud unless we have two completely equal sets of institutions, and they have to be in each area. If you fund a program in one area, you're going to have to fund a secular program in that same area. And I think that, as I said, we learned before, separate is inherently unequal.

The opt out reminds me of what people tried to do in the cases in Oklahoma and Texas—McLoren and Sweatt are the cases—where they said, "Okay, we don't have a law school—we're not going to let black people into the white law school, but we'll send you out of State or let you go to law school in a separate place." Again, we're not talking about anything as invidious as racial discrimination, but we're talking about something that still shouldn't be part of the policy of the United States Government. We're going to set up and fund with Federal tax dollars, to which you have contributed, religious organizations, and the intent is, of the current administration, obviously, to channel much of the social service programming through them. And then we'll say, "If you don't like this, if you have a constitutionally-protected objection to it, we'll let you opt out, we'll find you another way." I am deeply skeptical that we will ever remotely approach equality. And the notion of an opt out is just offensive. It's, "Okay, well, you'll have to drop out. You'll have to go away here. You have to go there." It puts a burden on the beneficiary that shouldn't be put, particularly since many of these intended beneficiaries are not the best organized, best integrated personalities in the world.

Now, these are very difficult issues. I raise them here because I think the Chairman made a point about the advisability of redrafting the gentleman from New York's amendment, but we can't do that in a couple of hours. We can't do that if that is the intention, to just rush this bill through today. For what? So that the majority can say, "Well, we got a bill out?" Because no one thinks it's going to the floor right away. We've been making a good-faith effort. I would hope that we would continue for a little while longer, and then recess this markup, and come back, give us a chance to look at things. I have found this useful. The gentleman from New York, my colleague from Brooklyn, has been trying very seriously to grapple with some of these issues.

So I have both a substantive point, which is I think that the amendment is better than the existing bill, but I think it could be further improved.

Of course, we have this other problem, by the way, because of the parliamentary footing that the majority chose to use. If in fact, we were dealing with an original text, the gentleman from New York's amendment would be further subject to amendment. The Chairman made a point, and I think it could have been done.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. FRANK. That's now been preempted parliamentarily.

Mr. SCOTT. Mr. Chairman, Mr. Chairman?

Chairman SENSENBRENNER. For what purpose the gentleman from Virginia seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. And I'd like to inquire from the Chairman, whether or not the legislative intent of the language on page 17, line 24—or I guess beginning at line 20, says that no funds provided through a grant shall be expended for sectarian worship—sectarian instruction, worship or proselytization, and if the religious organization offers such activity, it should be voluntary for the individuals receiving the service, offered separate from the program. Whether that means that during the government-funded program there should be no worship, proselytization, sectarian instruction by volunteers or otherwise, and any religious activities would be totally separate and apart from—and voluntary—separate and apart from the government program? Is that——

Chairman SENSENBRENNER. The answer to the question is yes.

Mr. SCOTT. Thank you.

Chairman SENSENBRENNER. That's what it says. The question is on the Nadler amendment to the Chairman's amendment. Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it. The noes——

Mr. NADLER. rollcall, Mr. Chairman.

Chairman SENSENBRENNER. rollcall is ordered. The question is on agreeing to the amendment offered by the gentleman from New York, Mr. Nadler, to the amendment offered by the Chairman. Those in favor will, as your names are called, answer aye, those opposed no, and the clerk will call the role.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Gekas?

[No response.]

The CLERK. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Barr?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Graham?

Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Scarborough?
Mr. SCARBOROUGH. No.
The CLERK. Mr. Scarborough, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
[No response.]
The CLERK. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. I'm sorry? Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman.
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Pass.
The CLERK. Ms. Jackson Lee, pass. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Are there additional Members in the room who desire to cast or change their vote? The gentleman from Pennsylvania?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no.

Chairman SENSENBRENNER. Gentleman from North Carolina?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Chairman SENSENBRENNER. Gentleman from Georgia?

Mr. BARR. No.

The CLERK. Mr. Barr, no.

Chairman SENSENBRENNER. Gentleman from Tennessee?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Chairman SENSENBRENNER. Gentleman from Alabama?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no.

Chairman SENSENBRENNER. Gentleman from Florida?

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Chairman SENSENBRENNER. Gentleman from Arizona?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no.

Chairman SENSENBRENNER. Gentleman from Florida?

Mr. WEXLER. Aye.

The CLERK. Mr. Wexler, aye.

Chairman SENSENBRENNER. Further Members who wish to cast—the gentlewoman from Texas.

Ms. JACKSON LEE. How am I recorded?

The CLERK. Ms. Jackson Lee, pass.

Ms. JACKSON LEE. Aye.

The CLERK. Ms. Jackson Lee, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or to change their votes? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 7 ayes and 22 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments to the amendment?

Mr. SCOTT. I have an amendment at the desk, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, No. 6.

Chairman SENSENBRENNER. The clerk will report the Scott amendment No. 6.

The CLERK. Amendment to the amendment to H.R. 7, offered by Mr. Scott and Ms. Waters.

On page 10, line 10 strike "paragraph-" through——

Mr. SCOTT. Mr. Chairman——

Mr. CHABOT. Mr. Chairman, reserving a point or order.

Chairman SENSENBRENNER. A point of order is reserved. The gentleman from——

Mr. SCOTT. Move that reading be waived.

Chairman SENSENBRENNER. Without objection, the reading of the amendment will be waived and the gentleman from Virginia is recognized for 5 minutes.

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott and Ms. Waters
Scott #6

On page 10, line 10 strike "paragraph-" through "(A) if" on line 11 and insert "paragraph if".

On page 11, line 23 strike "; or" and insert and insert a period.

On page 11, strike line 24 and all that follows through page 12 line 15 and insert the following "(5) Nothing in this section shall affect any programs under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)".

Mr. SCOTT. Mr. Chairman, this amendment that I'm offering with the gentlelady from California simply prevents charitable choice rules to applying to programs under the Elementary and Secondary Education Act. Both the Senate and House recently passed, by overwhelming majorities, bipartisan education bills. Charitable choice was not considered by either the House or the Senate authorizing Committees, nor was it debated on the House or Senate floors, because doing so would have jeopardized an otherwise bipartisan bill. As controversial as charitable choice is in the social service context, and even more so when applying it to elementary and secondary programs. For the first time ever, H.R. 7 would establish direct grants to pervasively sectarian institutions, including private religious schools, to run elementary and secondary programs. The courts have not even decided the constitutionality of vouchers in situations like this, an indirect aid scenario, and here we are immediately providing direct aid to these institutions.

Charitable choice is not needed for churches and other houses of worship to participate in these programs, so long as they comply with civil rights laws. But the meager protections that are in charitable choice for adults, are simply inadequate when running pro-

grams for children. The provisions prohibiting proselytization during government services does not go far enough when we deal with children. The law has consistently differentiated between children and adults, for example, when we talk about prayers. Children are more susceptible to coercion, and so we can have city council approved prayers at official ceremonies involving adults, but we can't have school-sponsored prayers dealing with children. Here children represent a truly captured audience, and even proselytization that occurs outside of a program may cross the line, particularly when parents are not consulted or informed.

Now, I would like to add that the language providing alternatives is particularly unrealistic in a school situation, given the huge demands for these programs and the current system's inability to meet that demand. The quote, "alternatives" available to children are particularly obnoxious because all of the normal children would go to one program, while the one or two children belonging to another religion would have to be separated and relegated to another room.

I'd like to note that the original charitable choice bill introduced by then Senator Ashcroft, covered just about everything except elementary and secondary education programs. This amendment is supported by the National Education Association, the American Federation of Teachers, the American Association of School Administrators, and I'd like to submit their letters of support for the record.

Chairman SENSENBRENNER. Without objection.

Mr. SCOTT. I yield back.

[The material referred to follows:]

NATIONAL EDUCATION ASSOCIATION

Robert F. Chase, President
Reg Weaver, Vice President
Dennis Van Roekel, Secretary-Treasurer

John I. Wilson, Executive Director

1201 16th Street, N.W.
Washington, D.C. 20036-3290

GOVERNMENT RELATIONS
Mary Elizabeth Teasley, Director
202-822-7321 FAX: 202-822-7741

June 27, 2001

Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

Dear Judiciary Committee Member:

On behalf of the National Education Association's (NEA) 2.6 million members, we would like to express our strong support for an amendment to be offered by Representative Scott (D-VA) that would strike charitable choice provisions for after-school and tutoring programs from the Community Solutions Act of 2001 (H.R. 7).

NEA believes that increasing the role of faith-based organizations in government programs raises serious issues – particularly in the areas of separation of church and state, religious discrimination, and accountability for the use of taxpayer dollars. First, constitutional provisions on the establishment and free exercise of religion prohibit the introduction of any sectarian practices into the public school system. An expanded charitable choice plan could violate this prohibition by subjecting beneficiaries of educational services to religious worship or instruction.

In addition, NEA is deeply concerned that expansion of charitable choice could open the door to federally-funded employment discrimination and the violation of the religious liberties of those receiving services. Charitable choice proposals contain no assurances against taxpayer funded religious employment discrimination. Indeed, by claiming that an employee has violated a religious tenet or doctrine of the group, a religious organization providing educational services could unfairly discriminate against an employee paid with federal funds.

Finally, charitable choice proposals undermine accountability for use of taxpayer dollars. Federal dollars flow directly to religious organizations, which could be free from reporting and monitoring requirements. In addition to academic standards, recipients of charitable choice funds could also be exempt from civil rights, certification and training, and health and safety standards. Any efforts to hold religious organizations accountable for their use of federal funds would likely result in unconstitutional excessive government entanglement.

Charitable choice is a controversial and divisive issue that will serve only to stall an important, bipartisan bill. We urge the Committee to drop charitable choice provisions from H.R. 7.

Sincerely,

Mary Elizabeth Teasley

Mary Elizabeth Teasley
Director of Government Relations

555 NEW JERSEY AVENUE, N.W.
WASHINGTON, DC 20001-2079
202-879-4400

SANDRA FELDMAN
PRESIDENT

EDWARD J. McELROY
SECRETARY-TREASURER

NAT LaCOUR
EXECUTIVE VICE PRESIDENT

June 27, 2001

Members
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative:

On behalf of the more than one million members of the American Federation of Teachers, I strongly urge you to support an amendment offered by Representative Scott that will strike the provisions applying charitable choice to afterschool education programs from H.R. 7, the "Community Solutions Act of 2001."

Allowing federal funds to flow directly to pervasively sectarian religious organizations to provide government services such as education through charitable choice raises serious constitutional issues regarding the separation of church and state. Under charitable choice beneficiaries of government programs could be subjected to proselytization, religious worship or instruction. Although the bill does not permit the use of federal funds for proselytization, organizations could use private funds for this purpose. This could force susceptible young children in education programs to listen to religious messages that make them uncomfortable and may be contrary to their family's religious orientation.

The AFT is also extremely concerned that charitable choice in H.R. 7 would allow government-funded employment discrimination. Under H.R. 7, religious organizations receiving federal funds would be allowed to refuse to hire individuals based on their religion. This represents a dangerous step backward for civil rights in this country.

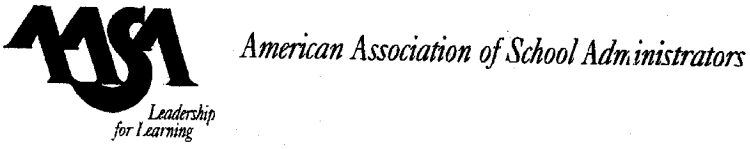
In addition, H.R. 7 would undermine accountability for the use of public funds. Religious organization providing education services, for example, could not be subjected to the same oversight and accountability for student achievement as other providers without risking excessive government entanglement with religion.

I urge you to remove the badly flawed and divisive charitable choice provisions from H.R. 7.

Sincerely,

Charlotte J. Fraas

Charlotte J. Fraas
Director, Department of Legislation



June 26, 2001

The Honorable Bobby Scott
Attn: Theresa Tilling-Thompson
Senior Legislative Assistant
2464 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Scott:

The American Association of School Administrators, the professional organization of more than 14,000 local school leaders, wishes to express our support for your amendment to strike the provision in HR 7 that would apply "charitable choice" to after school and tutoring programs.

The section you would strike, should it remain in the bill, would establish the dangerous precedent of authorizing direct federal payments to religious institutions for elementary and secondary education programs. Congress has long held that poor children in religious schools will receive federal educational assistance provided by the local school district in a neutral setting, a program that continues to work well. Further, local schools already partner with churches in a range of after school activities, with the school district being the fiscal agent and responsible for ensuring program accountability.

In the name of "charitable choice," the bill would allow discrimination in hiring based on religion, a practice not tolerated in any public school; a practice that runs counter to the very premise of our establishment as a nation.

The Community Solutions Act, by granting churches—in the "Compliance" provisions—the right to sue local school authorities, if the church believe its "rights" to federal funding "have been violated," opens a Pandora's box that will only hurt children in local communities.

We envision a multitude of lawsuits being filed against local school districts, because any religious organization believing it has a right to federal after school funds can and likely will bring suit, at tremendous cost to local taxpayers.

We do not have sufficient resources, as it is, to educate our most disadvantaged children Diverting scarce federal dollars to churches not only conjures constitutional issues, but also dilution of funds that would otherwise work to the benefit of all children, regardless of creed.

In closing, we thank you for moving to strike the education provisions of this misguided legislation. Congress must direct the nation's considerable resources toward education, not litigation.

Sincerely

Nicholas J. Penning
Senior Legislative Analyst

01 North Moore Street ▲ Arlington, Virginia 22209-1813 ▲ 703.528.0700 ▲ Fax 703.841.1543 ▲ http://www.aasa.org

Chairman SENSENBRENNER. The gentleman from Ohio insist upon his point of order?

Mr. CHABOT. I'll withdraw my point of order, Mr. Chairman.

Chairman SENSENBRENNER. Does the gentleman seek recognition?

Mr. CHABOT. I do. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I'll be brief.

I oppose the amendment. The amendment in essence would eliminate adult GED and after-school programs from coverage, and these are very important programs that provide very important

services to significant people within our Nation, and should not be excluded. The Supreme Court has upheld direct government funding to elementary schools, provided that the proper monitoring procedures are in place. So for those and other reasons, we oppose this amendment.

Mr. WEINER. Would the gentleman yield for a question? Would the gentleman yield for a question?

Mr. CHABOT. I'd yield.

Mr. WEINER. I'm predisposed to oppose the amendment as well, but the gentleman, in his explanation, offers an interesting question. What if you have an after-school program, you have a student or say two students who opt out of it? According to the bill, they have to be provided with a program, an alternative that has a value that is not less than the value of the assistance that the individual would have received from such organizations. How—how do you, as the Chairman of the Subcommittee, see that working? Part of the value of an after-school program is you are hanging out with a bunch of other children, you have different rooms to travel in, you have a basketball court in one room and arts and crafts, a tutoring program. Do you envision an after-school program being constructed of the same value, meaning you have a gym with one kid running around, you have a tutoring program where the tutor waits to see if that kid wants to stop by, a wicker workshop in the next room, seeing if maybe that fellow wants to run in there. How do you conceive of the opt-out program working in a construct of the underlying bill?

Mr. CHABOT. Will the gentleman yield?

Mr. WEINER. Sure, it's your time.

Mr. CHABOT. I thank the gentleman for yielding. The recipient clearly has the option, if they object to a religious program providing that service, to go to either another religious program, or secular program——

Mr. WEINER. Right.

Mr. CHABOT. And that will be determined on a case-by-case basis as to whether it's been appropriate and whether it's of comparable funding, and they're entitled to that under this bill.

Mr. WEINER. Will the gentleman yield further? Will the gentleman yield further?

Mr. CHABOT. It's your time.

Mr. WEINER. Actually, it's not. It's your time, but I appreciate it.

Mr. CHABOT. I'll yield.

Mr. WEINER. In Cincinnati, in your district, in Brooklyn, in mine, you can't shake a stick without hitting an after-school program. Thank goodness there are plenty of alternatives around. But the explanation for why this is needed, we've also—we've always been pointed to the parts of our community that are served by churches that are sometimes not in big cities. Let's say it's a corner of rural Idaho that has an after-school program set up in the local Baptist church in the basement. They have an after-school program. Someone in rural Idaho who's not of that faith feels uncomfortable, or a child doesn't want to go to that after-school program. What do you envision—how is this actually going to work on the ground? You say it has to be something of equal value. How do you replicate that in a community that has no other after-school programs because it also has to be accessible? I'm curious. In the real world,

in that real world example, how would you envision the bill working?

Mr. CHABOT. Reclaiming my time.

Mr. WEINER. Certainly.

Mr. CHABOT. I think the gentleman raises a very important, very interesting point. This is something that he and I and Mr. Green had an opportunity to discuss on the floor a bit. I don't know that we're ever going to come to a conclusion which is satisfactory to the gentleman, but we're going to—you know, you have to look at it. You mentioned Idaho as an opportunity, a rural area. It may be a little bit more difficult there than it might be in a large city, to provide a comparable service, but that's something that's going to have to be worked out. And ultimately we may end up in the court in determining how this—injunctive relief—not for money damages, but for injunctive relief—but this is again something that we've had for some time.

Mr. WEINER. But what do you——

Mr. CHABOT. Under Welfare Reform—under Welfare Reform, we've had this, for example, since 1996, and this is not new law, it's an expansion of existing law, in essence, and I'd be happy to continue to yield to the gentleman.

Mr. WEINER. Well, certainly. But putting aside the litigation, what do you envision? I mean, you're a supporter of the bill. It was your Subcommittee and you're an expert in this. What do you envision in that case, and what's the dream Chabot scenario? How does it work out? Do we really—are going to have to create? Is that rural Idaho community going to have to create—I mean, what do you think is going to happen, I'm asking?

Mr. CHABOT. Reclaiming my time, I cannot, with great candor, determine exactly what the program in Idaho is going to do, nor should I be the one that should make that determination. As our former Chairman, Mr. Hyde, mentioned, there's an army of people out there that want to provide services for the right reasons. These are people of goodwill who really care about helping underprivileged children, about helping homeless children, about providing after-school care, a whole range of activities out there that our country needs in great amounts for all kinds of people for all kinds of reasons. And we're trying to provide the resources to many groups and organizations and faith-based organizations that have not, unfortunately, been able to take advantage of this and provide those services for some time. We're going to have to see in practice how this actually works, and they're going to have to work within the constraints and the confines of this law

So again, I commend the President for putting this program forward, and I commend this body for debating this issue in an intelligent manner and trying to craft good legislation, but I can't tell you exactly what it's going to look like in Idaho, and I yield back the balance of my time.

Mr. WEINER. Would the gentleman yield?

Mr. FRANK. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. To strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. FRANK. I think we have gotten to one of the serious problems with this bill. The gentleman from Brooklyn was taking the argument seriously, and he's being told, well, we don't know how it's going to work out. I've asked to be distributed an excerpt from the transcript of the hearing that the gentleman from Ohio's Subcommittee had with Professor Laycock from the University of Texas, who was here at the request of the majority to be a strong witness in favor of this program. And Professor Laycock says, on page 48 in what's been given out, "We will not put religious conditions on the money to the provider and we will protect the beneficiary by really making available an alternate provider. You have got to really do that or this program is a fraud."

And on the next page, 64, actually my name is omitted, it begins with me. I ask him about this, and he says again—I say, "Do we have to have in place a complete alternative set of programs that meet the condition?" And Mr. Laycock says, at line 1510, "If you read my written testimony, you will see I said yes, this is where the real issue is. How do we make this happen? This is a religious liberty bill, it is not a funding bill. The higher the levels of funding the better this will work."

Well, he says you have to have a complete parallel set, but what bothers me is, I then turn to Mr. Esbeck, representing the administration, the Justice Department, and I asked him if he agreed with Mr. Laycock that you had to have the complete set of alternatives, and he said no. That's why I do not believe that this promise is going to be kept. Indeed it isn't even being made by the administration. I can't charge them with breaking a promise. They won't make it.

Here's Mr. Esbeck on page 66, lines 1527: "let's say it is a drug rehabilitation service, if they have one objector, they could simply employ a clinical psychologist to deliver the services to that one particular individual." We're now going to have the social service delivered by the one individual.

I said, well, what if there were 6 or 7 or 11? The administration has basically answered the gentleman from New York and said, no, we're not even going to try.

And I finally asked him—and this is at the bottom of page 67—"Do you agree with Professor Laycock's characterization that for this program to be fair and justifiable there needs to be a substantively equal secular alternative set of programs?"

Mr. Esbeck, representing the Justice Department, the administration witness here: "I think in my earlier answer I was showing you an example where that was not necessary. So I guess the answer is no."

