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VIA U.S. MAIL AND FAX

Eric Holder, Attorney General
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U.S. Department of Justice, Room 4400
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Washington, DC 20530-0001
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Re: Juvenile Justice and Byrne grants to faith-based organizations

Dear Mr. Attorney General:

In a February 25, 2008 letter, we asked then-Attorney-General Mukasey to investigate thirteen Congressionally-directed Juvenile Justice and Byrne grants to faith-based organizations that were to be funded by the Department of Justice (DOJ) in fiscal year 2008, and to refrain from paying the earmarks unless they satisfied all legal requirements. The DOJ nonetheless funded all the earmarks. Based on information we received through a Freedom of Information Act request (OJP FOIA No. 09-00088), we believe that nine of those grants remain constitutionally problematic. We ask that five grants be terminated. The remaining four should be carefully investigated and, depending on the results of the investigation, they should either be modified to include appropriate safeguards or be terminated.

Prohibitions on government aid for religious activity

The Constitution's Establishment Clause prohibits the provision of public aid for religious activity, such as religious worship or instruction. *See Mitchell v. Helms*, 530 U.S. 793, 840-41, 857, 861 (2000) (O'Connor, J., concurring)¹; *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988); *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 754-55 (1976); *Hunt v. McNair*, 413 U.S. 734, 743 (1973). This prohibition extends not only to direct spending of government funds on religious activities, but also to the use of government funds to pay for items or activities that are secular in themselves yet are used to support religious programming. *See Mitchell*, 530 U.S. at 837-38, 857-58 (O'Connor, J., concurring) (Establishment Clause prohibits use of secular federally-funded materials and equipment, such as computers, to advance a parochial school's

¹ Federal appellate courts have agreed that Justice O'Connor's concurrence, and not the plurality opinion, represents the holdings of *Mitchell*. *See Cmty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1058 (9th Cir. 2007); *Columbia Union Coll. v. Oliver*, 254 F.3d 496, 504 n.1 (4th Cir. 2001); *DeStefano v. Emergency Hous. Group, Inc.*, 247 F.3d 397, 418 (2d Cir. 2001); *Johnson v. Econ. Dev. Corp.*, 241 F.3d 501, 510 n.2 (6th Cir. 2001).

religious mission); *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 762-63, 774 (1973) (state funding of secular maintenance and repair work at religious schools held unconstitutional because that work “subsidize[d] directly the religious activities of sectarian . . . schools”); *Tilton v. Richardson*, 403 U.S. 672, 683 (1971) (federal funding of secular facilities at religiously-affiliated colleges held unconstitutional to extent that facilities could be used for religious activities more than twenty years after being built); *Ams. United for Separation of Church & State v. Prison Fellowship Ministries*, 509 F.3d 406, 418-19, 424-25 (8th Cir. 2007) (state payments to religious prison program — which were in part used for telephone, mailing, computer, copying, and other office costs — were unconstitutional because they ultimately supported religious indoctrination).

Moreover, the Establishment Clause prohibits the government from making direct cash payments to pervasively sectarian institutions. See *Bowen*, 487 U.S. at 610-12, 621; *Roemer*, 426 U.S. at 755; *Hunt*, 413 U.S. at 743. An institution is “pervasively sectarian” if its “secular activities cannot be separated from sectarian ones” (*Roemer*, 426 U.S. at 755) or “a substantial portion of its functions are subsumed in the religious mission” (*Hunt*, 413 U.S. at 743). Recent circuit decisions have split over whether the “pervasively sectarian” test remains good law: While the Fourth Circuit has held that the test is no longer applicable (*Columbia Union Coll. v. Oliver*, 254 F.3d 496, 504 (4th Cir. 2001)), the Sixth Circuit has affirmed the continued vitality of the test (*Steele v. Indus. Dev. Bd.*, 301 F.3d 401, 408-09 (6th Cir. 2002); *Johnson v. Econ. Dev. Corp.*, 241 F.3d 501, 510 (6th Cir. 2001)). But only the Supreme Court can overrule its previous decisions establishing the “pervasively sectarian” test (see *Agostini v. Felton*, 521 U.S. 203, 237 (1997)), and the Court has not done so. Thus, that test remains the law in most jurisdictions — including the D.C. Circuit, which has not spoken on the issue.