The problem is that without a lot more work, given the administration's position, we are being asked to adopt a program that will work out, in the words of Professor Laycock, fraudulently.

Mr. WEINER. Will the gentleman yield?

Mr. FRANK. Yes.

Mr. WEINER. I just want to make a point. I mean, I think it's also important to know that a job training program teaching people to type, you can very easily send a typist over to a person's home or have them meet in someone's office and teach them to type. What troubles me about after-school programs is the very nature of after-

school programs. You can't just remove a child from that environment and then surround them with people——

Mr. FRANK. Well——

Mr. WEINER. I'm sorry.

Mr. FRANK. No, I agree with the guy, when he's saying this context—but by the way, that's true of job training programs. As everyone knows, job training programs don't simply teach you the physical skill. They teach you how to get up and get there on time. They teach you how to work with other people. Whenever you are dealing—we are dealing here with problems that are often behavioral, and the notion that it's equal if you just send a clinical psychologist there, to being part of this social setting, is wrong. And again, I am disturbed because Mr. Esbeck, on behalf of the Bush administration, denies what seems to many of us to be the central principle on which we've heard. He says, no, Professor Laycock is wrong. You don't have to do it equally.

Now, the relevance of that is this: the more you allow religious content in the program, the more you generate the possibility that people are going to want a separate program which is going to cost a lot of money, which will be very difficult with our current fiscal situation, and which Mr. Esbeck says won't be there. So while we cannot control in this the funding, this is an argument, it seems to me, for diminishing the likelihood that you're going to drive people to want that alternative. That's why some of us have supported some of these amendments that try to preserve this right. But fundamentally, what this transcript shows is the witness that the majority brought forward, the professor from the University of Texas, Mr. Laycock, says, here's what you need to make this fair, and the Justice Department says basically, no, we're not going to do that.

Chairman SENSENBRENNER. The gentleman's time has expired. For what purpose does the gentlewoman from California, Ms. Waters, seek recognition?

Ms. WATERS. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. It was mentioned that within a few weeks ago the House and Senate passed bills reauthorizing the Elementary and Secondary Education Act programs. Provisions within each bill allow community groups to compete for after-school grants and to provide tutoring assistance to pupils attending low-performing schools. These measures are intended to improve our children's education.

However, neither bill included a charitable choice amendment to establish direct grants to private religious schools and other sectarian entities, to provide educational services to elementary and secondary students. Such an amendment was not even considered on the floor or in Committee, and yet that's exactly what this bill would do. It would sneak in direct grants to religious groups through the back door.

If this is an important aspect to educational services, then why wasn't it discussed when we dealt with the education reauthorization bill? I think I know why: because the authors of the bill knew that such a provision would be very objectionable to the Education and Workforce Committee and that it would undergo far too much scrutiny on the floor.

Well, we must not allow such underhanded tactics. Charitable choice is offensive and problematic enough without adding in provisions relating to after-school and tutoring. These provisions would again entangle the Government with religion. To allow our Government to dole out funding to private religious schools is to invite an inappropriate melding of church and state.

I would like to quote from a letter I received yesterday from the American Federation of Teachers in opposition to H.R. 7. It says in part, and I quote, "Allowing Federal funds to flow directly to pervasively sectarian religious organizations, to provide Government services such as education through charitable choice, raises serious constitutional issues regarding the separation of church and state."

The letter goes on to note that the bill could force susceptible young children in education programs to listen to religious messages that make them uncomfortable and may be contrary to their family's religious orientation.

We here on the Judiciary Committee are very consciously working within our jurisdictional guidelines. The authors of this bill should be held to the same standard. These provisions should not be in this bill, and I urge you to strike them.

Ms. LOFGREN. Would the gentlelady yield?

Ms. WATERS. I yield to the gentlelady from California.

Ms. LOFGREN. I think that your statement is wise, and I would like to make an additional observation about the amendment before us.

In the example raised by the gentleman from New York, he described an after-school program that might be located at a church or an institution, a faith-based institution. But oftentimes these after-school programs are actually located at the school, and there is very limited space, and you might have outside groups that come in and actually provide the services on the school site.

If the Wiccans actually had the lowest-cost program and they want to come on to the school site and provide the after-school care, they agree not to proselytize, but they're dressed as witches. The parents don't have another option. The kid is at school. The kid can't go anywhere else. The school can't accommodate an additional program. So you're going to end up with the Wiccans and no possibility of implementing the opt-out that is essential to even arguably making this bill constitutional. And I thank the gentlelady for yielding.

Chairman SENSENBRENNER. Would the gentlelady yield?

Ms. WATERS. Let me just——

Chairman SENSENBRENNER. Would the gentlelady yield further?

Ms. WATERS. Reclaiming my time, I would think that my friends on the opposite side of the aisle would really be afraid of what has been constructed in this bill that would allow their children to receive religious messages that do not comport or agree with where they stand religiously in the family. I think this is the greatest possible intrusion.

Let me just say, if you're an adult, you can tell somebody about what offends you, you don't like it. But what do children know? What do children know who are put in this position? We are sending them for tutoring, for after-school programs, and to have to encounter the possibility of being given religious messages by people

you don't know and you certainly don't agree with. I think this is not a liberal issue. This is really not a conservative issue. But I have heard conservatives more than anybody else talk about protecting the right of parents to be able to infuse the values that they care about in their children rather than having other people interfere with that.

Chairman SENSENBRENNER. The gentlewoman's——

Ms. WATERS. I think this is dangerous.

Chairman SENSENBRENNER.—time has expired. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott, to the Chairman's amendment. Those in favor will say aye. Opposed, no? The noes appear to have it.

Ms. WATERS. rollcall.

Chairman SENSENBRENNER. A rollcall is requested and will be ordered. The question is on the adoption of the Scott amendment to the Chairman's amendment. Those in favor will, as your names are called, answer aye; those opposed, no; and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

[No response.]

The CLERK. Mr. Barr?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Graham?

[No response.]

The CLERK. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Scarborough?

[No response.]

The CLERK. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

[No response.]

The CLERK. Ms. Hart?

Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Pass.
The CLERK. Ms. Jackson Lee, pass. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Additional Members in the room who wish to cast or change their vote? The gentleman from North Carolina?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from Ohio?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Chairman SENSENBRENNER. The gentleman from South Carolina?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no.
Chairman SENSENBRENNER. The gentleman from Tennessee?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. The gentleman from Georgia?
Mr. BARR. No.

The CLERK. Mr. Barr, no.

Chairman SENSENBRENNER. Additional Members in the room who wish to cast or——

Ms. JACKSON LEE. How am I recorded, Mr. Chairman?

The CLERK. Ms. Jackson Lee, pass.

Chairman SENSENBRENNER. The gentlewoman from Texas?

Ms. JACKSON LEE. Aye.

Chairman SENSENBRENNER. Does the gentlewoman from Texas wish to change her vote?

Ms. JACKSON LEE. I was—yes, I'd like to vote aye.

The CLERK. Ms. Jackson Lee, aye.

Chairman SENSENBRENNER. If there are no further Members who wish to cast or change their vote, the clerk will report.

The CLERK. Mr. Chairman, there are 10 ayes and 17 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments?

Ms. LOFGREN. Mr. Chairman, I have——

Chairman SENSENBRENNER. The gentlewoman from California—I was instructed by the Democratic staff to recognize the gentlewoman from California next. For what purpose does the gentlewoman from California seek——

Ms. LOFGREN. I have an amendment at the desk designated the Lofgren-Schiff amendment.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment to H.R. 7, offered by Representative Lofgren and Representative Schiff, strike section 104.

[The amendment follows:]

Amendment to the Amendment to H.R. 7

Offered by Rep. Lofgren AND REP. SCHIFF

Strike Section 104.

Chairman SENSENBRENNER. The gentlewoman from California is recognized for 5 minutes.

Ms. LOFGREN. Mr. Chairman, we have had a lengthy and I think useful discussion about the role of religious and the need to protect the free exercise of religion, but there's something else in this bill that also needs to be attended to that I don't think is really about charitable choice at all, and that is section 104 that this amendment would strike.

It appears to me to be written for really no other purpose than to shield corporations from the responsibility they should continue to have for those items or services they may contribute or, if you look at the plain language, also rent or charge a fee for. This bill creates such a high standard, namely, either gross negligence or intentional misconduct, that it almost guarantees immunity from li-

ability for injuries or death that could result from furnishing materials, vehicles, real property to nonprofit agencies.

Let me just give a couple of examples. On page 3 of the Chairman's amendment, there is a liability relief for business entities that provide use of facilities to nonprofit organizations, specifically when the use occurs outside of the scope of the business or the business entity; it's limited also that the injury or death would occur when the facility is used by the nonprofit entity and that it's authorized by the business.

Section (b)(2) indicates that the facility doesn't even have to be donated to the nonprofit. It can be rented or a profit could be made by the business for furnishing space.

Well, think about some scenarios that could be covered by this. For example, you've got a store in a city and there's extra room in back of the store that is rented, because times are tough in the commercial world, to a baby-sitter, a nonprofit baby-sitter, perhaps even a church. Now, the store owner neglects to check the smoke detectors, and the store owner neglects to make sure that the emergency exits are cleared. When the facility catches fire and the 3-year-olds are injured, the store owner would be exempt from liability for the injuries sustained by the pre-schoolers because the conduct involved would be mere negligence, not gross misconduct or intentional misconduct.

Let me give another example in the motor vehicle section on page 4. Take a corporation—it's very common. The corporations have vans that they use for their own employees. Times are tough in the corporate world, especially in Silicon Valley. If a corporation decides to lease or rent that employee van to the Girl Scouts but fails to check on the bald tires, that van flips and incinerates the Girl Scout troop, the business that has made a profit by providing that van to the Girl Scouts is immune from liability for their negligence. And I can't imagine that that's what the proponents of charitable choice wish to do.

Finally, on page 5, there's a provision eliminating liability for business entities providing tours of facilities. Now, I must confess, I have thought long and hard about why this provision would be here because this is not even limited to nonprofits. It appears to be completely extraneous to the whole issue that we've been discussing all day, which is faith-based matters. It appears that if you were a factory owner and you did a tour for salesmen, and the salesmen in the bowels of the manufacturing facility ended up being beaned by a faulty line, that you would be exempt from liability under this section, although that has absolutely nothing to do with religion. So I am just bemused by that.

I also am astonished, frankly, that in the manager's amendment, the few sections that would carve out liability when misconduct is a sexual offense, when misconduct is a hate crime, when misconduct violates a Federal or State civil rights law, when misconduct——

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Ms. LOFGREN. I'd ask unanimous consent for an additional minute.

Chairman SENSENBRENNER. Without objection.

Ms. LOFGREN. When misconduct is a crime of violence, those have been removed in the amendment. So if you had—I know a woman who is a psychologist who specializes in counseling child molesters for a profit, she's in business. If she rents out the first floor of her building to the day care and her clients molest the children in the day care, this bill is going to preclude any finding of liability for that negligence, and I cannot believe that that is something that proponents of faith-based programs would wish to do. And I yield back the balance of my time.

Chairman SENSENBRENNER. The Chair will recognize himself for 5 minutes in opposition to the amendment.

Section 104 provides that businesses that provide in-kind charitable contributions shall not be liable for death or injury arising from the use of those contributions unless there is gross negligence or intentional misconduct. The gentlewoman spotted the fact that the original bill had a number of instances contained in there, including hate crimes and sexual assaults. Those are all intentional misconduct, and there is no exemption from liability if any of the beneficiaries under charitable choice are victims of that kind of activity.

The liability protection in the manager's amendment applies in four instances: first, when a charity uses equipment donated by a business; second, when a charity uses the facilities of a business; third, when a charity uses motor vehicles or aircraft of a business; and, fourth, when a charity takes a tour of the facilities of a business.

This provision extends to those matters the same basic concept that this Committee embraced for volunteers in the Volunteer Protection Act of 1997. That bill passed this Committee by a vote of 20 to 7. It passed the House by a vote of 390 to 95. It passed the other body by a vote of 99 to 1 and was signed into law by former President Clinton.

I am hopeful that we can have the same type of bipartisan support for this provision that we had for the Volunteer Protection Act. The basic idea is that donating something to a charity should not be a high-risk venture. You should not have to endure unlimited liability for ordinary negligence to be a good corporate citizen. That type of litigation limits the good works that charities can do.

For example, potential liability for the use of donated motor vehicles can discourage businesses from helping kids go on a field trip or to get to summer camp. We do not want these kinds of good works hindered by the threat of lawsuits.

For those of you who don't like this type of protection, we've also taken care of your concerns. All the States under the manager's amendment are free to override the provisions of this section and to reinstate liability laws should they choose. I think it is unlikely that States would reject this type of provision, but they can do so if they choose.

I yield back the balance of my time and declare the Committee in recess——

Mr. FRANK. Mr. Chairman——

Chairman SENSENBRENNER.—and come back following the votes.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. Pending at the time of the recess was the Lofgren amendment striking section 104——

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER.—of the Chairman's mark. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. To strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. FRANK. Mr. Chairman, first, I am still puzzled as to why this bill decides that any tour of a business facility, including one for which people pay, is a matter of faith-based.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. FRANK. Yes.

Chairman SENSENBRENNER. I would ask unanimous consent that the Sensenbrenner amendment be modified to delete that section.

Mr. FRANK. I object, Mr. Chairman—oh, delete the whole section?

Chairman SENSENBRENNER. No. To delete the section relating to tours.

Mr. FRANK. Tours. No objection.

Chairman SENSENBRENNER. Without objection, so ordered.

Mr. FRANK. Well, I thank the Chairman for that. I still—I'm a little frustrated because I am denied the explanation of how it got in here in the first place. I think that would be a more interesting tour than those for which you were going to give people liability. But the gentleman's point illustrates the absolute unreasonableness of the apparent decision by the House leadership that this Committee must finish this bill. I believe that the Chairman has played up until now a very constructive role in trying to improve this bill, and I appreciate what he did. I realize that matters of scheduling are not entirely autonomous ones for the Committee.

But precisely because the Chairman was working so hard to get some revisions, we on our side of the aisle did not see this bill until yesterday afternoon. This is a very complex bill. It has a lot of references to other statutes. It is a subject on which a number of Members feel favorably inclined in some ways, subject to some amendments. And because of the way things have turned out, we are going to be asked to pass this bill without it being given adequate consideration.

It is now a time when many Members have left on both sides. I have had Members on both sides say to me, gee, I got a plane to catch. No doubt that the majority will be able to muster a quorum, at least a working quorum, to shut down debate on the bill if they can't quite get it voted out. And those who are insisting that this be done—I don't impute this desire to the Chairman. Those who are insisting that this be done do this whole bill, this whole concept, a disservice.

Again, the Chairman just agreed, we needed an amendment here. The Chairman earlier pointed out what I thought was a flaw in the wording of the amendment offered by the gentleman from New York. I've got amendments to deal with other parts of this bill. The beneficiaries section has some serious problems.

One of the things that's clear to me, if you look at this bill, is that it is a license for people to discriminate against gay and lesbian people. Beneficiaries, for instance, are protected against dis-

crimination based on some laws, but they are explicitly not protected against discrimination based on State laws, and that is an invitation for people to discriminate based on sexual orientation.

I'd like to be able to explore these things, but what we're going to be dealing with now—members are barely here, even after they've been asked, some Members will be leaving, Members are under pressure to get out of town. A complicated bill involving important constitutional and policy questions is being rushed through, and why? It cannot come to the floor of the House for 10 days and, indeed, will not come to the floor of the House very soon. The rational thing to do would be to resume on this bill, even on the Tuesday. Members had originally been told there would be voted on Monday. We could come back on Tuesday in July and have the 4 or 5 hours left to consider this. Instead, consideration of this bill will be truncated. Important questions will not be dealt with fairly. It will be voted out under pressure. A bill that was substantially revised, to the good—and I appreciate the revisions—but revised so late given the timing of the markup that we did not have adequate chance to prepare.

Now, that's what you do if you were trying not to resolve an important public policy issue, but if you're trying to get some political points because you think you're in trouble. Obviously, things have not been going well for the administration in their mind, and so they felt that they needed before this recess to have a success to talk about. And the sole purpose of this rushed and truncated markup on a bill which we have not had adequate chance to study is so the administration can recoup a little of what it has lost. And it does this at the expense of the effort to build a consensus behind this bill.

We were prepared to be serious about this, to debate it. We were working our way through the issues. We got through the employment issue. We were going to get into the beneficiary issue. We've made also serious progress in dealing with the question of the proselytization. But that now gets—that plug gets pulled because no one thinks between now and whatever time the deadline will come you're going to get adequate consideration given all these constraints.

I really very much regret that this has happened.

Chairman SENSENBRENNER. The time of the gentleman has expired.

The gentleman from Virginia, Mr. Scott?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I would hope that we would adopt this amendment so we could give coherent attention to the issue. This is a tort reform issue, not a charitable choice issue. As the Chairman has pointed out, we have good Samaritan laws that might achieve bipartisan consensus, but we can't do that in the middle of a charitable choice debate. There are some provisions that involve motor vehicles, for example, where we usually exempt motor vehicle liability because there's usually insurance. We don't have time to really do this, and I would hope we'd accept this amendment and try to deal with the issue on another day.

I yield back.

Ms. LOFGREN. Would the gentleman yield?

Mr. SCOTT. I yield to the gentlelady from California.

Ms. LOFGREN. I think your point in terms of the insurance issue is a good one, and I wanted to make just two additional comments about the amendment and also the deletion of the carve-outs in the underlying bill.

The Chairman is obviously correct that a sexual offense is an intentional act and, therefore, would not be—would be covered under the underlying bill. But the point is that liability can attach to someone other than the tort feasor in the case of some sexual attacks, for example, the famous case where negligence in the lock that allowed the hotel guest to be—to have a room broken into and to be raped. And there was negligence found on the part of the hotel.

If, for example, you have—and I gave an earlier example of someone who I actually happen to know who is a psychologist, whose specialty is child molesters. If that person rents space in the bottom of her building and then hires as an attendant or a handyman a registered child molester, and the child molester molests the children in the downstairs basement, you can—sure, you can go ahead and sue the child molester, but chances are he is going to be judgment-proof. And it's the negligence of the owner of the building that really needs to be called into account, number one, so that there can be remedial funds made available to counsel the children who have been damaged; and, number two, there's a reason for tort law, which is to hold people to ordinary standards of care. And the idea isn't just to tag people once they've messed up, but to have people think and not do stupid things so that we live in a safer environment.

I think that the elimination of the sex provision and the crime of violence provision and the hate crime provision is a serious mistake. I object to the whole section, but at least we ought to have those carve-outs because I think they are serious issues.

I thank the gentleman for yielding to make those points.

Chairman SENSENBRENNER. The gentleman yields back.

The question is—the gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I want to simply say that I agree with the amendment of the gentlelady from California. And having said that, I want to associate myself with the remarks of Mr. Frank. I am very disturbed by the rush job of this bill. As Mr. Frank said, we first saw this bill or the Chairman's mark late last—oh, 6, 7 o'clock yesterday, I think it was. And there's obviously not been a proper time—enough time to do a proper job of analyzing this and going through it.

Now, of course, given the way we rushed through the tax bill, that may be a pattern.

Let me say one other thing, though. There are rumors afloat today that there may be a move by the Chairman to move the previous question at some time tonight. I earnestly hope that's not the case. In the 9 years I've been on the Committee, I recall three occasions—I recall two occasions when the previous question was called. The previous question, of course, eliminating the right of the minority or, for that matter, perhaps majority Members to offer amendments. Once was during the Contract on America, I forget which bill it was, and the Chairman at that time was apologetic

and in effect said he had no choice, he had been instructed to get the bill out that day by the Speaker or whoever. But we had had 4 or 5 days on the bill.

Earlier this year, you, sir, called the previous question. And maybe there was a reason in that one Member of the Committee was being obstreperous in offering dilatory—using many dilatory tactics. Nobody's doing—nobody's doing that today. If we simply do not have enough time to go through all the amendments today, a second day of markup on a bill of this nature is not too much to ask. It would be a gross violation of comity between the parties and of the traditions, I think, at least in the years that I've been here, of the Committee to move the previous question. And I hope that the Chairman won't do it, and I hope that it will not be necessary for the minority, if he should do it, to engage in a lot of dilatory tactics for the rest of the session.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the Lofgren amendment to the Chairman's amendment. Those in favor will signify by saying aye. Opposed, no? The noes appear to have it.

Ms. LOFGREN. rollcall, Mr. Chairman.

Chairman SENSENBRENNER. A rollcall is requested. The question is on agreeing to the Lofgren amendment to the Sensenbrenner amendment. Those in favor will, as your names are called, answer aye; those opposed, no; and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

[No response.]

The CLERK. Mr. Barr?

Mr. BARR. No.

The CLERK. Mr. Barr, no. Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson, no. Mr. Cannon?

[No response.]

The CLERK. Mr. Graham?

Mr. GRAHAM. No.

The CLERK. Mr. Graham, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Scarborough?

[No response.]

The CLERK. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
[No response.]
The CLERK. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members—the gentleman from California?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Chairman SENSENBRENNER. Are there additional Members who desire to cast their votes or to change their votes? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 7 ayes and 13 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr.——

Mr. FRANK. I offer an amendment. It's the one that's headed, "Offered by Mr. Frank and Ms. Baldwin."

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment to H.R. 7, offered by Mr. Frank and Ms. Baldwin. Page 15——

Mr. FRANK. I ask unanimous consent that it be considered as read.

Chairman SENSENBRENNER. Without objection.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT TO H.R. 7

OFFERED BY MR. FRANK AND MS. BALDWIN

Page 15, line 23, after "subsection (f)(3)" insert "on any basis prohibited under applicable Federal, State, or local law or".

Page 16, strike line 1 and all that follows through line 8 and insert the following:

1 "(2) INDIRECT FORMS OF DISBURSEMENT.—A religious
2 organization providing assistance through a voucher,
3 certificate, or other form of indirect disbursement under a
4 program described in subsection (c)(4) shall not
5 discriminate, in carrying out the program, against an
6 individual described in subsection (f)(3) on any basis
7 prohibited under applicable Federal, State, or local law or
8 on the basis of religion, religious belief, or a refusal to hold
9 a religious belief."

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. This goes to a section we have not previously debated. We've dealt with employment discrimination. This deals with beneficiary discrimination.

Now, on page 15, we have non-discrimination against beneficiaries. Interesting, the very fact that we are dealing with this shows the controversial nature of some aspects of this program. Or-

dinarily, when the Federal Government is funding programs, we don't worry about discrimination against beneficiaries. But apparently there is the perception from people who know this best that some of the organizations receiving this money might be inclined to discriminate against beneficiaries. Obviously, that is impermissible with Federal funds.

But the problem is that it seems to me to be very incomplete. There is a provision on page 13—I think it's inappropriately placed, but I hope it's suppose to mean that. Under section (e), employment practices, there's subsection (1) and then subsection (2), and subsection (2) says, "Nothing in this section alters the duty of a religious organization to comply with certain laws."

Now, it's placed in the bill as if it only applied to employment. I am assuming we would clarify that it was meant to imply to beneficiaries as well as employment. If not, we'll have some problems. But even assuming that for the moment, here's what it says: You shall not, if you are a religious organization, discriminate based on title VI of the Civil Rights Act, race, color, or national origin, sex in education but not elsewhere under title IX, and then section 504 of the Rehab Act and the Age Discrimination Act.

It then says you shouldn't discriminate based on religion. Well, one of the things it clearly leaves out, I believe intended, was any State law that added to these protections. And, obviously, what we are talking about primarily here are State laws that ban discrimination against people based on their sexual orientation.

In other words, this bill licenses the recipients of these funds to discriminate against beneficiaries based on their sexual orientation, because by terms it says no discrimination based on race, on color, on national origin, on disability.

By the way, it also would allow some discrimination based on sex, because title IX deals with discrimination in educational programs or activities on the basis of sex, but other discrimination on the basis of sex would apparently be allowed.

My amendment—and it's cosponsored by the gentlewoman from Wisconsin, who had to leave—says you shall not, if you take these funds, discriminate based on any basis prohibited under Federal, State, or local law. In other words, I do not think the Federal Government ought to take this as a license—I do not think the Federal Government ought to license private organizations to violate State anti-discrimination law, but the bill does that. The bill says if you take Federal funds for this program—previously the gentlewoman from Wisconsin had said if you have both a mix of Federal and private funds, you could avoid State anti-discrimination laws in employment. Well, now that also happens with regard to the beneficiaries. And obviously it is intended to allow some organizations to say no to gay, lesbian, bisexual, or transgendered people who might otherwise be protected by State law and deny them these benefits.

Now, again, we have the mythical separate but equal alternative. Yes, if you're denied these benefits, theoretically there will be another existing set. But it is abhorrent to be told that you can't even have your choice of these.

We're not talking now about someone who says, oh, I don't want this religious instruction—or I don't want this religious organization giving me the service. We're talking about someone who wants

the service, who is protected against discrimination by State law, but who by virtue of this bill can be turned away from a federally funded program when the State law would protect him or her against discrimination because this law allows a discrimination against not the employment—the employees, but the beneficiaries.

I think that is significantly unworthy of something that comes in the guise of trying to alleviate our social distress, and I point it also would allow sex discrimination in non-educational activities. I do not understand how people can consider this to be a great social advance.

Chairman SENSENBRENNER. The gentleman's time has expired.

For what purpose does the gentleman from Ohio, Mr. Chabot, seek recognition?

Mr. CHABOT. Move to strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I'll be very brief.

I oppose the amendment, rise to oppose it. There is no reason to believe that either gays or lesbians would be or should be discriminated by any of the programs here. There's absolutely no intention in that or any reason to believe that that's the case, and for that reason we oppose it.

Mr. FRANK. Would the gentleman yield?

Mr. CHABOT. I'd be happy to yield.

Mr. FRANK. Well, but I would assume you would also think there was no reason to believe that people would discriminate based on race or conditions of disability, yet you put into the bill that they can't. So if we're going to go on the good-faith assumption that it wouldn't happen, it wouldn't be in the bill. In fact, you put several categories in the bill and leave out State laws, which are the only protections that now exist for gays and lesbians.

Mr. CHABOT. Well, reclaiming my time, Congress has the opportunity—has had the opportunity to act in this area, thus far at the Federal level has chosen not to do so. There's no reason for this bill to be the vehicle for that occurring. It's a debate that it's a legitimate——

Mr. FRANK. Would the gentleman yield? Because the gentleman misstates me.

Mr. CHABOT. I'm not yielding yet. So there's no—there's no reason in this specific bill to have this be the bill that deals with that particular——

Mr. FRANK. Would the gentleman yield?

Mr. CHABOT. I'll yield.

Mr. FRANK. And neither does the amendment that we offer do that. The amendment does not name any categories. What the amendment says is we will respect State law. This is not an effort to include in Federal law any new protection.

I would also point out that the bill includes a protection that's not in Federal law, religious discrimination. So you don't confine yourself in this bill to banning only that discrimination currently banned under Federal law. You add, as you should, religious discrimination. So the question is: Why do we pre-empt State law here in this one area, or whatever area the States want to add?

Mr. CHABOT. Well, reclaiming my time, this is Federal dollars which the Federal Government has the right to essentially set the

rules on. And thus far Congress has chosen not to act with respect to discrimination relative to gays or lesbians. There's no reason for us to——

Mr. FRANK. Would the gentleman yield?

Mr. CHABOT. This particular—I'll be happy——

Mr. FRANK. Thank you. But neither has Congress done this with regard to religion. You added religion here. This is not simply saying only those which the Federal Government had done. And there might be State laws—State laws may offer more protection on the basis of sex discrimination, not sexual orientation but sex, than Federal law. You allow that to be overridden. You only protect sex discrimination in regard to education, and there is no general ban here on sex discrimination. Some States which have equal rights amendments, they would find these disregarded.

I understand that Congress has the power to do that. I simply don't understand why in the context of a bill that's supposed to be enhancing our sense of compassion we license people to discriminate against some categories that their States have tried to protect against discrimination.

Mr. CHABOT. Reclaiming my time, under existing law, other than based upon religion, you clearly cannot discriminate for race, color, national origin, or any other item, and this is just the determination that there's no reason to bring in sexual orientation under this particular bill. It's a legitimate debate for Congress to have at some point in time. This is not the bill to do that——

Mr. FRANK. If the gentleman would yield, that——

Mr. CHABOT. Essentially what we're trying to do here is we're trying to allow religious groups who can provide good services for people who really need the help, whether it's women who are being abused, whether it's children, whether it's—a whole range of very needy people. We want to allow religious groups to compete for those existing dollars because we realize that some of those groups can do a better job than others——

Mr. FRANK. Would the gentleman yield?

Mr. CHABOT.—and we want to provide the best service, the most efficient service to those needy people as we possibly can. And there are, as I mentioned, race and color and national origin. Those are all protected, as we already had the religious discussion and the discrimination relative to religion, all the way back to the 1964 civil rights law. It was determined not to include religion. It's just—it's the belief that this is not the law to deal with gays or lesbians, the sexual orientation issue. I'll be happy to yield.

Mr. FRANK. If the gentleman would yield, I am appalled by that. What you're saying is because we haven't done it before, this is a new program, it's expanding it. And, yes, if you're abused and, yes, if you're in trouble, you'll get help, but if a group getting Federal funds decides that because you're a lesbian, the fact that you've been abused as a wife, they can deny you, you say that's okay. That's appalling.

Mr. CHABOT. Well, reclaiming my time, again, it's been stated this is an expansion of existing programs. In essence, much of this is not new programs. We're already doing this. We were doing this under the welfare reform bill back in 1996, which was signed by President Clinton. To my knowledge, there's nothing in there rel-

ative to discrimination of gays and lesbians, and, again, this is not the bill to do that. And I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the Frank amendment to the Chairman's amendment. Those in favor will say aye. Those opposed, no? The noes appear to have it.

Mr. FRANK. rollcall.

Chairman SENSENBRENNER. A rollcall will be ordered. All those in favor of the Frank amendment to the Sensenbrenner amendment will, as your names are called, answer aye; those opposed, no; and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Barr?

Mr. BARR. No.

The CLERK. Mr. Barr, no. Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?

[No response.]

The CLERK. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Graham?

[No response.]

The CLERK. Mr. Bachus?

[No response.]

The CLERK. Mr. Scarborough?

[No response.]

The CLERK. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

[No response.]

The CLERK. Ms. Hart?

Ms. HART. No.

The CLERK. Ms. Hart, no. Mr. Flake?

[No response.]

The CLERK. Mr. Conyers?

[No response.]

The CLERK. Mr. Frank?

Mr. FRANK. Aye.

The CLERK. Mr. Frank, aye. Mr. Berman?

[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members who wish to cast or to change their vote? The gentleman from North Carolina?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from South Carolina?
Mr. GRAHAM. No.
The CLERK. Mr.——
Chairman SENSENBRENNER. Graham.
The CLERK. Mr. Graham, no.
Chairman SENSENBRENNER. Further Members? The gentleman from Tennessee?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. Further Members?
[No response.]
Chairman SENSENBRENNER. The clerk will report.
The CLERK. Mr. Chairman, there are 7 ayes and 15 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to. Are there——
Mr. FRANK. Mr. Chairman?
Chairman SENSENBRENNER.—further amendments? The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Mr. Chairman, I have a second amendment here. It says, "Offered by Mr. Frank and Mr. Scott."

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment to——

Mr. FRANK. I ask unanimous consent it be considered as read.

Chairman SENSENBRENNER. Well, if the amendment can be distributed, at least someone will be able to see if a point of order lies. The clerk will continue to report.

The CLERK. Amendment to the amendment to H.R. 7, offered by Mr. Frank and Mr. Scott. Page 3, line 24—page 13, line 24, Strike "(2) Effect on other laws"——

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT TO H.R. 7

OFFERED BY MR. FRANK AND MR. SCOTT

Page 13, line 24,

Strike "(2) EFFECT ON OTHER LAWS. –Nothing in this section alters the duty of a religious organization to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688) (prohibiting discrimination in education programs or activities on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (prohibiting discrimination on the basis of age)."

and insert in place thereof:

"(f) EFFECT ON OTHER LAWS. –Nothing in Section 1994A shall alter the duty of a religious organization receiving assistance or providing services under any program described in subsection (c)(4) to comply with the nondiscrimination provisions in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (prohibiting discrimination on the basis of race, color, and national origin), title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688) (prohibiting discrimination in education programs or activities on the basis of sex and visual impairment), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibiting discrimination against otherwise qualified disabled individuals), and the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (prohibiting discrimination on the basis of age)."

Page 14, line 14

Strike "(f)" and replace with (g)" and re-letter subsequent subsections accordingly.

Chairman SENSENBRENNER. The gentleman from Massachusetts will be recognized for 5 minutes.

Mr. FRANK. Mr. Chairman, unlike my previous amendment, which tried substantively to expand the protection, this one is aimed at clarifying what seemed to me possible ambiguities in the protections already included in there with 2.

On page 9 of the Chairman's mark, beginning at 20, line 20, it says, "Funds not aid to religion," and it says that the money that would, in effect, be given to the organizations, the faith-based orga-

nizations, for the purpose of this assistance shouldn't be construed as support for religion or the organization's religious belief.

As a statement of fact and constitutional principle, that is unexceptional. I just wanted to make sure that this was not interpreted as somehow avoiding the effect of the non-discrimination statutes that are in there, that is, the non-discrimination statutes applied to the entities, and one potential interpretation was that if you hold that the money being given is not being given to the organizations, that somehow that might mean that they were not as organizations subject to the anti-discrimination statutes. If I am assured that that was not the intention, maybe we could even work that out technically. But that's the purpose.

In other words, I wanted to make sure that the anti-discrimination statutes that are listed beginning on page 13, subsection (2), that those, in fact, do apply to the organizations even if it's interpreted as not being aid to them.

Secondly, there is just a question of the way the bill is constructed, and I hope it's not intended this way, but that's the other thing I would add. On page 13 it says, "(e) Employment Practices." The provision that I assume bans discrimination against beneficiaries is listed here as subsection (2) of (e) under Employment Practices. It seemed to me that it ought to be made a separate section, that is, I just wanted to make clear that if you read this, someone might think—would think that employment practices in general effect on other laws, that there is then nothing that covers beneficiaries.

If this is read literally to apply, subsection (2)(b) line 24 only to be employment practices, then there's no language about beneficiaries. It then goes on to talk about rights of beneficiaries about their rights to withdraw.

So what I was trying to do was to get clarification that subsection (2) on lines 24 and thereafter applies to beneficiaries as well as to employees, and also that when we say that this aid is not aid to the religious organization but aid to the individuals, that that does not work also to exempt them from the effects of the statute.

I would yield——

Chairman SENSENBRENNER. Would the gentleman yield? Is it the effect of the gentleman's amendment, which to me seems to consist solely of inserting the word "receiving assistance" or "providing services" under any program described under subsection (c)(4), and the rest is identical to what is——

Mr. FRANK. Except can I make one other point, Mr. Chairman? The other thing it does is simply re-letter so that it takes that section out from under being a subsection of employment practices. You're right. It adds providing services, and then it re—it re-designates so that the anti-discrimination section is a separate—is not subsumed under (e), which is employment practices.

I don't strike anything. All I do is to re-letter it. The way this is worded, on page 13, it says, "(e) Employment Practices," and then subsection (2) is "Effect on Other Laws." I just take that out from under employment practices and make that (f). It doesn't change it. It says—you have (e) and then you have—subsection (2) becomes (f), because I assume that is not intended to apply only to

employment practices, but to employment practices and beneficiaries.

The question is: Is subsection (2), beginning on page 24, intended to apply only to employment practices? If it does, then nothing provides anti-discrimination protection for beneficiaries.

The Chairman is right. Other than the indirect, that section is identical. But, again, it's a question of how it's placed in the bill.

Chairman SENSENBRENNER. If the gentleman would yield?

Mr. FRANK. Yes.

Chairman SENSENBRENNER. We're prepared to accept the amendment.

Mr. FRANK. I thank the Chairman.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Massachusetts, Mr. Frank. Those in favor will signify by saying aye. Opposed, no? The ayes appear to have it. The ayes have it and the amendment is agreed to.

Are there further amendments? The gentleman from—the gentlewoman from Texas, Ms. Jackson Lee?

Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment. Which amendment does the gentlewoman prefer to have reported?

Ms. JACKSON LEE. The Jackson Lee-Waters amendment.

Chairman SENSENBRENNER. Is the clerk clear which amendment is the one that is being called up?

The CLERK. Amendment to the amendment to H.R. 7, offered by Ms. Jackson Lee and Ms. Waters. Page 12, beginning on line 21, strike "Federal, State and local governments" and insert "Federal government."

Page 13, beginning on line 1, strike "Neither" and all that follows through the word "shall" on line 3——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

Amendment to the Amendment to H.R. 7

Offered by Ms. Jackson-Lee and Ms. Waters

Page 12, beginning on line 21, strike "Federal, State and local governments" and insert "Federal government".

Page 13, beginning on line 1, strike "Neither" and all that follows through the word "shall" on line 3, and insert "The Federal Government shall not".

Page 18, strike lines 8-18.

Chairman SENSENBRENNER. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the gentleman very much. I thank the Chairman.

Our understanding of H.R. 7 is that it pre-empts State and local contracting requirements related to religious organizations. Supporters of charitable choice argue that it would override State and local non-discrimination employment laws if those laws are contrary to sincerely held religious beliefs and have also argued it would override State and local contracting requirements with respect to contracting with diverse providers.

Now, we have indicated two things in this session today: one, that we are not doing anything extraordinary—some of us disagree with that—but that we are leaving intact basic laws of protection, whether they be civil rights, the First Amendment, and also laws of non-discrimination.

This is a simple amendment because it extends the protection of Federal, State, and local laws protecting individuals against discrimination on bases other than religion to this legislation. And, therefore, what it does is that it prohibits eliminating the protections that State and local governments provide. And that—I would say that it adds and enhances to this legislation by allowing the State laws and the local laws to stand. It doesn't change any laws.

It simply allows those certification requirements of local governments that may require non-discrimination to be applied and not have the Federal law pre-empt such laws.

I'd ask my colleagues to consider this in the light of the fact that all of the entities that I have had represent their concern to me or interest in this legislation clearly indicate that they do not want to discriminate, and they want to be able to adhere to the laws and, as well, practice their faith. For those who would be impacted, who might be discriminated against, this would add an extra measure of protection if State and local laws have non-discrimination laws within them. This would provide the protection for it.

With that, I yield back.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

What we have in the bill right now in every single—is in every single previously passed charitable choice bill. The whole idea here is to allow new players into the game. A faith-based organization needs to be able to preserve its autonomy against infringements by any level of government, and these are Federal funds. We want a uniform rule throughout all 50 States for the use of Federal funds. There are State provisions that try to limit freedoms the U.S. Supreme Court has held are part of our religion clauses when it comes to Federal money.

If States or localities have different notions of church-state issues, all they have to do is keep their funds separate and their own provisions will apply to their own separated funds.

We don't want to overrule how States use their own State funds. We want to apply the same equal access rules when Federal funds are used. And, therefore, we respectfully oppose the amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. CHABOT. I'd be happy to yield.

Chairman SENSENBRENNER. My reading of the section on page 18 that this amendment seeks to delete is that it leaves it up to the State or locality to make a determination on whether they want their laws to apply. If there are exclusively Federal funds going into the faith-based organization, then this is not a relevant issue. If the faith-based organization accepts Federal funds as well as either State or local funds, then the State or local government, if they wish their laws to apply, can require that their funds be segregated from the Federal funds.

So what the amendment of the gentlewoman from Texas attempts to do is to take away the choice of State or local governments to make that determination for themselves in their extension of the funds to the faith-based organization. I think that State and local governments should have that right and as a result would oppose the amendment and urge that the Committee vote it down.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The time belongs to the gentleman from Ohio.

Mr. CHABOT. I yield back.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California, Ms. Waters, seek recognition?

Ms. WATERS. I would like to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. Mr. Chairman and Members, I am going to speak out in opposition to section 201(d) of H.R. 7, the organizational character and autonomy provision, and section 201(j), the effect on State and local funds. As a result of these sections, charitable choice would pre-empt State and local laws' contracting requirements.

Under section 201(d)(1), religious organizations are given the right to retain autonomy from Federal, State, and local governments. This provision extends to the organization's control over the definition, development practice, and expression of its religious beliefs. section 201(d)(2)(A) would enable religious organizations to avoid Federal, State, or local requirements that the organization alter its internal governance and character documents. section 201(j) applies charitable choice provisions to any State or local funds that are commingled with Federal funds.

These provisions create discrimination issues. For example, State and local contracting requirements apparently would not apply beyond the extent to which they exist under charitable choice. Even supporters of charitable choice acknowledge as much. Carl Esbeck, one of the drafters of charitable choice, stated the following in an article on charitable choice: "States and municipalities often have non-discrimination laws and procurement policies enacted pursuant to governmental spending power. When these spending power laws do not permit faith-based organizations to select staff on the basis of faith commitments, the laws are not enforceable against FBOs acting pursuant to charitable choice contracts or grants."