When providing grants to faith-based organizations, it is the government’s responsibility to put in place “effective means of guaranteeing that the [grants] will be used exclusively for secular, neutral, and nonideological purposes.” *Nyquist*, 413 U.S. at 780; accord *Freedom from Religion Found., Inc. v. Bugher*, 249 F.3d 606, 614 (7th Cir. 2001). At a minimum, to ensure that aid is not used improperly, government officials should require aid recipients to submit signed assurances that aid will be used only for secular purposes. See *Mitchell*, 530 U.S. at 861-63 (O’Connor, J., concurring); *Roemer*, 426 U.S. at 741-42. Additionally, government officials should conduct on-site monitoring visits of the funded programs or entities. See *Mitchell*, 530 U.S. at 861-63 (O’Connor, J., concurring); *Ams. United*, 509 F.3d at 424-25; *Bugher*, 249 F.3d at 613.

In addition to the constitutional prohibitions, the DOJ’s own regulations restrict the use of grant funds for religious activity.² Under the so-called Equal Treatment Regulation, “[o]rganizations that receive direct financial assistance from [DOJ] under any [DOJ] program

² This is not to say that the regulations provide sufficient protection against constitutional violations. We believe they do not. See, e.g., Ira C. Lupu & Robert W. Tuttle, *The Faith-Based Initiative & The Constitution*, 55 DEPAUL LAW. REV. 75-85 (Fall 2005).

may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services” for which DOJ funds are used. 28 C.F.R. § 38.1(b)(1) & § 38.2(b)(1). Any inherently religious activities “must be offered separately, in time or location, from the programs or services funded with direct financial assistance from [DOJ], and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.” *Id.*

Prohibitions on government aid for organizations that discriminate in employment

Several federal statutes applicable to recipients of Juvenile Justice and Byrne grants prohibit discrimination on the basis of religion in funded programs. *See* Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c)(1); Victims of Crime Act, as amended, 42 U.S.C. § 10604(e); Juvenile Justice and Delinquency Prevention Act, as amended, 42 U.S.C. § 5672(b). While the previous administration took the position that the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb, overrides such statutory prohibitions, that position is untenable for at least three reasons.

First, the non-discrimination provisions do not “substantially burden” religious exercise.³ *See* 42 U.S.C. § 2000bb-1(a). The courts have repeatedly held that the government’s mere unwillingness to subsidize sectarian activity does not impose a substantial burden on the exercise of religion. *See, e.g., Locke v. Davey*, 540 U.S. 712, 720-25 (2004) (upholding a state’s exclusion of theology-degree study from educational scholarship program); *Teen Ranch v. Udow*, 479 F.3d 403, 408-10 (6th Cir. 2007) (upholding application of statute barring direct state aid for

³ In a June 29, 2007 memorandum, the Office of Legal Counsel took the position that “RFRA is reasonably construed to provide” that requiring the religious organization World Vision, Inc. “to comply with the Safe Street Act’s religious nondiscrimination provision as a condition of receiving [an] OJP grant” would “substantially burden World Vision’s religious exercise.” Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act, at 9, *available at* <http://www.usdoj.gov/olc/2007/worldvision.pdf> (posted Oct. 14, 2008). Two prominent scholars have commented, however, that the OLC’s position “is open to serious doubt and potential revision in the Obama Administration” because the religious organization’s hiring practices “are not compelled by its religious convictions,” and because “the ‘importance’ of the relevant benefit to World Vision may be considerably less than the comparable importance of unemployment benefits to someone like Mrs. Sherbert,” the plaintiff in *Sherbert v. Verner*, 374 U.S. 398 (1963), whose predicament of having to choose between receiving employment benefits and observing the Sabbath the OLC found analogous to World Vision’s choice between receiving a federal grant and continuing to discriminate on the basis of religion in hiring. Ira C. Lupu & Robert W. Tuttle, THE STATE OF THE LAW 2008: A CUMULATIVE REPORT ON LEGAL DEVELOPMENTS AFFECTING GOVERNMENT PARTNERSHIPS WITH FAITH-BASED ORGANIZATIONS 36 (2008). To the extent you deem the OLC memorandum applicable to the nine grants discussed in this letter, we urge you to revoke the memorandum.