Supporters also tell us that charitable choice would override State and local non-discrimination employment laws if those laws are contrary to sincerely held religious beliefs. We don't even know what that encompasses. The phrase is not defined in the bill and would arguably be extended to cover almost anything a person believes. We know that the courts are already reluctant to delve into the politically sticky area of deciding the merits of a religious tenet. Even worse, this provision goes further than to allow sincerely held religious beliefs. It applies to any arbitrary practice, decision, or rule that the religious organization uses. In other words, if a religious group believes that all their employees must be bald-headed men over the age of 70, this provision would make it acceptable.

We're also told, again, by supporters of charitable choice that it would override State and local contracting requirements for culturally diverse providers. Specifically, supporters have stated that a State or locality would not be able to require that the governing board of a faith-based provider reflect the ethnic, gender, or cultural diversity of the community or beneficiaries. Their response is that such matters of internal governance are under the control of the faith-based organization. Under section 201(j), any State or

local funds that are commingled with Federal funds would be exempt from State or local laws and requirements. This is clear overreaching.

The first question we need to ask is: Why is Congress interfering with States' rights on this issue? Furthermore, how can we justify as constitutional a bill that allows religious organizations to blatantly ignore valid employment and contracting non-discrimination laws. These provisions, like many other provisions in H.R. 7, are unbalanced and unfair. Our amendment would revise them so as to prevent blatant discrimination.

I urge you to amend these problematic parts of H.R. 7 and take a step towards a bill we can truly support. It is very seldom that I witness this kind of pre-emption at the Federal Government level. To override States and their local laws is far, far reaching, and I would hope that in the interest of honoring what so many people on the opposite side of the aisle preach about, States' rights, that we would support this amendment.

I yield back the balance of my time.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Frank?

Mr. FRANK. Mr. Chairman, I am disturbed by a couple of things about this bill. One is the institution of—institutionalization of the principle that it's perfectly reasonable for religious organizations not to want to hire people of other religions for non-religious purposes, as if it was somehow an imposition on them to do so.

Secondly, though, we have this principle now that says you can take Federal funds and use the fact that you have received Federal funds to exempt you from the existence of State laws, State anti-discrimination laws and some other laws.

This notion that the Federal Government can immunize you from following State laws that otherwise fairly apply to everybody is really very troubling, it's very radical, and wholly unnecessary.

Now, Members will tell us that it was in the welfare bill. I would say a couple of things about that. First of all, I voted against the welfare bill, so I do not feel concluded by it.

Secondly, I think it is fair to say that much of what was being done in the welfare bill, the focus was on the welfare part. I don't believe this got a lot of attention.

Finally, we are not the Supreme Court of the United States. The notion that having once legislated a certain way we are, therefore, precluded from unlegislating or doing it differently is, of course, a proposition to which no one holds any adherence. It's something that may be thrown in, but it's not an argument. It's an absence—it's a substitute for an argument.

The question is: Is it good or bad public policy? And I do—and I appreciate the gentleman from Ohio making it very explicit that this is not a bill where we are going to deal with the rights of gay men and lesbians. The point, though, is that many States have. This is not in my judgment—I'm not asking—my colleagues weren't asking that we make this a vehicle to give gay and lesbian Americans more protections than they already have. I agree that should be in another bill.

What this bill does, though, is to say to some organizations that are now governed by State laws protecting gays and lesbians that,

by the receipt of Federal funds, some entities can get an exemption from that. What this bill does is to reduce the protection that gay and lesbian citizens have. And that, it would seem to me, ought to be as inappropriate as using this as a vehicle for expansion.

The way you have this bill, you are using it as a license to cut back on rights that many States have seen fit to grant to gays and lesbians, perhaps to other categories, because right now if a religious organization or any other wants to give a purely secular service—they're not covered by the religious exemption—then they would be covered by this in some States, maybe not in others. New Jersey even has a public accommodations statute that's very broad.

So what this bill says is by taking Federal funds, a private entity previously subject to a legislated requirement not to discriminate based on sexual orientation can now do so. That seems to me terribly unfair to gay, lesbian, and bisexual Americans who will have less protection as a result of this law than before. And it's a terrible precedent and a terrible statement.

What you're saying, again, is take Federal funds an dy can be exempted from some of these State laws. You know, I think back—I see my friend from California, and I think of her extraordinary distinguished predecessor, Gus Hawkins, whom so many of us revered. I remember when we did the Civil Rights Restoration Act back in the days when we thought the Federal Government should be expanding people's rights, not being an excuse to cut them back. And when people complained about the Civil Rights Restoration Act, which made it clear that if you took Federal funds you couldn't discriminate after the Supreme Court had somewhat shortchanged that statutory interpretation, he said, you know, if you dip your fingers in the Federal till, don't complain if a little democracy rubs off on them.

Well, you're absolutely reversing this. And so both specifically by reducing the protections that now exist for gay men and lesbians and in general by setting the precedent or reaffirming it and broadening it from the welfare bill that accepting Federal funds is a license not to follow existing State law, I think this bill does terrible damage.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognize for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I, in addition to the States' rights arguments that have been asserted, really have serious reservations about what we are doing—what we are saying to State and local governments, particularly on page 13 at lines 9 through 12, because the effect of what we are saying is that if a State or local government makes an effort or is making an effort to comply with the decisions of the United States Supreme Court about what is constitutionally permissible and what is not constitutionally permissible, we are in this bill prohibiting them from doing that. And that just seems extremely counterproductive to me.

I mean, here we are a Nation of laws. We may, as I quite often do, disagree with the decisions of the United States Supreme

Court, but they are the final arbiters of the Constitution in our structure. And for us to be saying to State and local governments, even though you are trying to comply with the constitutional mandates as they have been set out by the United States Supreme Court, we are directing you in this law that we are passing not to require a religious organization to remove religious icons or what have you.

And I think those are some of the cases where the Supreme Court has really said that in some cases that could be necessary to comply with the United States Constitution.

How do we look as a—I mean, I suppose we could go at it directly and try to amend the Constitution. We have. But this is an indirect way of saying to the States we can't—we can't—we don't have the votes to amend the Constitution. We've done as aggressive a job as we can do on changing the composition of the United States Supreme Court, and we've failed to revise the interpretation of the Constitution that they have come down with, even having had control of the Court for whatever period of time. Now we are going to direct you in a Federal statute not to comply with what the Supreme Court has said the law is. This is unprecedented.

And I just—it's unprecedented for us to be usurping State and local laws, first of all, those of us who give so much lip service to States' rights consistently, but then to go beyond that and say, All right, States, we are directing you not to follow the Supreme Court's decisions when we all know that that in our process is the final word on legal and constitutional issues is just—is just outrageous. I think we should support this amendment, and I yield back—I'm sorry. I was going to yield the balance of my time. I got carried away. I was going to yield to Ms. Jackson Lee.

Thank you.

Ms. JACKSON LEE. I may have to ask—thank you very much, Mr. Watt.

Mr. Chairman, let me answer the concern that you raised about the fact that this has not been done before, and to say, with Mr. Watt's commentary, this is a restatement of existing law. But in the evolution of charitable choice provisions, for example, the Community Renewal Tax Relief Act of 2000, which amended certain provisions and grant programs administered by the Substance Abuse and Mental Health Service——

Chairman SENSENBRENNER. The gentleman's time has expired.

Ms. JACKSON LEE. Can I have someone strike the last word so I can get some time to finish my point, please?

Chairman SENSENBRENNER. The gentlewoman has already been recognized in support of her amendment.

Ms. JACKSON LEE. Mr. Nadler, would you yield to me when you get through, please? Thank you.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

I wish to commend the gentleladies, Ms. Jackson Lee and Ms. Waters, for their excellent amendment, and I yield to the gentlelady from Texas.

Ms. JACKSON LEE. I thank the distinguished gentleman very much.

I wanted to make a point that this has occurred in previous legislation, the Community Renewal Tax Relief Act of 2000, had language in the legislation, which we supported, many of us, that nothing in this section shall be construed to modify or affect the provisions of any other Federal or State law or regulation that relates to discrimination in employment.

I think we can come together on this simply by acknowledging that all we want to do is leave existing law in place and not undermine any existing rights or enhance any existing rights. We are not trying to write legislation that would cause us to give rights, we're just trying not to take rights away.

And I don't think any religious entity, willing to be the Good Samaritan, as I have indicated, would be opposed, Mr. Chairman, to just having the present laws that they are governed by, in their particular jurisdiction, remain in place. They've lived under those laws, and I think they would rightly be willing to do so.

This amendment that myself and Ms. Waters are offering clearly just asks that we not exempt from the obligation to adhere to, not exempt these entities participating under this legislation from existing nondiscriminatory State and local laws. And I would ask my colleagues to support this amendment, as it restates and is supported by previous legislation by the Act of 2000, the Community Renewal Tax Relief Act of 2000.

With that, I yield.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Texas, Ms. Jackson Lee, to the Chairman's amendment.

Those in favor, all say aye.

Opposed, no.

The noes appear to have it.

Ms. JACKSON LEE. rollcall.

Chairman SENSENBRENNER. A rollcall is ordered.

Those in favor of the Jackson Lee amendment to the Sensenbrenner amendment will, as your names are called, answer aye; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Barr?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
[No response.]
The CLERK. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Are there additional Members who wish or desire to cast or change their vote?

The gentleman from North Carolina?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Chairman SENSENBRENNER. The gentleman from Georgia?

Mr. BARR. No.

The CLERK. Mr. Barr, no.

Chairman SENSENBRENNER. The gentleman from Tennessee?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Chairman SENSENBRENNER. If there are no further Members who desire to cast or change their vote, the clerk will report.

The CLERK. Mr. Chairman, there are 9 ayes and 19 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments?

The CLERK. Excuse me, Mr. Chairman. I'm sorry. There are 7 ayes and 19 nays.

Chairman SENSENBRENNER. As corrected, the rollcall will stand.

The gentleman from North Carolina, Mr. Watt?

Mr. WATT. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the Sensenbrenner amendment to H.R. 7——

Mr. WATT. I am going to ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

Amendment to the Sensenbrenner Amendment to H.R. 7

Offered by Mr. Watt

Page 14, line 11, insert before "and the": "the Fair Housing Act (42 U.S.C. 3601-3631),"

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I believe, Mr. Chairman, that this is an oversight that I am trying to correct. If you look at the bill starting on Page 10, the definition of programs includes the Federal housing statutes, including community development block grants. That's at the top of Page 11. Yet, when you get over to Page 14, and you start to itemize the impact on other laws, the Fair Housing Act is left out, and——

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. WATT. Yes, I'm happy to yield.

Chairman SENSENBRENNER. The subsection that the gentleman is attempting to amend deals with employment practices. The Fair

Housing Act, as amended, deals with the sale or rental of housing. It has nothing to do with employment, and consequently this was not an oversight because the Fair Housing Act is not relevant to employment practices.

Mr. WATT. Okay. I think the gentleman is right, and I withdraw the amendment.

Chairman SENSENBRENNER. Are there further amendments?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Mr. Chairman, I have one more amendment at the desk. I think it's No. 2.

Chairman SENSENBRENNER. The clerk will report one more Nadler amendment. [Laughter.]

Chairman SENSENBRENNER. This is the final Nadler amendment?

Mr. NADLER. I believe so.

Chairman SENSENBRENNER. Can we count on it?

Mr. NADLER. Unless I have further inspiration.

Chairman SENSENBRENNER. The clerk will report the amendment, and those in the room will please be uninspiring. [Laughter.]

The CLERK. Amendment to the amendment to H.R. 7 offered by Mr. Nadler and Mr. Frank. Page 15, strike line 1 through line 3 and insert:

"(A) Is an alternative"——

Mr. NADLER. Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with.

Chairman SENSENBRENNER. Without objection.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT TO H.R. 7
OFFERED BY MR. NADLER & MR. FRANK
(NADLER #2)

Page 15, strike line 1 through line 3 and insert:

"(A) Is an alternative, including a nonreligious alternative, that is accessible and not objectionable to the individual; and"

Page 15, insert after line 15:

"(4) Section 1994A of this title shall not apply with respect to assistance provided under a program described in subsection (c)(4) during a fiscal year by an organization if the requirement of paragraph (1) is not met with respect to that assistance."

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, this bill promises a nonreligious alternative to any eligible individual who does not wish to participate in a religious program or a program run by a particular religion. I think everyone believes that in order to prevent the religious coercion of the most vulnerable members of our society, those seeking help from the Government, with the burdens of poverty, drug addiction, homelessness, and the many other terrible social ills addressed by programs in this bill should not be subject to religious proselytization as the cost of getting the services they need.

I certainly agree with that view. If religious liberty has any meaning, it is that no one should have the right to use public money and the power of the State to coerce those living in the shadows of life into giving up their own religious autonomy. So profound a principle is this that even supporters of the bill have agreed that an alternative must always be made available.

In fact, Professor Douglas Laycock, a respected legal scholar who was called at the hearings before the Subcommittee as a witness by the majority went so far as to say in our hearing that the entire program would be a "fraud," if such an alternative were not made available.

But a funny thing happened on the way to protecting the religious autonomy of the poor seeking help. The budget proposed by the President and passed by this House actually cuts funding from any of these social programs. These are programs that are not now

fully funded. Those of us who try to help our constituents obtain these services know that they are often not available in a reasonable period of time or in an accessible location or, in some cases, not at all. We all know that a young person who sincerely wants to kick drug addiction may be told, "Sorry. We don't have any room for you right now. Come back in 6 months." By that time, he could be dead or infected with HIV or no longer able to participate in the program.

So where is the alternative envisioned in the bill going to come from? The bill provides no new money. It pays for not one additional bed or home or bowl of soup or detox. It certainly does not pay for these alternatives. In fact, if no new money is available, those alternatives will likely lose their funding, in some cases, to religious organizations.

The alternative which everyone agrees is absolutely necessary to make this program work, to make it constitutional and certainly to make it something other than a way to foist the religious beliefs of some onto society's most vulnerable members is simply a hollow promise. This amendment is intended to give that promise meeting. If you are going to have charitable choice, you are going to have to provide an alternative choice. If you cannot or you will not, then there will be no charitable choice, and everyone has agreed that there should be no charitable choice without a real choice, without a secular choice. This amendment will require proponents of this program to put their money where their principles are.

I have also restored language from the original legislation making clear that among the alternatives that must be available are nonreligious alternatives. It does no good to tell a person to find a less objectionable religious program when all they need is a place to keep from freezing to death for the night. I have, however, obtained language from the Chairman's mark making clear that the alternative must be religiously not objectionable to the individual, in addition to being accessible and of equal value. I guess you could call this the secular, but equal amendment. I know there are weaknesses with this approach that have been discussed today, but it's better than not making real the alternative.

I strongly urge the adoption of this amendment. Without the adoption of this amendment, the entire project really is State-sponsored religious coercion. The very reason why the Framers of our Constitution were concerned that excessive entanglement between Government and religion would endanger religious liberty. Here is a clear illustration of why they are correct.

And I must say that this amendment is a time for the sponsors of the bill to show that they are sincere in their protestations that they mean for there to be a nonreligious alternative so that there's no religious coercion because this amendment says that the charitable choice provisions in a given program are eliminated if there is no charitable choice made avail—if there's no secular alternative made available in a reasonable time. This will force funding of reasonable alternatives.

Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I rise to oppose the amendment.

The focus should be a case-by-case determination of what the individual beneficiary wants. The alternatives the bill currently provides for might be, for example, another faith-based organization, not objectionable to the beneficiary or an alternative purchased on the open market or provided by volunteers or a third one would be an alternative secular provider.

The bill, without the amendment, allows States and localities more flexibility in offering alternatives, and it allows beneficiaries greater choice, and for that reason, we oppose the amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from New York, Mr. Nadler.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments?

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, Scott No. 9.

Chairman SENSENBRENNER. The clerk will report amendment No. 9.

The CLERK. Amendment to the amendment to H.R. 7 offered by Mr. Scott. Page 15, line 1 after "that is" insert "at least as."

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott
Scott #9

Page 15, line 1 after "that is" insert "at least as".

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this amendment will ensure that program beneficiaries would have equal access to alternative programs. Under the current language of the manager's amendment, program beneficiaries who object to the religious character of a program must be provided with an alternative program, but an alternative program needs to be at least as accessible as the designated program in order to offer a real alternative. If the alternative is located much farther away, not on a public transportation line or has other accessibility issues, then it may be technically accessible, but it is not a reasonable alternative for the beneficiary.

If we're serious about offering alternative programs to those who are uncomfortable with the religious character of an organization, then we must make sure that the alternative programs are not just technically available, but at least as accessible as the original program. My amendment adds this clarifying language, and I ask that you support it.

Chairman SENSENBRENNER. The Chair recognizes himself in opposition to the amendment.

This amendment makes this safety valve unworkable. If somebody lives across the street from that Baptist Church in Idaho that we spent most of the afternoon talking about and doesn't want to go to the Baptist Church for an after-school program or social services provided under the bill, this requires that the alternative program be at least as close as the Baptist Church across the street. Now, that's unreasonable. I would hope the amendment would be voted down, as a result of that.

I yield back the balance of my time.

The question is on the adoption of the Scott amendment to the Sensenbrenner amendment.

Those in favor will signify by saying aye.

Opposed, no.

Noes appear to have it, the noes have it, and the amendment is not agreed to.

Are there further amendments?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. SCOTT. No. 12.

Chairman SENSENBRENNER. No. 12.

The CLERK. Amendment to the amendment to H.R. 7 offered by Mr. Scott, Page 9, line 11 after the period add, "For the purposes of this section, a religious organization is an organization which is pervasively sectarian, and states in the application for funding that it is a pervasively sectarian organization."

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott
Scott #12

Page 9, line 11 after the period add " For the purposes of this section, a religious organization is an organization which is pervasively sectarian, and states in the application for funding that it is a 'pervasively sectarian organization.' "

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, we've waived significant laws for religious organizations. Civil rights may not apply, there's separate alternatives that are available if the organization making an application is a religious organization, but I couldn't find a definition of what religious organization meant.

If an organization is going to be entitled to benefits under the bill, we should know it before the problem occurs. So this amendment provides a description of what a religious organization is that says it's a pervasively sectarian organization and states that it ought to say so in the application, otherwise secular programs might try to benefit from the provisions of the bill by suggesting, when they get in trouble on discrimination, that they are religious because they began reading Bible versus around the programs, and they are now a religious organization and ought to qualify.

We ought to know that up front. This defines religion and says if you're going to be a religious organization for the purposes of this bill, then you ought to say so up front.

I'd hope you'd adopt the amendment.

Mr. HYDE. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. I think the word "pervasive" is a little bit pejorative. I'm surprised that the gentleman looked through a dictionary and could only come up with this. Pervasively sectarian could be an atheist, pervasively atheist, agnostic, sectarian. Why not just say sectarian? Why the pervasive? It just seems to me that's pejorative.

Mr. SCOTT. Will the gentleman yield?

Mr. HYDE. Sure.

Mr. SCOTT. I used that term because that's what the Supreme Court has used when they look at religious organizations. They generally use the term "pervasively sectarian." So, if you want to strike it—if you'll adopt the amendment if I strike it. [Laughter.]

Mr. CHABOT. Would the gentleman from Illinois yield?

Mr. HYDE. Yes.

Mr. CHABOT. I thank the gentleman for yielding.

I, as well as the Chairman, or former Chairman, oppose this particular amendment. The pervasively sectarian standard in the law is dead. As the Congressional Research Service concluded in its December 27th, 2000, report to Congress on charitable choice, "In its most recent decisions, the Court appears to have abandoned the presumption that some religious institution, such as sectarian, elementary, and secondary schools, are so pervasively sectarian that they are constitutionally ineligible to participate in direct public aid programs."

"It also seems clear that for a majority, a different majority of six justices, those joining in the Thomas and O'Connor opinions, the question of whether a recipient institution is pervasively sectarian is no longer a constitutionally determinative factor."

So, therefore, the pervasively sectarian test is dead.

Another one of its obituaries was written just yesterday by the Fourth Circuit Court of Appeals, as I had mentioned earlier in that case this morning, which held that the Constitution allows the Government to provide direct aid to a religious organization, "without resort to a Court's examining its pervasively sectarian status,

as long as there are protections in place prohibiting Federal funds from being used for a proselytizing activities."

The Supreme Court has decisively rejected the idea that religious people simply can't be trusted to follow rules against using Federal funds for proselytizing activities. Both the plurality opinion and the opinion joined by Justices O'Connor and Breyer in *Mitchell* v. *Helms* stand for the proposition that members of religious organizations should always be presumed to be acting in good faith.

In *Mitchell* v. *Helms*, the controlling opinion of Justices O'Connor and Breyer states that, "The Court's willingness to assume that religious school instructors will inculcate religion has not caused us to presume also that such instructors will be unable to follow secular restrictions on the use of textbooks. It is entirely proper to presume that these school officials will act in good faith."

In *Mitchell* v. *Helms*, the majority reversed an appeals court holding that providing educational materials and equipment to pervasively sectarian schools was unconstitutional.

So, just to reiterate, the pervasively sectarian standard in the law is completely dead, and I thank the gentleman for yielding.

Chairman SENSENBRENNER. Does the gentleman from Illinois yield back?

Mr. HYDE. I yield back.

Chairman SENSENBRENNER. The question is on the Scott amendment to the Sensenbrenner amendment.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott?

Mr. SCOTT. I have an amendment at the desk, No. 14.

Chairman SENSENBRENNER. The clerk will report Scott No. 14.

The CLERK. Amendment to the amendment to H.R. 7 offered by Mr. Scott. Page 19, line 20, after "COMPLIANCE," insert "Funding under this section shall be based on the objective merits of the applications submitted and shall not discriminate against an applicant based on the religious character of the organization."

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott
Scott #14

Page 19, line 20 after "COMPLIANCE --" insert "Funding under this section shall be based on the objective merits of the applications submitted and shall not discriminate against an applicant based on the religious character of the organization."

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, this amendment provides that decisions to fund one organization—a decision to fund one organization or another must be made on objective merits and not religious discrimination. We have heard all day that all religions will be treated fairly. This amendment protects minority religions which I think, frankly, will not be treated fairly. If a minority religion has the best program, it ought to get the contract. There should not be discrimination against a religion because it's not the religion favored by the Government officials making the decision.

So, Mr. Chairman, as we heard earlier, we're going to treat all religions fairly, well, let's put it in the bill.

I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. Move to strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I oppose the amendment. This is already provided for in Subsection (c)(1)(b), no discrimination——

Mr. SCOTT. Can you say what pages that's on——

Mr. CHABOT.—on the basis of religion——

Mr. SCOTT. Excuse me. What page is that on?

Mr. CHABOT.—no discrimination on the basis of religion for or against faith-based providers. This is already the whole purpose of the bill. Let's not get judges involved in saying what is objective or what is not. The term "applicant" doesn't fit in the context of indirectly funded programs such as vouchers, and therefore we oppose the amendment.

Yield back the balance.

Chairman SENSENBRENNER. The question is on——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER.—the adoption of the Scott amendment.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. We were just trying to find the provision that he——

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. WATT. Yes.

Chairman SENSENBRENNER. It is on Page 9, (1)(b), lines 12 through 19, inclusive.

Mr. WATT. Page 9.

Mr. SCOTT. Will the gentleman yield?

Mr. WATT. Yes, I will yield to the gentleman.

Mr. SCOTT. Mr. Chairman, that says that you cannot discriminate against a religion because it has a religious character. It does not say that you can't discriminate against one religion because you don't like that religion. If you have picked one religious group over another because the Government officials prefer that religion, notwithstanding the fact that the other program had a better pro-

gram by any objective standard, you ought not discriminate against an organization because you don't like their religion.

Now, this is where I think we may have a disagreement. I don't believe—I believe that the minority religions aren't going to get any funds under this because Government officials will pick their favorite religion because of politics, the one, the religion that has the most votes, not the program that has the best merits. And this amendment says that you can't discriminate against one religion or another, just because it has religious character and you pick a religious group, if it is, by any objective standard, a minority religion has a better program, then it ought to get the contract.

Now, if this amendment isn't passed, then all that discussion we had about treating religions fairly was a waste of time because this says that you have to treat religions fairly. And either you're going to do it or you're not, and if you want to treat religions fairly, you ought to adopt this amendment.

Mr. WATT. Reclaiming my time, Mr. Chairman.

We've had a lot of discussion today about religion and not discriminating against religions and not disadvantaging religions, but in the final analysis, the delivery of services of the Government is about the delivery of services, and who can deliver those services the best. That's why, I take it, this bill, this whole idea is being advanced because some people, a number of us agree that religious institutions can deliver certain social services and Government services that have been delivered by the Government in the past more effectively than the Government.

But in the final analysis, this should never be about discriminating against one religion because it's got less members or less votes or—this should always be about providing a provider of service that will do the best job, which is what we all are about as the Government here.

And while I respect your reference to the language on Page 9, it simply does not do what Mr. Scott's amendment would do, and I think we have done ourselves, and the public and taxpayers a major disservice if we are not striving to get the most efficient and best provider of services out there to deliver whatever it is we're trying to deliver, whether it's drug counseling or education or whatever we're delivering through these organizations.

And I agree with Mr. Scott. I think quite often this language is going to be used to favor mainstream religions to the advantage of other religions that might be able to deliver the services substantially better and more effectively. It's going to be used in some section of town because that section of town votes and not in the other section of town because that other section of town doesn't vote, and that's the very thing that we should not be countenancing under this legislation, and I think if we are serious about this, we've got to adopt Mr. Scott's amendment.

Chairman SENSENBRENNER. The question is on the Scott amendment to the Sensenbrenner——

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I will not consume 5 minutes. I, just in favor of this amendment, I think it's important that there be a process put in place in the selection process so that we do not end up with favoring one religion over another. Frankly, if that patterns emerges, and it's quite possible it may, that's clearly violative of the First Amendment, and this whole thing is going to fall apart.

I think it is important to prevent that—that circumstance by providing a process to—where the first amendment can be sustained. And I think, you know, I don't know what is in the minds of all of the Members of the Committee, but there may be assumptions across America that it will be the predominant religion in America that is often selected. Well, I'll tell you, there are parts of the country, especially in the State I'm from, where the predominant religion of the citizens and voters is not the predominant religion of America.

And so unless there is a process for fairness, and I do not buy the argument that there cannot be objective standards. I mean, in my decades of service in local government, you have RFPs, you have standards, that is routine, and it is imposed, oftentimes, by the Federal Government, as well as State Government. So you can do objective standards, and if we don't do it, we're just going to end up with lawsuits all over the country, and I think the——

Mr. SCOTT. Would the gentlelady yield?

Ms. LOFGREN. I would yield to Mr. Scott.

Mr. SCOTT. I would also add, since you mentioned local officials having to evaluate, if you don't have objective standards by which an applicant got the contract, how does the agency that let the contract evaluate the program if it's not on objective criteria? Do we say it's a good religion—religious experience or what? You have to have some kind of objective standard to let the contract to begin with and then to follow up to see if they complied with the contract.

Ms. LOFGREN. Reclaiming my time. The lack of standards, also, will instigate, will be an incentive to litigation because people are very edgy about their religious beliefs and take those beliefs very seriously. And if you have a competition between the Sikhs, the Buddhists and the Janes in my district, and one of those is selected and the other two are not, and there is no objective criteria, the losers are going to maybe suspect that they were not selected because of their religious beliefs rather than the program they put forward. And I think that the lack of dealing with this up front is a severe problem.

I yield back the balance of my time and thank the Chairman for——

Chairman SENSENBRENNER. The question is on the Scott amendment to the Sensenbrenner amendment.

Those in favor will say aye.

Opposed, no.

Noes appear to have it. Noes have it, and the amendment is not agreed to.

Mr. SCOTT. Mr. Chairman, I'd like a recorded vote on that one.

Chairman SENSENBRENNER. A recorded vote will be ordered. Those in favor of the Scott amendment to the Sensenbrenner amendment will, as your names are called, answer aye; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Barr?
[No response.]
The CLERK. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Scarborough?
Mr. SCARBOROUGH. No.
The CLERK. Mr. Scarborough, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?

Ms. LOFGREN. Aye.

The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?

Ms. JACKSON LEE. Aye.

The CLERK. Ms. Jackson Lee, aye. Ms. Waters?

Ms. WATERS. Aye.

The CLERK. Ms. Waters, aye. Mr. Meehan?

[No response.]

The CLERK. Mr. Delahunt?

[No response.]

The CLERK. Mr. Wexler?

[No response.]

The CLERK. Ms. Baldwin?

[No response.]

The CLERK. Mr. Weiner?

[No response.]

The CLERK. Mr. Schiff?

[No response.]

The CLERK. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Mr. BARR. Mr. Chairman?

Chairman SENSENBRENNER. Gentleman from Georgia, Mr. Barr?

Mr. BARR. No.

Chairman SENSENBRENNER. Are there any other Members in the chamber who wish to cast or change their votes?

The CLERK. Mr. Barr, no.

Chairman SENSENBRENNER. If not, the clerk will report.

The CLERK. Mr. Chairman, there are 7 ayes and 20 nays.

Chairman SENSENBRENNER. The amendment is not agreed to. Are there further amendments? The prolific gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, No. 8. And I just have two more amendments, Mr. Chairman, this one and one more.

Chairman SENSENBRENNER. Would you like to have them considered en bloc?

Mr. SCOTT. No, Mr. Chairman. [Laughter.]

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment to H.R. 7, Offered by Mr. Scott. Page 20, line 7 strike "From" and all that follows——

Mr. SCOTT. Mr. Chairman, I'd ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection. The gentleman's recognized for 5 minutes.

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott
Scott #8

~~Page 20, line 7 strike " From" and all that follows through "funds" and insert "(1) Funds"~~ .

Page 20, line 17 strike "$25" and insert "$50".

Page 20, line 18 after the period insert:

"(2) Such assistance ~~shall~~ may include:

(A) assistance and information relative to creating an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 to operate identified programs;

(B) grant writing assistance which may include workshops and reasonable guidance;

(C) information and referrals to other nongovernmental organizations that provide expertise in accounting, legal issues, tax issues, program development and a variety of other organizational areas; and

(D) information and guidance on how to comply with federal nondiscrimination provisions including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Fair Housing Act, as amended (42 U.S.C. 3601 et. seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107)."

(3) Reservation of Funds- An amount of no less than $5 million shall be reserved under this section. Small nongovernmental organizations may apply for these funds, to be used for assistance in providing full and equal integrated access to individuals with disabilities in programs under this Title.

(4) Priority– In giving out such assistance described in this section, priority shall be given to small nongovernmental organizations serving urban and rural communities."

Mr. SCOTT. Mr. Chairman, this amendment doubles the technical assistance funds provided to small community and religious-based

organizations to operate programs. Because the Department of Justice will be providing technical assistance across the multitude of agencies and departments, in addition to the level of assistance it may be required to provide—that it may be required to provide, I believe that the proposed funding level of $25 million is inadequate.

In addition to doubling the funding for technical assistance, the amendment lays out several specific kinds of technical assistance that should be provided by the Department of Justice, and these include: assistance in creating 501(c)(3)'s; grant-writing assistance, which may include workshops and reasonable guidance, information and referrals to other non-governmental organizations that provide expertise in accounting, legal issues, tax issues; information and guidance on how to comply with Federal nondiscrimination provisions. It also requires that priority be given to small non-governmental organizations serving urban and rural communities. In addition, it sets aside $5 million for technical assistance to help small non-governmental agencies, organizations make their programs accessible to the disabled.

Mr. Chairman, the critics of charitable choice have been accused of not understanding the power or faith and accused of wanting to defund programs like Habitat for Humanity and Catholic Charities. That's wrong. The fact is that there is broad bipartisan support for involving faith- and community-based organizations to help our communities. We just shouldn't have to sell off our civil rights to get those investments. By providing technical assistance to community and religious organizations, particularly those that are small, we can actually increase their participation in Federal programs without sabotaging civil rights.

I hope we would adopt the amendment, and I yield back the balance of my time.

Mr. CHABOT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Mr. Chairman, in conjunction with staff, we're trying to figure out exactly what this amendment means, and without a little more time, we just have to—have to oppose it, although Mr. Scott is a tremendously effective Member of Congress, so we would ask perhaps if we have a little more time.

Chairman SENSENBRENNER. Gentleman from Illinois, Mr. Hyde, recognized for 5 minutes.

Mr. HYDE. Mr. Chairman, the last paragraph says, "in giving out such assistance described in this section, priority shall be given to small, non-governmental organizations serving urban and rural communities."

Previous amendments were talking about who has the best program rather than discriminating against unpopular or minority religions. Now here we're supposed to give priority to small——

Mr. WATT. Will the gentleman yield?

Mr. HYDE. Yes.

Mr. WATT. This is assistance—this is assistance to access the funds and know how to technically comply with the law. That's why it's written that way.

Mr. HYDE. Well, I understand, but you're giving a preference to small, non-governmental organizations.

Ms. JACKSON LEE. Would the Chairman yield? Would Mr. Hyde yield?

Mr. HYDE. Yes, I'll yield.

Ms. JACKSON LEE. Mr. Hyde, I know that in the course of talking to a lot of religious groups in my community, one of the apprehensions they had was understanding the Federal system. I can't speak for Mr. Scott in terms of his provision on—the last provision, but I know the technical assistance to allow them or encourage them or provide a road map on how to access these funds to be the good samaritan, I think is very productive. It opens the doors to more applicants. It keeps them within the guidelines of the regulations that will be promulgated, and also, it will allow them to understand all aspects of receiving Federal funds, and yet being able to do the service. So I would hope that we would come to some agreement on this amendment about technical assistance. I yield back.

Mr. WATT. Will the former Chairman yield? Will Mr. Hyde yield?

Mr. HYDE. I'll yield back so the Chairman can get the time.

Chairman SENSENBRENNER. I move to strike the last word, and recognize myself for 5 minutes.

Mr. WATT. Would the Chairman yield just for——

Chairman SENSENBRENNER. Well, I'm going to make a deal you can't refuse. I'm willing to accept the amendment if on paren two you strike the word "shall" and replace it with "may." And that gives the Justice Department flexibility but not a mandate.

Mr. SCOTT. I'll agree to that. Ask unanimous consent that after paren 2, "Such assistance", "may" instead of "shall."

Chairman SENSENBRENNER. Without objection, so ordered. And——

Mr. WATT. Would the Chairman yield just briefly while he's thinking?

Chairman SENSENBRENNER. I just want to make sure that the Justice Department administers the funds. And page 20, you strike the word "from" on line 7 through "funds", which means that OJP does not have the mandate to administer this program. I would just as soon that you omit that so that the Office of Justice Programs does this, rather than something else in the Justice Department.

Mr. SCOTT. I'd ask unanimous consent that that amendment be adopted.

Chairman SENSENBRENNER. Without objection, the amendment is further modified, and without objection, the Scott amendment is agreed to.

Are there further amendments?

Mr. SCOTT. I have an amendment.

Chairman SENSENBRENNER. One more? You're not going to quit when you're ahead? [Laughter.]

Chairman SENSENBRENNER. The clerk will report the last Scott amendment.

Mr. SCOTT. No. 11.

The CLERK. Amendment to the amendment to H.R. 7, Offered by Mr. Scott. Page 10, line paren, period, end paren, add paren, "Notwithstanding the provisions of this paragraph, title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.)"——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman will be recognized for 5 minutes.

[The amendment follows:]

Amendment to the Amendment to H.R. 7
Offered by Mr. Scott
Scott #11

Page 10, line "." add "Notwithstanding the provisions in this paragraph, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) shall apply to organizations receiving direct assistance funded under any program described in subsection (c)(4)."

Mr. SCOTT. Thank you, Mr. Chairman. I'm not sure whether there's a—a problem with the bill or not, but it seems as though this is a clarifying amendment to make sure that title VI actually applies to direct grants. There is language in the bill that says that funds are not aid to religion. In the past that language has been used to specifically exempt the application of title VI. Without this amendment, the bill will say that title VI applies, but the provision of title VI only applies to organizations in receipt of Federal funds, and the bill seems to say that this is not direct aid to the organization, and therefore, title VI doesn't apply.

Small organizations getting Federal funds under this amendment would therefore be able to discriminate because they wouldn't be covered by title VI because they're not receiving Federal funds. In fact, they're not even covered by title VII, so they're not covered by any civil rights bills, unless this amendment is adopted saying that if you get money, notwithstanding the no-aid-to-religion language, you're still technically in receipt of Federal funds and title VI shall apply.

Yield back.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. Gentleman from Ohio, Mr. Chabot, is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I'll be very brief. We opposed the amendment. It's already crystal clear, already covered. It's very unnecessary. It's already covered under section E(e), and we yield back the balance of the time.

Chairman SENSENBRENNER. The question is on——

Mr. SCOTT. Excuse me, Mr. Chairman, could you yield and say what section you're looking at again? On what page and line, if you could?

Mr. CHABOT. We'll get the page for you. It's the bottom of page 13, line 24.

Mr. SCOTT. 13, line 24.

Mr. WATT. Will the gentleman yield?

Mr. SCOTT. Will the gentleman yield?

Mr. CHABOT. It's my time. I'll yield.

Mr. SCOTT. I would ask on page 9, line 20, you say that Federal, State or local funds or other assistance received by a religious organization constitutes aid to an individual and families and not support for the religion or the organization's religious beliefs. If that's the case, title VI, although it applies, it only applies to organizations receiving funds. You just said that they don't receive funds. And so what this amendment says is whatever you meant by—in line 20, you really mean it on page 14, where title VI applies. Now, does title VI apply or not? And if you—because you said they're not receiving funds, title VI only applies to organizations receiving funds.

Mr. CHABOT. Reclaiming my time, our contention is it does apply, and it's clear, and there's really nothing else to discuss.

Mr. SCOTT. Is it the legislative—would the gentleman yield?

Mr. CHABOT. I'll continue to yield.

Mr. SCOTT. Is it the legislative intent that the non-discrimination provisions of title VI apply to everyone getting money under this bill, whether they're technically in receipt of funds by the organization or not? Is that the legislative intent?

Mr. CHABOT. Yeah. They must be receiving funds.

Mr. SCOTT. Well, you just said on page 9 that they're not receiving funds. That means that title VI doesn't apply, and they can discriminate at will, based on race, religion, everything else.

Mr. CHABOT. Title VI only applies to institutions receiving funds from the government.

Mr. SCOTT. That's right. And does the language on page 9, which says they don't receive funds, mean that title VI doesn't apply to organizations receiving funds under this bill?

Mr. CHABOT. I'm going to have to consult with staff here.

[Pause]

Chairman SENSENBRENNER. The gentleman from Ohio.

Mr. CHABOT. Relative to paragraph 2, it says, "Federal, State or local government funds or other assistance that is received by a religious organization for the provision of services under this section, constitutes aid to individuals and families in need, the ultimate beneficiaries of such services, and not support for religion or the organization's religious beliefs or practices." So it seems.

Mr. SCOTT. As to title VI, title VI doesn't apply.

Mr. CHABOT. I'll yield back the balance of my time. We think——

Chairman SENSENBRENNER. The question is on the adoption of Scott amendment No. 11.

Mr. WATT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman from North Carolina's recognized for 5 minutes.

Mr. WATT. I yield to Mr. Scott.

Mr. SCOTT. Well, Mr. Chairman, based on that reading, it is obvious that no civil rights laws apply. Title VI applies to organizations receiving Federal funds, and you've conveniently—and this isn't the first time this is done. I mean I've seen memos from some organizations, say if you can get a not-state aid amendment into a bill, you have essentially exempted the organization from title VI oversight. And that's what the purpose of the language on line—page 9, line

20. It is to say—make the fiction that the organization receiving funds really didn't receive funds. And that fiction blows away title VI of the civil rights laws and means that the organization can discriminate any kind of way it wants. It's not subject to title VII under religion, and if it's got less than 15 employees——

Mr. CHABOT. Will the gentleman yield?

Mr. SCOTT.—Title VII doesn't even kick in anyway.

Mr. CHABOT. Will the gentleman yield?

Mr. SCOTT. They can discriminate based on race, religion, any kind of thing they want to rely on with that language in there, and all my little amendment says is that title VI anti-discrimination provisions ought to apply.

Chairman SENSENBRENNER. The time belongs to the gentleman from North Carolina.

Mr. WATT. I yield to Mr. Chabot.

Mr. CHABOT. Thank you. It's clear—we've reviewed it again—it's clear that title VI, that it applies, and it's our contention—we disagree on it, but it seems to be very clear to us.

Mr. WATT. Reclaiming my time, I—for the life of me, it may be clear to you, but it certainly is not clear to us. If you've got a provision in the law that says this is not aid to the organization, this is not money that's going to the organization, it's going to individuals and families in need, the ultimate beneficiaries of such service, and not support for religion or the organization's religious beliefs or practices, then basically you've said that it doesn't apply. Unless you put some proviso at the end that says it does apply, which is what Mr. Scott is trying to do.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The time belongs to the gentleman from North Carolina.

Mr. WATT. I yield to Mr. Nadler.