“sectarian activity” to prohibit placement of children in youth residential program that incorporated religious teaching); *Eulitt v. Maine Dep’t of Educ.*, 386 F.3d 344, 354 (1st Cir. 2004) (upholding state’s exclusion of religious schools from a tuition aid program that benefitted certain private schools); *KDM ex rel. WJM v. Reedsport Sch. Dist.*, 196 F.3d 1046, 1051 (9th Cir. 1999) (upholding state’s refusal to provide special education services to disabled student at parochial school); *Goodall by Goodall v. Stafford County Sch. Bd.*, 60 F.3d 168, 172 (4th Cir. 1995) (holding that school board that had been providing transliteration services for disabled child at public school was not obligated to continue providing those services after child transferred to religious school); see also *United States v. Am. Library Ass’n*, 539 U.S. 194, 212 (2003) (upholding statute requiring libraries that received federal subsidies for Internet access to install Internet filtering software on their computers, and explaining that “[a] refusal to fund protected activity, without more, cannot be equated with the imposition of a ‘penalty’ on that activity” (plurality opinion) (internal quotation marks omitted)).

Second, even if the non-discrimination provisions were to impose a substantial burden on religious exercise, the government would have a “compelling governmental interest” (see 42 U.S.C. § 2000bb-1(b)) for imposing such a burden: the prevention of religious discrimination. See, e.g., *N.Y. State Club Ass’n v. City of New York*, 487 U.S. 1, 14 n.5 (1988) (recognizing that state has “compelling interest” in “combating invidious discrimination”); *Young v. N. Illinois Conf. of United Methodist Church*, 21 F.3d 184, 185 (7th Cir. 1994) (explaining that it “is unquestionably the case” that “the elimination of discrimination is a compelling state interest ‘of the highest order’” (quoting *Rayburn v. General Conf. of Seventh Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985)); *Jews for Jesus, Inc. v. Cmty. Relations Council of New York, Inc.*, 968 F.2d 286, 295 (2d Cir. 1992) (explaining that state had “a substantial, indeed compelling, interest in prohibiting, racial and religious discrimination”).

Third, Congressional action subsequent to the enactment of RFRA in 1993 demonstrates that Congress did not intend RFRA to override existing religious non-discrimination provisions. In 1996 and 2002, Congress amended two of the statutory sections containing religious non-discrimination provisions that apply to the DOJ, and it thus had the opportunity to remove or revise the non-discrimination provisions in light of RFRA. See 42 U.S.C. §§ 5672, 10604. The fact that Congress left intact the non-discrimination provisions demonstrates that it did not intend for RFRA to override them. See *id.* Moreover, in 2007, the House of Representatives rejected a proposal to remove the religious non-discrimination provision from the Head Start Act. See 153 CONG. REC. H4376-78 (daily ed. May 2, 2007), available at http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2007_record&page=H4376&-position=all. Thus, the position that RFRA overrides statutory prohibitions against discrimination is at odds with Congressional intent.