Mr. NADLER. Thank you. I've been listening to this discussion in some confusion, as I imagine some other people have. What I seem to come away from is that Mr. Scott says—and Mr. Watt—that without ameliorative language, title VI would not apply. Mr. Chabot says, "Oh, yes, title VI does apply." Everybody seems to agree that title VI should apply. The question is over the interpretation.

I'd ask Mr. Chabot, do you agree that title VI should apply in this situation?

Mr. CHABOT. I agree it should, and it does. It seems to be crystal clear.

Mr. NADLER. All right. And reclaiming my time, there's a real disagreement here as to whether it does or not. Everybody seems to agree that it should. So why not simply put in a statement that says it does? What possible harm is there to just clarify the point, Mr. Chabot?

Mr. CHABOT. You could amend anything and repeat the language redundancy upon redundancy. If it's clear already, there's no reason to——

Mr. NADLER. Well, in this case—reclaiming my time——

Mr. CHABOT.—amend something just for the purpose of amending it.

Mr. NADLER. In this case, I would suggest and I would urge that it would serve a great purpose—either you're right or wrong. If

you're right, the amendment's superfluous but harmless. If you're wrong, the amendment is necessary. And there would seem to be a lot of pretty good legal minds that think that maybe you're wrong. So why not accept the amendment? It seems to me that if we all agree that title VI should apply, then simply saying we must oppose the amendment because, although it doesn't do anything wrong, it doesn't do anything right either, is a little over rigid. Why not satisfy everybody? Get rid of an hour debate on the floor a couple weeks from now, and say, either this language or some other language that someone can draft if you don't like this language for some reason, and say title VI applies.

Mr. WATT. Reclaiming my time, I yield to Ms. Lofgren.

Ms. LOFGREN. I would just urge the same point made by Mr. Nadler. We've had a lot of disagreements today on the merits of what should be included, what shouldn't be included, but it seems to me foolish when we agree that we can't clarify it. And if we can have, you know, six lawyers arguing the point and not agreeing here for 20 minutes, it seems to me there will be lawyers across the country disagreeing. And to make it clear is a reasonable thing to do, and I would urge that we do so.

Mr. CHABOT. Would the gentlelady yield? I'm not sure whose time it is over there.

Ms. LOFGREN. It's Mr. Watt's time.

Mr. WATT. I yield to Mr. Chabot.

Mr. CHABOT. Okay. I thank the gentleman for yielding. We continue to believe that it's clear, that it's already covered, that the language is unnecessary and redundant, but since it's redundant, it's really not harmful, and so for that reason, we will withdraw our objection to the amendment.

Chairman SENSENBRENNER. The gentleman's time is expired. The question is on Scott amendment No. 11 to the Sensenbrenner amendment. Those in favor, will signify by saying aye.

Opposed, no.

The ayes have it, and the amendment is agreed to.

There being no further amendments, the question is on adoption of the Sensenbrenner amendment as amended. Those in favor will signify by saying aye.

Those opposed, no.

The ayes appear to have it.

Mr. NADLER. Mr. Chairman——

Chairman SENSENBRENNER. This is on the Sensenbrenner amendment. This is not on reporting the bill.

Mr. NADLER. Oh, sorry.

Chairman SENSENBRENNER. The ayes appear to have it. The ayes have it.

A reporting quorum is present.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The question occurs on the motion to report the bill, H.R. 7, favorably as amended.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. All in favor will say aye.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. Opposed, no.

The ayes appear to have it.

Mr. SCOTT. I was seeking recognition before the motion. Before the vote. I sought recognition before the vote.

Chairman SENSENBRENNER. The Chair will vitiate the voice vote. For what purpose the gentleman from Virginia seek——

Mr. SCOTT. Mr. Chairman, I was just looking at the amendment that was adopted, and there seems to be—there's a technical glitch to it. Page 10, it should read "line 2" after the period. I think——

Chairman SENSENBRENNER. Without objection, the amendment is so modified.

The question now again occurs on the motion to report the bill H.R. 7 favorably, as amended. All those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. A rollcall is requested. Those in favor of the motion to favorably report will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

Mr. NADLER. I thought it was requesting a rollcall on the Sensenbrenner amendment. I don't need a rollcall on this.

Chairman SENSENBRENNER. We want one. This is final passage. The clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. Yes.

The CLERK. Mr. Hyde, yes. Mr. Gekas?

Mr. GEKAS. Yes, aye.

The CLERK. Mr. Gekas, aye. Mr. Coble?

Mr. COBLE. Yes, aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Barr?

Mr. BARR. Aye.

The CLERK. Mr. Barr, aye. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Hutchinson?

Mr. HUTCHINSON. Aye.

The CLERK. Mr. Hutchinson, aye. Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Graham?

Mr. GRAHAM. Aye.

The CLERK. Mr. Graham, aye. Mr. Bachus?

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus, aye. Mr. Scarborough?

[No response.]

The CLERK. Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye. Mr. Keller?

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye. Mr. Issa?

Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye. Ms. Hart?
Ms. HART. Aye.
The CLERK. Ms. Hart, aye. Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms. Lofgren?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Are there additional Members in the chamber who desire to cast or change their vote? Gentleman from Florida?

Mr. SCARBOROUGH. Aye.
The CLERK. Mr. Scarborough, aye.

Chairman SENSENBRENNER. Are there additional Members who desire to cast or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 18 ayes and 5 nays.

Chairman SENSENBRENNER. And the motion to favorably report is agreed to. Without objection, the bill will be reported in the——

The CLERK. Excuse me. 20 ayes, and 5 nays.

Chairman SENSENBRENNER. The final rollcall is so modified. Without objection, the bill will be reported in the form of a single amendment in the nature of a—strike that.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. All Members will be given 2 days, as provided by House rules, in which to submit additional dissenting, supplemental, or minority views.

The Chair extends his heartfelt thanks to the patience of all Members, staff and audience for sticking us—with us through this ordeal, and without objection, the Committee is adjourned.

[Whereupon, at 8:00 p.m., the Committee was adjourned.]

DISSENTING VIEWS

We dissent from the provisions in H.R. 7 which fall within the Committee on the Judiciary's jurisdiction (sec. 201 and 104).

We strongly believe that religious organizations can and should play an important and positive role in meeting our nation's social welfare needs. However, we cannot support legislation which seeks to enlarge the role of religious institutions by sanctioning government-funded discrimination and by breaking down the historic separation between church and state. This is why the legislation is opposed by a broad range of groups, including civil rights organizations (the Leadership Conference on Civil Rights, the NAACP, the NAACP Legal Defense Fund, the ACLU, Americans United for Separation of Church and State, the National Abortion Rights Action League, People for the American Way, the National Gay and Lesbian Task Force, the National Organization for Women), religious organizations (the Interfaith Alliance, the Baptist Joint Committee, the American Jewish Committee, the Union of American Hebrew Congregations, the Unitarian Universalist Association of Congregations), education organizations (the National Education Association, the American Federation of Teachers), and organized labor (AFSCME, Service Employees International Union).[1]

Summary of Legislation and Democratic Concerns

Section 201 of H.R. 7 adds a new section 1994A to title 42 of the U.S. Code designed to expand previously enacted "charitable choice" laws[2] to include eight new categories of Federal grant programs (relating to, among other things, juvenile justice, crime, housing, job training, domestic violence, hunger relief, seniors services, and education). Under the bill, the Federal Government—or a State or local government using covered Federal funds—is prohibited from discriminating in the award of grants against religious organizations on account of their religious character.[3] This right is enforceable by a lawsuit brought by a religious organization against the local, State and/or Federal Government.[4]

The bill extends the current exemption in the civil rights law (section 702 of the Civil Rights Act of 1964) which permits religious organizations to discriminate in employment on account of religion

[1] Letter from the Coalition Against Religious Discrimination to Members of the House of Representatives (June 25, 2001) (listing 51 national organizations that oppose charitable choice) (on file with the House Judiciary Committee).

[2] The Personal Work and Work Opportunity Reconciliation Act of 1996, P.L.104–193, title I § 104 (Aug. 22, 1996), 110 Stat. 2161, 42 U.S.C. 604a (hereinafter, the "Welfare Reform Act"); The Community Services Grant Program, P.L. 105–285, title II, § 201 (Oct. 27, 1998), 112 Stat. 2749, 42 U.S.C. 9920; The Substance Abuse and Mental Health Services Act, P.L. 106–310, 42 U.S.C. § 300x-65; and The Community Renewal Tax Relief Act of 2000 (H.R. 5662 included in Consolidated Appropriations Act of 2001, P.L. 106–554 (Dec. 12, 2000), 114 Stat. 2763).

[3] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(c)(1)(B), 107th Cong. (2001).

[4] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(n), 107th Cong. (2001).

to allow religious organizations to use public funds to discriminate on account of religion.[5] Because the current section 702 exemption permits religious organizations to discriminate in employment on the basis of so-called "tenets and teachings," the bill therefore would permit religious groups to use taxpayer money to discriminate not just on account of a prospective employee's religion, but upon his or her failure to adhere to religious doctrine (e.g., being pregnant and unmarried, being gay or lesbian).[6] Significantly, this ability to discriminate would supercede any Federal, State, or local civil rights law or contracting requirement or condition to the contrary.[7]

In an effort to prevent the legislation from being unconstitutional under the Establishment Clause, the bill includes several purported first amendment safeguards. Thus, the legislation states that if a beneficiary objects to the religious character of a provider, the governmental entity is required to provide an alternative service that is unobjectionable on religious grounds.[8] The bill also specifies that religious organizations receiving grants may not discriminate against beneficiaries on the basis of their religion, and that religious organizations receiving indirect assistance (e.g., a voucher) may not deny admission on the basis of religion.[9] In addition, the legislation states that government funds may not be used for sectarian instruction, worship, or proselytization, and that if the religious organization offers such activity, it is to be "voluntary" and "offered separate" from the government funded program.[10]

Enforcement of these strictures is largely left to the religious organization. Thus, the religious organization is expected to file a certificate that it is aware of and will comply with the limitations on the use of its funds and the voluntary and separate require-

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[5] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(e), 107th Cong. (2001).

[6] David M. Ackerman, *Scope of the title VII Exemption Contained in title II of H.R. 7, as Approved by the House Judiciary Committee,* CRS Report prepared for Rep. John Conyers, Jr. (July 3, 2001), at 2, 3 (on file with House Judiciary Committee).

[7] Several features of H.R. 7 make it clear that the legislation will supercede State and local laws:

First, subsection (d) specifies that a religious organization receiving Federal funds "shall have the right to retain its autonomy from *Federal, State, and local governments,* including such organization's control over the definition, development, practice and expression of its religious beliefs." The same subsection operates to protect the organization's internal governance against any governmental interference. Under the Constitution's Supremacy Clause, this subsection would take precedence over a State law, for example, protecting gays and lesbians, unmarried, or pregnant individuals from employment discrimination.

Second, subsection (e) specifies that a provision in a program receiving Federal funds under a covered program—which would include State programs that receive and distribute Federal funds—that is "inconsistent with or would diminish the exercise of [a religious] organization's autonomy" as recognized in section 702 of the Civil Rights Act or the bill generally "shall have no effect." This broad language would serve to negate, for example, a condition in a State grant program specifying that entities that received funds would need to agree not to discriminate on the bases of specified protective categories in employment.

Third, H.R. 7 does not include language from the Welfare Reform Act's charitable choice law specifying that nothing in that law is to "preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations." Given that Congress has previously opted to include language deferring to State law, we can only presume that H.R. 7 was specifically designed to supercede State law.

[8] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(g), 107th Cong. (2001).

[9] *See infra* note 60.

[10] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(j), 107th Cong. (2001).

ment.[11] Religious organizations are also supposed to conduct an annual "self audit" of their duties under the legislation.[12]

Finally, Subsection (l) of the legislation would introduce a major change to our social service programs, granting agencies the discretion to take any or all of the funds in programs covered by the legislation (e.g., for housing, hunger relief and the like) and convert it into an indirect aid program by which beneficiaries could provide "vouchers" to the religious organization, which could in turn receive Federal funds. Such "voucherized" programs would be exempt from the requirement that the religious organization not discriminate against beneficiaries on religious grounds as well as the requirement that any sectarian instruction, worship, or proselytization be "voluntary" and "offered separate" from the government funded program.

Section 104 of H.R. 7 is a "tort reform" provision. It supersedes State law to limit businesses from civil liability for donated equipment, the provision of their facilities, and the provision of their motor vehicles or aircrafts to nonprofit organizations.[13]

We cannot support the Judiciary-reported provisions of the legislation because in an effort to increase the role of religion in meeting society's needs, the legislation sacrifices two of our nation's most fundamental principles—equal protection and the separation of church and state.

In terms of equal protection, the legislation runs counter to the long held principle that it is unacceptable for any group or entity to discriminate with taxpayer funds. Given that the bill's proponents claim that government funds will only be used for wholly secular purposes, we cannot understand why it is necessary to sanction discrimination in employment on account of religion. Nor can we understand why the bill permits religious organizations to discriminate on the basis of "tenets and teachings," which sweep in employment discrimination against gays and lesbians, unmarried pregnant women, women who have had an abortion, and persons who advocate reproductive choice. Equally disturbing is the fact that the bill sets aside not only Federal civil rights protections, but also State and local laws and contracting requirements designed to protect against discriminating in employment with government funds.

With regard to the separation of church and state, we are concerned that the supposed "safeguards" included in the manager's amendment include several loopholes and are unlikely as a practical matter to insure that the Establishment Clause is respected. At the same time, the legislation is likely to serve to entangle government and religion, and in so doing, diminish the respect of our

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[11] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(j), 107th Cong. (2001).

[12] The only outside audit permitted under H.R. 7 is with regard to separate financial accounts set up to hold the government funds. Manager's admendment to H.R. 7 section 201 adding proposed section 1994A(i)(2)(A). The legislation also includes an annual authorization of $50 million (from the Office of Justice Programs and the COPS on the Beat program) to give small religious organizations training and technical assistance in seeking grants. Manager's admendment to H.R. 7, section 201 adding proposed section 1994A(o)(1).

[13] Section 104 would create an extremely high standard to prove corporate negligence, gross negligence or intentional misconduct. This means that unless the corporation knew at the time of donation that the equipment, motor vehicle or aircraft or facility would likely injure or kill the user, the corporation could not be held liable. As a result, a corporate donor would be virtually immune from responsibility for injuries it may have caused.

citizens for each. Recent press reports indicate that such inappropriate entanglement has already begun.[14]

We also believe it is somewhat inconsistent for the Administration to be advocating this legislation as a tool to respond to poverty and other social ills, when H.R. 7 does not authorize a single dollar in additional funds for any of the social service programs covered by the bill. Even more problematic is that cuts in the Administration's budget assure that even if H.R. 7 is enacted, it will only serve to pit religious organizations, secular non-profits, and government agencies against each other for an ever declining share of Federal funds. Finally, in terms of the State liability law limits included in the bill, we fear that unilateral changes of this nature undermine federalism and expose the most vulnerable members of society to greater risk of accident and harm from faulty equipment and dangerous facilities.

We support the notion that government can and should seek increased involvement of non-profits—including religious organizations—in meeting our nation's social welfare needs. At present, tax preferences provided to non-profits by the Federal Government total an estimated $25.8 billion per year.[15] Many of us are supportive of efforts to extend these tax benefits even further (although such extension was not sufficiently important for the Administration to include in their recently passed $1.35 trillion tax legislation).

In addition, we would note that the Federal Government already provides billions upon billions of dollars of direct annual support to non-profit organizations, including religiously affiliated organizations who have set up 501(c)(3) entities and operate within constitutional boundaries not required by H.R. 7. President Bush admitted as much in a recent speech when he acknowledged that under current law, Federal funds already go to child care and Head Start programs housed in churches and pay for health care in Catholic, Baptist, or other denominational hospitals. Illustrative of this success are Catholic Charities USA—which receives $600 million per year in government funds[16] and is able to offer services through more than 1400 agencies, institutions, and organizations,[17] and Lutheran Services in America, which serves over 3 million persons annually in over 3,000 communities.[18]

In fact, when President Bush visited Habitat for Humanity and proclaimed that it was an example of the need for charitable choice, the president and founder of Habitat for Humanity said he did not need new laws, and he insisted that he was "thriving" under present laws. Contrary to President Bush's recent assertions, we are unaware of anyone who opposes these organizations operating public programs and providing services. They are funded like all other private organizations are funded: they are prohibited from using taxpayer money to advance their religious beliefs and they are subject to the civil rights laws. Any program which can be

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[14] *See* discussion of alleged *quid pro quo* between Bush administration and Salvation Army, *supra.* p. 13.

[15] Staff of Joint Economic Committee, 106th Cong., Tax Expenditures: A Review and Analysis 3 (Comm. Print 1999).

[16] Catholic Charities USA, http://www.catholiccharitiesusa.org/who/stats.html.

[17] Catholic Charities USA, http://www.catholiccharitiesusa.org/who/history.html.

[18] Lutheran Services in America, http://www.lutheranservices.org/whoweare.htm.

funded under H.R. 7, as reported, can be funded now, except that under this bill the sponsoring organizations can refuse to comply with the civil rights laws.

Charitable Choice represents a false promise to struggling communities who desperately need resources. While it is described as a plan to help faith-based organizations receive and administer government grants, Charitable Choice in practice only represents an assault on our civil rights laws. It is also more clear than ever with the recent reports from the Washington Post that a sweeping roll back in civil rights protections at all levels is at the core of charitable choice.

Certainly, government can do more in collaboration with religious and non-profit organizations. We can expend funds to help religiously affiliated groups understand and comply with the law and seek Federal funding.[19] Also, we can encourage religious leaders to serve on government task forces fighting social ills, and insure that government offices provide appropriate information on social services offered by houses of worship. Unfortunately, H.R. 7 does not focus on bipartisan common sense initiatives which would move our nation forward. Instead it divides us along lines of religion, sexual status, marital status, and race. For these and the reasons set forth herein, we dissent from the Judiciary-reported provisions in H.R. 7.

I. H.R. 7 ALLOWS RELIGIOUS ORGANIZATIONS RECEIVING TAXPAYER FUNDS TO DISCRIMINATE IN EMPLOYMENT ON ACCOUNT OF RELIGION

Our principal objection to the legislation is that it permits taxpayer funds to be used to discriminate in employment. This violates one of the most fundamental principles of civil rights, first enunciated by President Franklin D. Roosevelt by Executive Order 60 years ago that the government should not fund employers, religious or otherwise, who engaged in discrimination on account of race, religion, color or national origin.[20]

We are perplexed why the Majority has so fervently sought to extend the right to discriminate on religious grounds given that they have separately argued that the funds referenced under the bill will be used for wholly secular purposes. They cannot have it both ways—either the Federal funds will be used for religious purposes, in which case there may be a justification for tolerating religious discrimination (but would render the legislation constitutionally suspect); or the funds will be used in a non-sectarian manner, in which case there is no reason to discriminate on the basis of religion. As Democratic Members made clear at the markup, cooking soup and giving it to the poor can be done equally well by persons of all religious beliefs.

Even more problematic is the bill's sanctioning of discrimination based on religious "tenets and teachings." Under this doctrine, religious institutions are permitted to discriminate in employment

[19] "In this regard, President Bush did request that Congress place $700 million in a 'Compassion Capital Fund' to support charitable organizations providing social services, claiming it was a "noble mission" during his February 27, 2001 Address to a Joint Session of Congress. Yet, the President's budget proposal only included $89 million for the fund. Even this reduced request was ignored in the budget resolution adopted by the Majority.

[20] Exec. Order 8802 (June 25, 1941). This fundamental principle of non-discrimination subsequently was reflected in other executive orders by every future President.

against anyone who disagrees with or conducts themselves in a manner at odds with any form of the religious institutions' doctrine or practices.[21] Thus, under the bill, an organization could use taxpayer funds to discriminate against gays and lesbians,[22] against divorced persons,[23] against unmarried pregnant women,[24] against women who have had an abortion, persons who use birth control, persons who favor reproductive rights,[25] or persons involved in interracial dating or marriage.[26] Again, while there may be some conceivable justification for this type of discrimination in the context of a religious organization employing persons associated with its religious function, there is no legitimate justification for extending such discrimination with regard to government-funded secular services for the poor and needy, as the bill does.