Grantees’ religious discrimination in employment is also prohibited by the Constitution’s Establishment and Equal Protection Clauses, which forbid public funding of religious discrimination. The Establishment Clause “mean[s] that government may not . . . discriminate among persons on the basis of their religious beliefs and practices.” *County of Allegheny v.*

ACLU, 492 U.S. 573, 590 (1989); *see id.* at 611 (“The antidiscrimination principle inherent in the Establishment Clause” is a “fundamental premise of the . . . Clause.”); *see also Bd. of Educ. v. Grumet*, 512 U.S. 687, 703 (1994) (“a principle at the heart of the Establishment Clause” is “that government should not prefer one religion to another, or religion to irreligion”). The Equal Protection Clause likewise prohibits the government from discriminating based on religion. *See, e.g., United States v. Armstrong*, 517 U.S. 456, 464 (1996); *Miller v. Johnson*, 515 U.S. 900, 911 (1995). And “it is . . . axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.” *Norwood v. Harrison*, 413 U.S. 455, 465 (1973); *accord City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 492 (1989) (plurality opinion of O’Connor, J., joined by Rehnquist, C.J., and White, J.). In other words, “[a]ctivities that the federal government could not constitutionally participate in directly cannot be supported indirectly through the provision of support for other persons engaged in such activity.” *National Black Police Ass’n v. Velde*, 712 F.2d 569, 580 (D.C. Cir. 1983). Accordingly, the Constitution prohibits the government from aiding organizations that discriminate on the basis of religion. *See Norwood*, 413 U.S. at 465-66 (“the Constitution does not permit the state to aid discrimination”); *id.* at 467 (“A State’s constitutional obligation requires it to steer clear . . . of giving significant aid to institutions that practice racial or other invidious discrimination.”).

Grants that should be terminated

The following five grants should be terminated because they clearly run afoul of one or more of the above constitutional, statutory, and regulatory restrictions, and it is not feasible to cure all the violations by placing additional restrictions on the grant.

Detroit Rescue Mission Ministries, Detroit, Michigan (Juvenile Justice grant of approximately \$490,000)

The grant application of Detroit Rescue Mission Ministries (DRMM) — which, like the other applications discussed in this letter, we obtained through our FOIA request — states that DRMM would use the two-year grant to run a program for at-risk youth that consists in part of a “challenge course” program over the course of eight weekends at Wildwood Ranch in Howell, Michigan. The grant application itself indicates that the program involves proselytizing to participating youths: The position description for Director of Camping Services at Wildwood Ranch — a position funded with the DOJ grant — lists among the position’s responsibilities, “Develop the program for summer camp, which include a variety of at least six (6) structured activities, *Bible studies* and fund [sic] games etc.” Program narrative at 32 (emphasis added). The website of Wildwood Ranch shows that proselytization is integral to DRMM’s mission: “Wildwood Ranch is a part of the Detroit Rescue Mission Ministries” and is “a Christian camp with the primary goal of sharing the joy of a personal relationship with Jesus Christ with inner-city youth and children.” *See* http://www.wildwoodranch.org/job_opportunities.html. Wildwood Ranch’s resident camp programs include “Bible studies” and “chapel.” *See id.* In fact, Wildwood Ranch’s motto is “Sharing God’s grace with youth — one at a time.” *See*

http://www.wildwoodranch.org/summer_camps.html. Because the grant pays for expenses integral to the operation of DRMM's "challenge course" program — including the salaries of the Director of Wildwood Ranch and the Program Director, as well as equipment and supplies to be used during programming — the grant to DRMM supports inherently religious activity in violation of the Constitution and DOJ regulations.

Further, it is clear from both DRMM's grant application and its website that DRMM discriminates based on religion in hiring. The grant application contains a position description for a Follow-Up Assistant — one of the positions funded with the grant — that lists as a qualification "[a] profession of personal faith in Jesus Christ as Savior and Lord; demonstrated Christian maturity and judgment consistent with DRMM Articles of Faith and Practice." Program narrative at 35. The general employment application available on DRMM's website confirms that applicants must be Christians who subscribe to DRMM's "Statement of Faith," and that "religious beliefs of the individual will be taken into account in making employment decisions." See <http://www.drmm.org/application.pdf>. Accordingly, the grant to DRMM violates the constitutional and statutory prohibition on religious discrimination in hiring.

Teen Challenge, Albany, New York (Juvenile Justice grant of \$47,000)

In its grant application, Albany Teen Challenge (ATC) states that it would use the grant to run several drug-prevention programs, including "Rock the Block." Specifically, ATC would use the grant to pay the salaries of personnel responsible for implementing the programs, as well as light and sound equipment to be used as part of the programs. While the application describes Rock the Block and the other programs only in secular terms, Rock the Block's website explains that "Rock the Block is the evangelistic non-profit outreach of Jimmy Jack Ministries and Long Island Teen Challenge," that it is "committed to bringing the life changing message of salvation through Jesus Christ to the city streets where people live," and that it "utilize[s] the urban arts of dance, song, drama and word to bring the message of salvation through Jesus Christ in a powerful way." See <http://www.rocktheblock.org/rocktheblock.html>. The website states that during the Rock the Block program, "the word of God is shared," "[a]n altar call is given, Bibles are provided, and salvation cards are distributed." See <http://www.rocktheblock.org/about%20the%20tour.html>. Further, "[t]hose who accept Christ as their Savior are referred to the local partner churches, to help them grow with Christ and discover God's unique plan for their life," while "[t]hose who suffer from drug or alcohol abuse, and desire help, are referred to a Teen Challenge crisis center" where "they receive healing, hope, and salvation through the love of Jesus Christ." See *id.*

Aside from Rock the Block, the mission of Teen Challenge as a whole is to "provide youth, adults and families with an effective and comprehensive Christian faith-based solution to life-controlling drug and alcohol problems." See <http://teenchallengeusa.com/mission.php>. "Teen Challenge does not subscribe to the medical model of helping an individual involved in drug abuse." See <http://teenchallengeusa.com/faq.php>. Instead, Teen Challenge claims to treat drug addiction through "the Jesus Factor": "New-found life in Christ and learning biblical

principles.” *See id.* “Devotions, Bible Reading, and Chapels are essential elements of the program as well as discipleship training during an average day.” *See* <http://teenchallengeusa.com/program.php>. “[A]ll aspects of the program are mandatory upon entrance.” *See* <http://teenchallengeusa.com/faq.php>. And “conversion is regarded as the greatest hope for breaking an addiction.” *See id.* By funding ATC’s operation of Rock the Block and other programs, the DOJ grant is supporting proselytization in violation of the Constitution and DOJ regulations.

The funding of ATC is also unlawful because, as acknowledged by Teen Challenge’s Director in testimony before Congress, Teen Challenge has a policy of hiring only Christians. *See Effective Faith-Based Treatment Programs: Hearing Before the Subcomm. on Criminal Justice, Drug Policy and Human Resources of the H. Comm. On Government Reform*, 107th Cong. 50-51 (2001) (testimony of Rev. John Castellani), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:77709.pdf.

Teen Challenge, Lebanon, Indiana (Juvenile Justice grant of \$94,000)

According to its grant application, Central Indiana Teen Challenge (CITC) would use the grant to fund the “Girl’s Transition to Education and Community Program,” a residential program for girls who have led a destructive lifestyle involving drug addiction. CITC’s website states that “Central Indiana Teen Challenge is all about giving young girls a second chance of finding a happy fulfilled life through God’s transforming grace, dedicated pastoral counseling and a chance to heal in a safe environment.” *See* <http://www.ci-tc.org>. The website further states that “[t]hrough consistent Bible study, prayer and personal accountability, [CITC’s] students are encouraged to apply the truths of God’s Word to their thoughts and actions in everyday life.” *See* http://www.ci-tc.org/index_files/Page347.htm. According to the website, “[h]undreds of girls have passed through [CITC’s] doors and found the love of Christ and freedom through forgiveness and grace.” *See id.* While CITC’s website does not specifically mention the Girl’s Transition to Education and Community Program, the website of Indiana Teen Challenge does discuss CITC’s “Adolescent Girl’s Home,” which appears to be the same as, or similar to, the Girl’s Transition to Education and Community Program. *See* <http://www.indianatc.org/content/view/22>. The application for admission to the Adolescent Girl’s Home states that “Teen Challenge believe[s] in the principles of Biblical counseling and in the fact that Christ-centered intervention can and will create life-changing results in your daughter and your entire family.” *See* <http://74.52.88.194/~intc/images/stories/girls-student-application.pdf> (application at 7). In light of the religious nature of CITC’s Adolescent Girls’ Home and other programs, it appears that the DOJ grant will support inherent religious activity, in violation of the Constitution and Department regulations.