Notwithstanding the series of changes made to the employment discrimination language pursuant to the manager's amendment, there is no question that after all is said and done, the bill will sanction this form of tenets and teachings discrimination. In a Memorandum issued subsequent to the Committee Markup, the Congressional Research Service stated that the bill would authorize this type of discrimination, noting that "[j]udicial decisions have held the [religious] exemption to apply to discrimination based on tenets, teachings, beliefs, behavior and practices."[27] The CRS Memorandum then goes on to cite a long list of cases where persons were discriminated against by religious organizations because, among other things, they failed to have their first marriage properly annulled, they were gay, they had extramarital sex, they supported reproductive choice, or they were actively involved in a church which had gay and lesbian members.[28]

We would further note that the protections against discrimination in H.R. 7 on the basis of race are not complete. The application of the "ministerial exception" to any publicly funded positions also should be given serious consideration and review. There is a question as to how enforceable title VII's protections against racial discrimination in employment will be once publicly funded religious discrimination is allowed. Given that the eleven o'clock hour is still one of the most segregated hours in America, an all white religious organization could simply tell otherwise qualified minority candidates of the same religion, we only hire those that belong to our church.

The non-discrimination language included in the bill not only sets aside Federal civil rights laws, it goes so far as to obviate State and local laws and Federal, State, and local contracting requirements intended to safeguard against religious discrimination in employment. Thus if a State had decided that as a matter of public policy it did not want to tolerate religious discrimination by

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[21] *See infra* note 6.
[22] *See Hall v. Baptist Memorial Healthcare* Corp., 215 F. 3d 618 (6th Cir. 2000).
[23] *See Little v. Wuerl,* 929 F. 2d 944 (3rd Cir. 1991).
[24] *See Cline v. Catholic Diocese of Toledo,* 206 F. 3d 651 (6th Cir. 2000).
[25] *See Maguire v. Marquette University,* 814 F. 2d 1213 (7th Cir. 1987).
[26] NAACP Legal Defense Fund Information Sheet. The report states, "under the language of [charitable choice], Bob Jones University could become a provider of services under one or more Federal programs and require that employees . . . subscribe to its religious tenets and not engage in interracial dating . . .". (On file with the House Judiciary Committee).
[27] *See infra* note 6.
[28] *Id.*

a non-profit engaged in secular affairs, or that religious organizations who utilized State provided funds should not be permitted to discriminate, or even that they should be able to discriminate on account of religion, but not on account of "tenets and teachings," all of these laws and contracting requirements would be set aside under H.R. 7. To us, this turns the principle of federalism and respect for State prerogatives on its head.

The consequences of H.R. 7's superceding State civil rights protections are quite extreme. Under the legislation, a national religious organization could choose to accept a single Federal grant and attempt to use that as a shield to avoid laws protecting gay and lesbian employment rights in all 50 States. For example, Maryland's law on domestic partner benefits could be set aside under H.R. 7. This means that even if the Bush administration abandons its proposal to issue an administrative ruling setting such State and local civil rights protections aside,[29] opponents of such protections would be able to accomplish even greater immunity from such laws under H.R. 7.

At its core, the Majority and supporters of H.R. 7 challenge the fundamental notion of "protected class" as currently recognized by our civil rights laws. The Majority has suggested that organizations should be able to discriminate in employment to select employees who share their vision and philosophy. Under current civil rights laws, employers can discriminate against a person based on their views on the environment, abortion, gun control, or just about any other basis. Employers can also select staff based on their commitment to serve the poor or whether they think prospective applicants have compassion to help others kick drugs. But because of a sorry history of discrimination against certain Americans, we have had to establish "protected classes" and under present law employers, including religious organizations who sponsor Federal programs, cannot discriminate against an individual based on race, sex, national origin, or religion.

It is for these reasons that civil rights groups such as the NAACP, the NAACP Legal Defense Fund and the Leadership Conference on Civil Rights are so strongly opposed to the bill. They have nothing against religion, but they do believe we do nothing to help poor and needy individuals if we tolerate more discrimination. Thus, on July 8, 2001, Julian Bond, the Chairman of the NAACP, the nation's oldest and largest civil rights organization declared that "[t]he Administration's faith-based plan threatens to erase sixty years of civil rights protections."[30] The NAACP Legal Defense Fund has written that the religious discrimination provisions in charitable choice legislation are "wholly inconsistent with longstanding principle that Federal moneys should not be used to discriminate in any form."[31] Wade Henderson, the Executive Director of the Leadership Conference on Civil Rights, the nation's most broadly based civil rights organization, has testified that "charitable choice threatens to erode [the fundamental principle of non-

[29] Dana Milbank, *Bush Drops Rule On Hiring of Gays; Democrats: "Faith Based" Initiative at Risk,* WASHINGTON POST, July 11, 2001, at A10.

[30] Statement by Julian Bond, Chairman, NAACP at NAACP National Convention, July 8, 2001, at 16. (On file with House Judiciary Committee).

[31] *See infra* note 26.

discrimination] by allowing Federal funds to go to persons who discriminate in employment based on religion."[32]

Given the obvious and real nature of our concerns regarding the bill's sanctioning of employment discrimination, we are not surprised that the legislation's supporters have resorted to a series of myths to justify H.R. 7. Of course, upon close scrutiny, none of these myths can be sustained:

Myth 1—Religious discrimination is needed so that small religious organizations can share religious employees between non-secular and secular functions

This claim suffers from several legal deficiencies. As a threshold matter, title VII only applies to organizations which employ 15 or more persons.[33] This means that extension of the section 702 exemption is not needed to permit small religious organizations to be able to hire persons of their own religion. Second, the courts have said that under the First Amendment Free Exercise Clause, religious institutions are entitled to a "ministerial exception" permitting them to bypass title VII's prohibitions on discrimination with respect to race, gender, and national origin to hire their clergy and spiritual leaders.[34] Again, extending the reach of the section 702 employment discrimination exemption will do little to help religious groups share the costs of their clergy between their religious and secular accounts.

The 15 person threshold requirement and ministerial exception should therefore cover most of the needs of small religious organizations. To the extent there is any gap in coverage, we note that the Majority never proposed a tightening amendment. Instead, H.R. 7 appears to use the issue of small religious organization needs as an excuse to justify wide scale relief from our anti-discrimination laws.

Myth 2—We should extend the religious civil rights employment exemption because it is based on previous charitable choice laws signed by President Clinton and which have been implemented without controversy

This contention also fails for a variety of reasons. Most obvious is the notion that a previous act of Congress cannot and should not bind a future Congress, particularly with regard to a dubious legal principle. Beyond that it is important to note that there are numerous, major differences between H.R. 7 and other charitable choice laws. Among other things, H.R. 7 covers a far broader range of programs and includes a far larger pot of funds than previous charitable choice laws.[35] H.R. 7 also includes a variety of different safeguards and permits a broader range of religious discrimination with respect to beneficiaries than previous charitable choice laws.[36]

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[32] Statement by Wade Henderson, Executive Director, Leadership Conference on Civil Rights before the Committee on the Judiciary, U.S. Senate, 107th Cong. (June 6, 2001) at 3.

[33] *See infra* note 6.

[34] *Id.*

[35] Based on the Bush Budget, the funds covered by the previous charitable choice laws total approximately $21 billion ($3 billion for SAMHSA; $16 billion for TANF; $2.4 billion for Community Development Block Grants). By contrast, the social service programs covered by H.R. 7 total at least $47 billion ($.3 billion for juvenile justice; $6.5 billion for crime control and domestic violence; $28 billion for housing; $7 billion for job training; $1 billion for seniors services; $4.1 billion for hunger; $1.4 billion for GED and after school programs).

[36] *See* notes 10, 60, 61 and accompanying text.

In addition, the legislative history of the previous charitable choice laws makes clear that these laws were never carefully considered or debated. We begin with the fact that until this Congress there has never been a hearing on charitable choice legislation in the House or the Senate. The Judiciary Committee—which has jurisdiction over the issue—has never been involved in any previous charitable choice legislation. Moreover, when charitable choice has been added to legislation in the past, it has often been done at the very end of the process, with no opportunity for Democratic input or amendment.[37]

It is also misleading to contend that prior charitable choice laws have been enacted with the endorsement of President Clinton. To the contrary, shortly after the Welfare Reform Act was enacted, the Clinton administration proposed amendments to clarify the charitable choice provisions to ensure that religiously affiliated organizations could not participate if they were "pervasively sectarian."[38] Additionally, in connection with the signing of the Community Services Block Grant law in 1998 and the Substance Abuse Mental Services Act in 2000, President Clinton specifically noted that the Department of Justice believed charitable choice was potentially unconstitutional, and as a result construed the law as forbidding the funding of pervasively sectarian organizations.[39]

Fourth, current charitable choice laws have barely been implemented, much less analyzed for effectiveness. As of September

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[37] The charitable choice provision of the Welfare Reform Act was offered in conference. It was not included in the House bill. Democrats never had a chance to strike the provision because conferees were never given an opportunity to offer amendments. Charitable choice was also added to the re-authorization of Community Services Block Grant (CSBG) in the 105th Congress as part of a larger Human Services reauthorization that included Head Start, CSBG, and Low Income Heating Energy Assistance Program (LIHEAP). It was the last item to be considered by the conferees due to the controversy. This marked the first time that Charitable Choice was debated on the House floor. The debate occurred at 1 a.m. Charitable Choice language was signed into law twice in the 106th Congress on the SAMHSA programs—as part of H.R. 4365, the Children's Health Act of 2000, P.L. 106–310, and as part of the omnibus end of year spending bill, H.R. 4577, P.L. 106–554. The language in H.R. 4577 replaced the language signed into law pursuant to H.R. 4365. In both cases, the charitable choice provisions were added without any opportunity to offer amendments.

[38] The Clinton administration filed the following comments in connection with the proposed amendments: "We recommend amending sec. 104 to clarify that it does not compel or allow States to provide TANF benefits through pervasively sectarian organizations, either directly or through vouchers redeemable with these organizations. . . . [P]rovisions of sec. 104 and its legislative history could be read inconsistent with the constitutional limits." The Administration's amendment to charitable choice failed to be included in a final package of technical amendments to the welfare laws adopted by Congress.

[39] *Statement on Signing the Children's Health Act of 2000,* 36 Weekly Comp. Pres. Doc. 2504 (October 17, 2000):

> The Department of Justice advises, however, that this provision would be unconstitutional to the extent that it were construed to permit governmental funding of organizations that do not or cannot separate their religious activities from their substance abuse treatment and prevention activities that are supported by SAMHSA aid. Accordingly, I construe the act as forbidding the funding of such organizations and as permitting Federal, State, and local governments involved in disbursing SAMHSA funds to take into account the structure and operations of a religious organization in determining whether such an organization is constitutionally and statutorily eligible to receive funding.

President Clinton stated similarly at the 1998 signing of The Community Services Grant Program:

> The Department of Justice advises, however, that the provision that allows religiously affiliated organizations to be providers under CSBG would be unconstitutional if and to the extent it were construed to permit governmental funding of "pervasively sectarian" organizations, as that term has been defined by the courts. Accordingly, I construe the act as forbidding the funding of pervasively sectarian organizations and as permitting Federal, State, and local governments involved in disbursing CSBG funds to take into account the structure and operations of a religious organization in determining whether such an organization is pervasively sectarian.

2000, 50 States had not implemented policies to facilitate the participation of faith-based organizations in charitable choice programs.[40] It is also incorrect to assert, as proponents have done, that prior charitable choice laws have not been subject to legal challenge. Even on the very thin implementation record before us, the legal and constitutional issues raised by charitable choice have already engendered five legal challenges.[41]

Myth 3—Even outside of charitable choice, various religiously affiliated organizations—such as hospitals and colleges—receive Federal funds and regularly discriminate on account of religion

This argument was trotted out several times during our markup. It is somewhat difficult to respond to, because to our knowledge, the Majority has not cited any specific examples. As best we can ascertain, the Majority bases their argument on the fact that religious colleges are receiving Pell Grants, and religious hospitals are receiving Medicaid and Medicare payments, at the same time they utilize the section 702 religious exemption. The principal flaw in this contention is that funds received from Pell Grants, Medicare, and Medicaid are indirect. They flow from choices made by beneficiaries, not the government. As a result, to the extent any such religiously affiliated hospital or college is engaged in discrimination, it is not with direct government funds.[42]

If a limited number of religious institutions are receiving Federal grants at the same time they are engaging in employment discrimination, it is possible the Majority does not realize the institutions may be doing so in violation of Federal law. Certainly, to the extent they are receiving Federal funds from grants concerning crime control, housing, job training, domestic violence, and education—all programs covered by H.R. 7—they would not be able to lawfully discriminate on account of religion, as those laws contain specific provisions preventing religious discrimination.[43]

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[40] Center for Public Justice, "States Fail Charitable Choice Check-Up," Press Release (Oct. 5, 2000).

[41] *See American Jewish Congress and Texas Civil Rights Project v. Bost* 00-A-CA-528-SS (W.D. Tex.)(challenging the Jobs Partnership of Washington County's use of State funding to buy Bibles and give Bible instruction for its welfare-to-work training program); *AJCongress v. Bernik,* No. 317896 (Superior Court, County of San Francisco)(alleging that the California Employment Development Department solicited proposals for $5 million to be earmarked solely for faith-based, but not secular, groups); *Freedom From Religion Foundation v. Thompson* 00-C-0617C (W.D. Wis.) (challenging the use of State funds by Faithworks, an alternative to Alcoholics Anonymous, which encourages belief in a higher power); *Lara v. Tarrant County* (Tex. Supreme Court) (challenging a prison chaplain's clear preference for Christianity when approving volunteer teachers for a prison-funded education program); *Pedreira v. Kentucky Baptist Homes,* C/A 3:00CV-210-SKY 2001 (W.D. Ky.)(challenging the firing of a lesbian worker from a State-funded residential child care run by ministries).

[42] *Siegel v. Truett-McConnell College, Inc.* confirms the important distinction between direct and indirect Federal aid. The plaintiff in Siegel argued that the college received substantial funds from Federal and State sources, such as Pell grants, and therefore was not entitled to the title VII exemption. The Court ruled that the college was entitled to the title VII exemption because there was no "direct Federal or State subsidy . . ." and that "[t]he government does not directly pay for any one teacher's salary, including Mr. Siegel's." The court went on to distinguish this case involving indirect benefit (where students choose their college) from a direct benefit (where government provides a direct contract for services). *Siegel v. Truett-McConnell College,* 13 F. Supp.2d 1335, 1343–45 (N.D. Ga. 1994), *aff'd,* 73 F.3d 1108 (11th Cir. 1995).

[43] *See* Omnibus Crime Control and Safe Streets Act of 1998, 42 U. S. C. § 3701 et seq. (includes a religious nondiscrimination provision at 42 U. S. C. § 3789d(c)); federally assisted housing programs, 42 U. S. C. § 13601 *et seq.* (includes a nondiscrimination provision requiring compliance with all civil rights laws at 42 U. S. C. § 13603(b)(2)); Workforce Investment Act of 1998, 29 U. S. C. § 2801 et seq. (includes a religious nondiscrimination provision at 29 U. S. C. § 2938); domestic violence programs, *see,* e.g., 42 U. S. C. § 10603 (includes a religious nondiscrimination provision at 42 U. S. C. § 10604(e)); the Child Care Development Block Grant Act of 1990, 42

Myth 4—Using Federal funds to discriminate in employment has been upheld by the courts

This contention rests on the Majority's misreading of the Supreme Court's decision in *Corporation of the Presiding Bishop v. Amos.* [44] That case did uphold the religious exemption set forth in section 702 of the Civil Rights Act, however, it did not involve any use of Federal funds. As a matter of fact, the Court went out of its way to distinguish the title VII exemption from other government programs that might advance religion through financial support or active involvement of the sovereign religious activity. Specifically, the Court held the exemption was "rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of the religious organizations to define and carry out their religious missions." [45] At most, permitting such discrimination was an "accommodation" required by the First Amendment's Free Exercise Clause that minimized the burden on religious organizations to predict which of their activities a secular court might consider religious.[46] Obviously, none of these factors or justifications are present in H.R. 7, which clearly involves the use of Federal funds for wholly secular purposes and activities.[47]

Nor is it true, as proponents claim, that Justice Brennan's separate opinion in Amos would lend support to H.R. 7's extension of the religious exemption. He wrote, "the potential for coercion caused by such a provision is in serious tension with our commitment to individual freedom of conscience in matters of religious belief." [48]

If anything, the case law on this point supports the contention that it is unconstitutional to use Federal funds to engage in discrimination. This was the holding of the district court in *Dodge v. Salvation Army.* [49] That case involved a religious organization—the Salvation Army—which used public funds to exclude members of the Wiccan faith from employment. The court found that such action was unconstitutional under the Establishment Clause because it treated religious non-profits preferably to non-religious non-profits.[50]

U. S. C. 9858 *et seq.* (includes a modified religious nondiscrimination provision at 42 U. S. C. § 9858L); the Community Development Block Grant Program of the Housing and Community Development Act of 1974, 42 U. S. C. § 5301 *et seq.* (includes a nondiscrimination provision requiring compliance with all civil rights laws at 42 U. S. C. § 5304 (b) (2)); and the Job Access and Reverse Commute grant program of the Federal Transit Act of 1998, 49 U. S. C. § 5309 note (includes a religious nondiscrimination provision at 49 U. S. C. § 53329(b)).

[44] *Corporation of Presiding Bishop v. Amos,* 483 U.S. 327 (1987).

[45] 483 U.S. at 339. As Justice Brennen noted in upholding the section 702 religious exemption for privately funded, religious non-profit activities: "What makes the application of a religious-secular distinction difficult is that the character of an activity is not self-evident. As a result, determining whether an activity is religious or secular requires a searching case-by-case analysis. This results in considerable ongoing government entanglement in religious affairs." 483 U.S. at 343.

[46] 483 U.S. at 334–35.

[47] Additionally, because H.R. 7 prohibits direct funds being used for sectarian instruction, worship, or proselytization, jobs used with taxpayer money would be beyond the scope of *Amos.* Therefore, none of the entanglement concerns raised by Amos would be applicable to an analysis of publicly funded secular positions.

[48] 483 U.S. 327, 340–41.

[49] *Dodge v. Salvation Army,* 1989 WL 53857 (S.D. Miss. 1989).

[50] The court concluded that such an arrangement was unconstitutional because:

> The benefits received by the Salvation Army were not indirect or incidental. The grants constituted direct financial support in the form of a substantial subsidy, and therefore to allow the Salvation Army to discriminate on the basis of religion, concerning the em-

Continued

II. H.R. 7 BREAKS DOWN THE HISTORIC SEPARATION BETWEEN CHURCH AND STATE

With regard to the separation between church and state, we are concerned that the safeguards included in the bill may be too weak, and that the bill will pave the way for excessive entanglement between government and religion. We are also concerned that the new voucher authorizations in the bill pose severe constitutional problems. These concerns demonstrate that the bill may be unconstitutional under the Establishment Clause.

Safeguards

We are particularly concerned that the most critical Establishment Clause safeguard included in the legislation—a beneficiary's right to a secular alternative to a faith-based service—is an unfunded and unenforceable mandate. The principal problem is that there is not a single dollar appropriated to meet the requirement, which serves as the lynch pin for H.R. 7, nor has there been any indication from the Administration that they intend to fund this mandate. The Majority's own witness, Professor Douglas Laycock acknowledged that the government must "really [make] available an alternate provider . . . you have got to really do that or this program is a fraud."[51] Yet at the same hearing, the Administration's own witness would not commit to fully funding the alternative program. When asked point blank by Rep. Frank whether for the charitable choice program to be fair and justifiable there needs to be a substantively equal secular alternative set of programs, Carl H. Esbeck, Senior Counsel at the Department of Justice responded, "I think in [an] earlier answer I was showing you an example where that was not necessary. So I guess the answer is no."[52]

If the Federal Government will not find the resources to meet the requirement of a secular alternative, it is unlikely the financially strapped State and local governments will be able to make up the difference. In this regard, the National League of Cities has written: "Local governments are already hard-pressed to deliver much needed services, and they are especially vulnerable to the impact of budget cuts in social service programs. Without the financial support from the Federal Government, it will be impossible for cities to satisfy this provision of H.R. 7; thus leaving cities vulnerable to litigation."[53]

The other key religious protections included in the bill—the requirement that government funds may not be used for "sectarian instruction, worship, or proselytization," and the requirement that if the religious organization offers such activity, it is to be "voluntary" and "offered separate" from the government funded pro-

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ployment of the Victims' Assistance Coordinator, would violate the Establishment Clause of the First Amendment in that it has a primary effect of advancing religion and creating excessive government entanglement.

[51] *The Charitable Choice Act of 2001: Markup Before the House Judiciary Committee,* H. Doc. No. HJU179.000, p. 214 (June 28, 2001).

[52] *Id.* at 67.

[53] Letter from Donald J. Borut, Exec. Dir., Nat'l League of Cities to Hon. John Conyers, Jr., p. 2 (June 27, 2001) (on file with the House Judiciary Committee).

gram—are largely left to self enforcement.[54] Of course, we do not question the good faith of our non-profit or religious organizations, but it does seem that the Majority could offer stronger safeguards for this core constitutional concern than self certifications and self audits.

Particularly questionable is whether a sectarian religious program offered in conjunction with a covered Federal program, such as after school programs for young children, can ever be truly "voluntary" to the children involved. We all know the tremendous peer pressure impressionable children can be under, and they can hardly be expected to be aware of their statutory rights to object under H.R. 7, let alone willing to assert such legal rights against a religious organization.[55] A similar concern exists for other categories of beneficiaries, such as drug addicts. As the Association for Addiction Professionals testified before the Senate Judiciary Committee, "[t]he patient presenting for addiction treatment is very vulnerable to subtle and implied coercion. As other treatment options may not exist in real time, the presenting patient may comply [with the religious coercion] in order to continue to receive services."[56]

The bill's other purported protection—the specification that religious organizations receiving grants may not discriminate against beneficiaries on the basis of their religion—is also likely to be problematic in practice. One obvious problem is that this protection is limited to religious discrimination; it offers no protection against discrimination on account of sex, pregnancy status, marital status, or sexual orientation.[57] The fact that the legislation includes a savings clause stating that specified civil rights protections are unaffected by the bill is of little import, since none of the cited laws provide any protection with regard to these categories of beneficiaries.[58]

Even the protection against religious discrimination against beneficiaries is incomplete with regard to indirect aid. The original version of the legislation required that for indirect forms of disbursement religious organizations were prohibited from discriminating based on religion in all respects.[59] The manager's amend-

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[54] It is worth noting that the bill still does not contain the most obvious safeguard with regard to separation of church and state—a simple statement that a religious organization may not proselytize at the same time and place as a government funded programs.

[55] "The bill would leave it up to the children in an after school program to ask for a non-religious alternative. But experience with 'voluntary' school prayer demonstrates that peer pressure or other factors may hinder children from exercising that right." *See Mr. Bush's "Faith Based" Agenda,* N. Y. TIMES, July 8, 2001, at A10.

[56] Statement by John L. Avery, Government Relations Director of The Association for Addiction Professionals (NAADAC) before the Committee on the Judiciary, U.S. Senate 107th Cong. (June 6, 2001).

[57] Reps. Frank and Baldwin attempted to offer an amendment to prevent discrimination on any basis prohibited under applicable Federal, State, or local laws, including sexual orientation.

[58] Letter from Laura W. Murphy, Director, ACLU and Terri Schroeder, Legislative Representative, ACLU, p. 11 (June 27, 2001) (on file with the House Judiciary Committee) ("At first glance, the paragraph may appear to provide significant protection to persons suffering employment discrimination caused by federally-funded religious organizations. However, a closer examination shows what protections are missing. Specifically, the paragraph saves absolutely no laws protecting persons against discrimination based on religion, sex, pregnancy status, marital status, or sexual orientation in any federally-funded program or activity."). *See also* Statement by Wade Henderson, *supra note* 32, at 5. ("None of the cited laws provide any protection against employment discrimination based on religion, sex, pregnancy status, marital status, or sexual orientation.").

[59] H.R. 7, section 201 adding proposed section 1994A(g)(2), 107th Cong. (2001), as introduced. "A religious organization providing assistance through a voucher, certificate, or other form of indirect disbursement under a program described in subsection (c)(4) *shall not discriminate,* in

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ment weakened the protection to merely require that a religious organization cannot deny admission based on religion.[60] This means, for example, pressure to convert can be applied once admission is granted. Also, the protections that proselytization must be voluntary and separately offered do not apply to indirect aid. Finally, like the other religious safeguards applicable to beneficiaries, this anti-discrimination protection is not enforceable in court. In contrast to the provisions protecting religious organizations against discrimination, which are enforceable in court and allow recovery of attorney's fees,[61] beneficiaries facing discrimination are given no such right.

Entanglement

We are also concerned that by unleashing the process contemplated by H.R. 7, Congress will be inviting excessive entanglement between the church and state, particularly with regard to raw political calculations. The last several months have already unleashed a flurry of such activity, as the White House has used the full weight of its office to curry political support from impacted religious groups and elected representatives.

Perhaps the most telling instance of the dangers of such entanglement can be seen in the discussed *quid pro quo* between the Bush White House and the Salvation Army relating to H.R. 7.[62] On July 10, 2001, the *Washington Post,* citing the text of a confidential Salvation Army document, stated that the Salvation Army had received a "firm commitment" from the White House to issue a regulation protecting such charities from State and city laws and regulations against discrimination in employment on the basis of sexual orientation, or requiring domestic partner benefits.

The Salvation Army document states: "We suggested the amendment to OMB Circular #A-102 to staff at the White House Office of Faith-Based and Community Initiatives as one potential solution." The document goes on to say that White House officials "first want to move the charitable choice provisions in the legislation and use the political momentum of this effort to push forward religious exemptions to domestic partnership benefit ordinances and municipal contract clauses that protect against any form of sexual orientation discrimination." The document goes on to observe, "The Salvation Army's role will be a surprise to many in the media" and urges efforts to "minimize the possibility of any 'leak' to the media."

Subsequently, on July 12, 2001, the Washington Post reported that senior White House officials, including Karl Rove, President Bush's senior advisor, were involved in discussions with the Salva-

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carrying out the program, against an individual described in subsection (f)(3) on the basis of religion, a religious belief, or a refusal to hold a religious belief."

[60] Manager's amendment to H.R. 7, section 201 adding proposed section 1994A(h)(2), 107th Cong. (2001) provides, "A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a program described in subsection (c)(4) *shall not deny an individual described in subsection (f)(3) admission into such program* on the basis of religion, a religious belief, or refusal to hold a religious belief." (emphasis added).

[61] The proposed section 1994A(n) authorizes the bringing of a civil action pursuant to title 43, section 1979 of the Revised Statutes of the United States, the codified version of what is commonly known as section 1983 of the United States Code. title 42, section 1988 allows for the awarding of attorney's fees in a 1979 action.

[62] *See infra* note 29.

tion Army; contrary to the Bush Administration's earlier position that senior officials were not involved.

It is difficult to conceive of a more troubling fact pattern from the perspective of separation of church and state. We have a large religious organization—that receives more than $300 million in Federal funds per year—allegedly entering into a secret deal by which the White House agrees to use taxpayer funds and resources to weaken civil rights laws if the religious organization supports the White House's legislative agenda.

Incidents such as this clearly raise the specter that religion may see its role as an independent voice of compassion in our society diminished. This was the very concern articulated by Rev. J. Brent Walker of the Baptist Joint Committee, when he stated, "[r]eligion has historically stood outside of government's control serving as a constant critic of government. Accepting government funding creates a dependency on government that will have the effect of silencing the prophetic witness. How can a religion raise a prophet's fist against government when it has the other hand open for a handout? It simply can't do both at the same time."[63]

An equally salient concern is that in the onslaught of lobbying for government grants by religious organizations, small and minority religions may be left underfunded and under appreciated. This of course would send a very dangerous message about which religions are worthy of government support and which are not. As Rabbi David Saperstein, the Director of the Religious Action Center of Reform Judaism testified: "The prospect of intense competition for limited funding; the politicizing of church affairs to obtain funds; the impact on those made to feel they are outsiders when they fail to obtain the funds—this leads to the very kind of sectarian competition and divisiveness that have plagued so many other nations and which we have been spared because of the separation of church and state."[64]

Early activities and statements by the Administration already provide cause for concern in this area. For example, when Stephen Goldsmith, a White House special adviser and a principal architect of the faith based plan, conducted a briefing in Augusta, Georgia in February, only "churches" were sent invitations.[65] Neither Jewish congregations nor secular nonprofits were invited. Similarly, when the White House hosted a meeting with Muslim groups last month, Muslim leaders walked out after an intern from David Bonior's office attending the meeting with the group was mistakenly removed by the Secret Service.[66]

It is also noteworthy that in an interview on *Face the Nation,* when CBS correspondent Bob Schieffer asked Mr. Goldsmith whether the Nation of Islam, which runs successful inmate rehabilitation programs, would be eligible to apply for a grant under charitable choice, Mr. Goldsmith answered, "I would say, if [the

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[63] Brent J. Walker, *What is Charitable Choice,* Baptist Joint Committee Information Sheet on Charitable Choice (Spring 2001) (on file with the House Judiciary Committee).

[64] Reform Action Center of Reform Judaism, "Rabbi Saperstein Testifies Before Congress in Opposition to Charitable Choice," Press Release (June 7, 2001).

[65] OMB Watch, "Analysis of Bush administration's Charitable Choice Initiatives," p. 4 (Apr. 23, 2001).

[66] Caryle Murphy, *Muslim Leaders Leave White House Briefing; Removal of Intern Leads to Walkout,* WASHINGTON POST, June 29, 2001, at A35.

Nation of Islam] preach[es] hate, if they can't perform the terms of the contract, they shouldn't be allowed to apply." Obviously, the last thing we want to do is put the Administration in a position of deciding which faiths are acceptable and which are not under their charitable choice plan. Yet when Rep. Scott offered an amendment to insure that discrimination between religions was not tolerated, and that any funding decisions were purely merit based, it was rejected by the Majority.

Voucher Expansion and Discrimination

Another serious concern with regard to the manager's amendment is that it provides an unprecedented new authorization of the use of vouchers and other indirect aid available for use by religious organizations. It also permits religious organizations to religiously discriminate in such voucherized programs, and to avoid the safeguards preventing the use of such funds for sectarian instruction, worship, or proselytization as well as the "voluntary and offered" separate requirement. These changes, effectuated in the fine print of the manager's amendment, and inserted without the benefit of any public hearings or discussion, constitute a massive expansion of the use of vouchers, and create major new loopholes in the bill's religious safeguards.

The authorization of the new voucher program appears in proposed new subsection (l). This language was not contained in the original version of H.R. 7, nor has it appeared in any previous charitable choice law. It would grant the Administration the ability to unilaterally convert more than $47 billion in social service programs into vouchers. Amazingly, this wholesale conversion in the nature of these programs could occur without any action by Congress, or even any regulatory action subject to outside comment. The action would even include education programs, despite the fact that such measures have created considerable legal and policy controversy in other contexts. In one fell swoop, this change could dramatically alter the nature of the nation's efforts to fight hunger, homelessness, crime, juvenile delinquency, and job training in a manner never contemplated or considered by Congress. At a minimum, such a wholesale change deserves more consideration than comes from being added in the middle of the night to a manager's amendment primarily touted for its other changes.

Our concerns with the new voucher program extend beyond its authorization. Tucked away in the manager's amendment is another clause which permits religious organizations participating in these "voucherized" programs to discriminate against beneficiaries on account of their religion. This is because, as noted above, subsection (h) of the Committee-reported version of the bill deletes language from the original bill generally prohibiting religious discrimination against beneficiaries by religious organizations, and instead, merely states they "shall not deny . . . admission" on the basis of religion. Again, this language did not appear in the original version of H.R. 7 or any other charitable choice law.

This means that religious groups could use their social service programs in an effort to convert non-believers to their faith. Given the controversy which ensued when the "Teen Challenge" group admitted in a recent congressional hearing that they seek to convert

Jewish persons in their programs to make them "completed Jews," we are surprised that language allowing such proselytization in these "voucherized programs" would be added to the manager's amendment.

Equally objectionable is the fact that such proselytization could occur with Federal funds provided under the bill. This is because, as noted earlier, the bill's safeguards do not apply to "voucherized programs." A careful reading of subsection (j) indicates that the bill's prohibitions on sectarian instruction, worship, or proselytization with Federal funds and the requirement that any religious activity be "voluntary" and "offered separate" only applies with programs receiving direct Federal funds, not indirect aid.

Constitutional Concerns

We also continue to be concerned that the Judiciary-reported version of the bill may be found unconstitutional. Contrary to the Majority's assertions, we need to do far more than consider whether the legislation is "neutral," as emphasized by the plurality opinion in *Mitchell v. Helms.*[67] The critical opinion was the concurring opinion written by Justice O'Connor and joined by Justice Breyer which represents the balance of power on the Court in terms of establishment clause doctrine.[68]

A reading of Justice O'Connor's concurrence makes clear that she specifically rejected the plurality's single-minded and exclusive focus on neutrality and disputed the plurality's contention that direct government aid to a pervasively sectarian institution is constitutionally acceptable: "we have never held that a government-aid program passes constitutional muster solely because of the neutral criteria it employs as a basis for distributing aid . . . I also disagree with the plurality's conclusion that actual diversion of government aid to religious indoctrination is consistent with the Establishment Clause."[69]

In Justice O'Connor's view, a statute raises sensitive establishment clause concerns when it involves direct funding of religion, as H.R. 7 clearly does: "In terms of public perception, a government program of direct aid to religious schools based on number of students attending each school differs meaningfully from the government distributing aid directly to individual students who, in turn, decide to use the aid at the same religious schools . . . This Court has recognized special Establishment Clause dangers where the government makes direct money grants to sectarian institutions."[70]

In cases such as this, Justice O'Connor will look at a range of factors, including, notably, the constitutional safeguards present, and the degree of entanglement between government and religion.

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[67] *Mitchell v. Helms,* 530 US 793, 809 (2000).

[68] The Justices in *Mitchell v. Helms,* 530 US 793 (2000) joined in three different opinions. Justice Thomas wrote the plurality opinion, joined by Chief Justice Rehnquist and Justices Scalia and Kennedy. *Id.,* at 801. Justice Souter, joined by Justices Stevens and Ginsburg, wrote a dissent. *Id.* at 868. Justice O'Connor, joined by Justice Breyer, wrote the determinative opinion in the case and the one that provides the most authoritative guidance on the current meaning of the establishment clause. *Id.* at 836.

[69] *Mitchell v. Helms,* 530 US 793, 840 (O'Connor, J., concurring).

[70] *Id.* at 842, 843. Even Justice Thomas, writing for the four justice plurality admitted that: "Of course, we have seen 'special Establishment Clause dangers', when money is given to religious schools or entities directly rather than . . . indirectly. But direct payments of money are not at issue in this case. . . ." *(citations omitted)*, 530 U.S. at 818–819 (Thomas, J., plurality opinion).

In Justice O'Connor's own words, "the program [should] include adequate safeguards"[71] and the funds should not "create an excessive entanglement between government and religion."[72]

Under these tests, there is a very real concern that H.R. 7 would fail to pass constitutional muster. As previously noted, the bill's so-called "safeguards" include numerous loopholes and are largely left to the religious organization to enforce. This is in stark contrast to the safeguards included in the school aid program upheld in *Mitchell*, where the State was given the power to cut off aid upon any violation, and conducted numerous monitoring visits and random reviews of the religious school to insure compliance. Also, as noted above, significant government entanglement with religion is not only inevitable, it has already begun to occur. We are also gravely concerned about the bill's new voucher provisions. The most serious problem is that these provisions allow pervasively sectarian organizations to use Federal money for sectarian purposes, including attempting to convert beneficiaries. Even if the funding is provided indirectly, it seems likely that any bill allowing religious organizations to proselytize in federally funded programs would be suspect. Collectively, these infirmities raise serious constitutional problems with regard to H.R. 7.

III. H.R. 7 DOES NOT AUTHORIZE A SINGLE ADDITIONAL DOLLAR TO FUND A COVERED SOCIAL WELFARE PROGRAM

It is difficult to support legislation which purports to provide an enhanced ability to fight poverty when the legislation itself does not authorize a single dollar in additional funds for charitable choice programs. This fact, when combined with the severe cuts in the Administration's budget for social services will place severe constraints on the ultimate viability of charitable choice programs.

It is indeed ironic that at the same time the Administration is touting the benefit of making the various programs set forth in H.R. 7 eligible for charitable choice, it has elected to slash the budgets of those very programs.[73] For example, with regard to local crime prevention, the Bush budget cuts funds by $1 billion. This includes cutting funds for juvenile delinquency programs, such as gang-free schools and communities, incentive grants for local delinquency prevention, drug reduction program, and victims of child abuse.

The Bush budget treats public housing needs—also covered by H.R. 7—no better, cutting funds by more than $1 billion. This includes the termination of the $309 million Public Housing Drug Elimination Grant, and cutting the Public Housing Capital Fund by $700 million. The Public Housing Drug Elimination Grant Program is used for anti-crime and anti-drug law enforcement and security activities in public housing. The Public Housing Capital Fund provides critical building repairs in public housing.

Job training is cut by more than $500 million under the Administration's budget. This will translate into vastly reduced job training

[71] *Id.* at 867.
[72] *Id.* at 845.
[73] Staff of House Comm. On The Budget, 107th Cong., Bush Budget Cuts Priority Programs (April 30, 2001) (on file with House Judiciary Committee); Materials provided by Senate Budget Committee (on file with House Judiciary Committee).

through the Workforce Investment Act for low income workers, dislocated workers, and other unemployed or underemployed individuals. The Older Americans Act—also covered by H.R. 7—which provides funds for elderly nutrition programs, home care, and ombudsman services for residents of long-term care facilities would also be cut by more than $5 million under the Bush budget.

We shouldn't be surprised that the Administration's budget treats the programs covered under H.R. 7 so uncharitably, when it also cuts the programs subject to previously enacted charitable choice laws. For example, with regard to Temporary Assistance for Needy Families (TANF), the subject of the 1996 Welfare legislation, the Bush budget eliminates $319 million in supplemental grants as well as $2 billion in contingency fund grants. The Administration would also reduce the Community Development Block Grant program, the subject of the Community Services Block Grant law, by more than $500 million.

IV. H.R. 7 UNJUSTIFIABLY PROTECTS BUSINESS ENTITIES FROM NEGLIGENT ACTS AND UNNECESSARILY PREEMPTS TRADITIONAL STATE LAW

Finally, we object to the liability provisions included in sec. 104 of the bill. First, they were included without the benefit of support from a single witness, or any statement of justification or support. The provisions were so sloppily and hastily pasted together, that the original bill, and the manager's amendment, included provisions bearing no relationship whatsoever to non-profits.[74] The final version still contains very tenuous liability relief—for example, the exemption applies to the use of facilities and motor vehicles or aircrafts, regardless of whether a nonprofit pays for its use.[75]

We are also concerned that under the bill even if donated equipment injures or kills, the corporation would be absolved of any duty it currently owes to the charity that received the items and to the injured person who suffered because of the business's negligent act. Despite the fact that the corporations are in the best position to determine if the donated equipment is properly maintained and reasonably safe, this bill shifts the costs away from the corporation and onto the charity. If the charity is also shielded from liability, under State law, or if it is without sufficient financial resources, the injured person would have to shoulder the loss completely.

To the extent there is any problem with corporate liability for charitable in-kind donations, we would suggest that the States are fully capable of passing their own laws protecting volunteers from personal civil liability. Moreover, by mandating these provisions on the States, we may invite legal challenges to Congressional authority to legislate in this area, particularly under the Supreme Court's decision in *United States v. Lopez* and its progeny.[76]

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[74] Section 104(B)(4) of H.R. 7, as introduced, and the manager's amendment exempted business entities from civil liability relating to any injury to or death of an individual occurring at a facility of the business entity, if the injury or death occurred during a tour of the facility in an area of the facility that was not otherwise accessible to the public.

[75] H.R. 7 sections 104(B)(2) and 104(B)(3), 107th Cong. (2001).

[76] 514 S.Ct. 549 (1995). In Lopez, The Court held that the Gun-Free School Zones Act of 1990, which made illegal the knowing possession of a gun in a school zone, was beyond Congress' Commerce Clause authority. Congress acted to remedy the constitutional infirmity in the Gun-

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Proponents' arguments that the legislation protects State prerogatives because it allows the States to opt-out[77] miss the mark. It is an odd formulation of federalism which grants all power to Congress unless the States affirmatively act to protect their interests. As proponents well know, it is no easy feat to obtain approval in a state house and senate and obtain the governor's signature. Moreover, many States meet on a biennial basis and could not even consider electing to opt-out for several years.

Conclusion

We believe that the government does nothing to respond to America's social problems by sanctioning government-funded discrimination. We also do nothing to strengthen our religious freedoms by breaking down the separation between church and state.

Rather than propose legislation which opens up even greater divisions in our society, as H.R. 7 does, we urge the Administration and the Majority to work with us in a bipartisan basis in expanding the role of religion in a manner which protects both equal protection and freedom of religion.

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WILLIAM D. DELAHUNT.
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TAMMY BALDWIN.
ADAM B. SCHIFF.

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Free School Zones law by limiting it to firearms that "ha[ve] moved in or that otherwise affects interstate or foreign commerce." *See* 18 U.S.C. § 922q.

[77] Manager's amendment to H.R. 7, section 104(e), 107th Cong. (2001).