Moreover, even if CITC were to insist that the Girl’s Transition to Education and Community Program is entirely secular, the DOJ apparently has failed to put in place “effective means of guaranteeing that the [grant] will be used exclusively for secular, neutral, and

nonideological purposes.” *Nyquist*, 413 U.S. at 780. Internal emails at the Office of Justice Programs’ Office of the General Counsel, obtained through our FOIA request, indicate that when earmarks to religious organizations were brought to the DOJ’s attention by our organization, they received no scrutiny beyond a reading of the grant applicant’s program narrative to determine whether the narrative, on its face, raised Establishment Clause concerns. *See, e.g.*, June 17, 2008 e-mail from Peter M. Brien to Marie Burke, *et al.* (“As a general matter, please forward program narratives to the faith-based team any time you feel that there might be an issue regarding the proper use of federal funds and the establishment of religion or the free exercise thereof.”); July 25, 2008 e-mail from Peter M. Brien to Susan Searby (“I’ve looked at the program narrative, and there are no First Amendment-related issues that I could identify.”); July 29, 2008 e-mail from Peter M. Brien to Matthew T. Scodellaro (“The program narrative looks good to me. I added a note that the application underwent review for constitutional issues.”). Such a cursory review, apparently without even reviewing the grant applicant’s website, is clearly inadequate. Moreover, neither the grant application nor any other FOIA document we have obtained indicates that the DOJ has placed any restrictions on CITC’s use of the grant.

The funding to CITC is also unlawful because of Teen Challenge’s general policy of employing only Christians.

Minnesota Teen Challenge (Juvenile Justice grant of \$235,000)

According to the grant application, Minnesota Teen Challenge (MnTC) would use the grant to expand its “Know the Truth” drug-prevention program, which targets pre-teens and teenagers in schools across Minnesota. Specifically, MnTC would use the grant to pay the salaries of staff, to pay for travel to and from the schools where the program is presented, and to pay for equipment and supplies used in the presentations. While Know the Truth purports to be a secular program, funding the program nonetheless violates the Constitution and DOJ regulations for two reasons.

First, a critical element of the program is that graduates from MnTC’s residential drug-treatment program “share their personal stories of addiction and recovery” with the pre-teens and teenagers attending the Know the Truth program. Program narrative at 12. MnTC’s residential drug-treatment program, however, is thoroughly evangelical. As the online application for that program explains, participants in the program must “participate in daily devotions, Bible reading, and prayer,” must participate in courses and counseling programs “that are based on Christian principles,” and must “attend church services when scheduled.” *See* <http://www.mntc.org/uploads/pdfs/Applications/Life%20Care%20Teen%20Application.pdf> (application at 6). And there is evidence that when the graduates of that program “share their personal stories” with youths as part of Know the Truth, “those stories invariably have overtures of religious awakening as a route to freedom from addiction.” *See* Andy Birkey, *Up in Smoke: Will Ramstad’s Faith-Based Earmark Hurt His Chances to Win Drug Czar Post?*, The Minnesota Independent, Dec. 9, 2008, available at <http://minnesotaindependent.com/19501/ramstads-recovery-policy-included-faith-based-earmark>. Accordingly, it appears the DOJ grant

supports a program that involves proselytizing to students.

Second, the grant application shows that MnTC uses the Know the Truth program as a tool for directing youths to its religious drug-treatment program. The application explains that at the end of each Know the Truth presentation, “students are given resource cards with information on how to contact our program staff.” Program narrative at 13. When a student does so and the staff determines that he or she “needs substance abuse treatment, the prevention program staff works with other MnTC staff to bring that student into MnTC’s teenage addiction program.” *Id.* Thus, because the Know the Truth program is a recruiting tool for MnTC’s thoroughly religious drug-treatment program, the DOJ grant is supporting inherently religious activity.

Moreover, the grant is unlawful because MnTC, in accordance with Teen Challenge’s general policy, discriminates on the basis of religion in hiring staff for the Know the Truth program. The program narrative states that “[a]ll MnTC staff who work with this program are graduates of MnTC’s chemical dependency programs.” Program narrative at 11. As the application form for the chemical dependency programs shows, however, MnTC effectively accepts only Christians (or those willing to become Christian) into those programs, as participants must “participate in daily devotions, Bible reading, and prayer,” must participate in courses and counseling programs “that are based on Christian principles,” and must “attend church services when scheduled.” See <http://www.mntc.org/uploads/pdfs/Applications/Life%20Care%20Teen%20Application.pdf> (application at 6). Thus, MnTC allows only Christians to be employed as staff for the Know the Truth program. See *Ams. United*, 509 F.3d at 425 (program’s requirement of participation in Christian activities effectively precluded non-Christians from participating).

Teen Challenge’s New Hope Academy, Factoryville, Pennsylvania (Byrne grant of approximately \$210,000)

According to its grant application, New Hope Academy Teen Challenge (NHA) would use the grant to expand its existing residential addiction-treatment program by offering it to low-income families at a reduced rate. NHA’s website shows that this residential program is saturated with religion. NHA, which calls itself “a Christian boarding school,” explains that upon entering NHA each student is assigned an advisor who develops a mentoring relationship with the student, which “allows the advisor to give Biblically sound pastoral counseling to the student.” See <http://www.newhopeacademytc.org/Counseling.html>. In addition, at NHA “students attend several church services during the week,” “[c]hapel is conducted . . . twice a week, and there is a weekly prayer time for all the students and staff.”⁴ See http://www.newhopeacademytc.org/Spiritual_Life.html. NHA’s “staff encourages the students to begin to practice spiritual disciplines such as prayer, meditation and Bible study.” See *id.* “Spiritual growth is a primary focus of New Hope Academy Teen Challenge”: “Being a Christian

⁴ NHA’s program narrative explains that the Director of Programming, whose salary is partly being funded by the grant, has among his or her duties “[o]versight of chapel schedule.”

is about developing a personal relationship with Jesus Christ.” *See id.* Accordingly, the application form for enrolling at NHA explains that “[s]tudents participate in a tightly integrated personal spiritual growth development program” and that “they find, through life in Christ, the changing power that gives the ability to cope and live more fulfilling lives.” *See* <http://www.newhopeacademytc.org/currentapp112608.pdf> (application at 1). In addition to spiritual counseling, NHA provides its residents with an academic program that is also thoroughly religious. NHA’s website explains that NHA “primarily uses Accelerated Christian Education’s Pace courses for [its] students.” *See* http://www.newhopeacademytc.org/Hope_Academy.html. The brochure of Accelerated Christian Education (ACE), in turn, explains that “Christian education . . . is the law of God,” and that ACE’s educational program “helps children grow to see life from God’s point of view” by “integrating character-building principles and Scripture memory into the academics.” *See* http://www.aceministries.com/aboutus/Great_Command_Commission-web.pdf (brochure cover page).

Because NHA, according to the budget included in its grant application, would apply the DOJ grant to expenditures integral to the operation and content of its religion-saturated program — salaries of staff, including the Director and the Director of Programming; enrollment fee scholarships for low-income applicants, which are ultimately “applied towards overall program costs”; and operational needs such as insurance, utilities, and building repair — it is apparent that the grant supports inherently religious activity. While NHA’s budget narrative states that “[n]o federal funds will be used for religious activities, promotion, or training,” and a “Clarification of program narrative” states that NHA “will ensure that OJP funds will be kept separate from inherently religious activities that may be undertaken,” those statements are not credible given the nature of NHA’s program and the funded expenditures. Moreover, NHA cannot avoid an Establishment Clause violation by purporting to apply federal dollars only to secular activities within a thoroughly religious program. That is the kind of “attempt[] to unbundle religious activities through statistics and accounting” that “[t]he Supreme Court has systematically rejected” (*Freedom from Religion Found., Inc. v. McCallum*, 179 F. Supp. 2d 950, 974 (W.D. Wis. 2002)), for “a mere statistical judgment will not suffice as a guarantee that state funds will not be used to finance religious education” (*Nyquist*, 413 U.S. at 778). Thus, the grant to NHA violates the Constitution and DOJ regulations.

Moreover, the funding of NHA is unlawful because NHA requires program participants to take part in religious activity. *See* 28 C.F.R. §§ 38.1(b)(1), 38.2(b)(1) (prohibiting fund recipients from coercing participants in funded programs to take part in religious activity); *DeStefano v. Emergency Hous. Group, Inc.*, 247 F.3d 397, 412 (2d Cir. 2001) (“[W]hen state funds are used to coerce worship or prayer, the Establishment Clause has been violated.”); *see also Ams. United*, 509 F.3d at 424-25 (state funding of prison program that required inmates to take part in religious activity was unconstitutional).

Finally, the funding is also unlawful because of Teen Challenge’s general policy of employing only Christians.

Grants that should be carefully investigated

The following four grants should be carefully investigated. If the investigation shows that the funded programs are entirely secular, appropriate safeguards should be put in place to ensure that grant funds are not used to support in any manner other, religious activities of the funded institutions. If the investigation shows otherwise, the grants should be terminated.

Denver Rescue Mission, Denver, Colorado (Byrne grant of \$282,000)

According to its grant application, the Denver Rescue Mission (DRM) would use the grant to fund the Strategic Transitional Assistance and Response (STAR) program, which is operated at “The Crossing,” DRM’s shelter and transitional housing facility. Specifically, DRM would use the grant funds to purchase, among other things, furniture for resident units, furniture for the dining room, security equipment, computers, telephones, a vending machine, a food processor, and locks and keys. *See* Program Budget, Attachments 2A & 2B. DRM would also use the grant to remodel resident units, replace worn floors and doors, and repair vehicles. *See id.* DRM’s website suggests that DRM proselytizes to those who participate in the STAR program. The website, which shows as DRM’s logo a Latin cross bearing the words “Jesus saves,” explains that “[a]t The Crossing, families in our Strategic Transitional Assistance and Response (STAR) program are given an opportunity to experience affordable, clean, and safe temporary housing *as we minister to them* and help them take the final steps toward self-sufficiency and permanent housing.” *See* <http://www.denverrescuemission.org/familyrescue.html> (emphasis added). Likewise, the grant application includes a position description for STAR Program Youth Coordinator, which lists as a “personal responsibility” a “passion to serve and minister to homeless children and teens,” and includes as a duty the provision of “evening programs, activities and ministries for teens.” Grant application, attachment #3 at 12-13. Thus, the DOJ grant may unconstitutionally support a program that involves religious ministering, in violation of the Constitution and Department regulations.

Moreover, The Crossing houses several other DRM programs that proselytize to residents. For example, the New Life Program for homeless men “integrat[es] spiritual and emotional counseling, life skills, education, *Bible study*, and work therapy,” and offers residents “many opportunities for personal development in Jesus Christ.” *See* <http://denverrescuemission.org/factsheets/NLP.pdf> (emphasis added). Likewise, Family Refugee Services aims to “[p]rovide a living witness of the love of Christ.” *See* <http://denverrescuemission.org/projectlovethyneighbor.html>. Further, in a promotional video on the website, the Facility Director of The Crossing explains that the purpose of The Crossing is to “create a culture and a community where lives can be changed in the name of Christ.” *See* <http://www.denverrescuemission.org/thecrossing.html> (video at 0:23 minutes). Because DRM would use the grant to upgrade, and purchase furniture and equipment for, its facilities at The Crossing, the grant may support not only the STAR program but also the other programs housed at The Crossing. And the DOJ appears to have placed no restrictions on the use of the new furniture and equipment by other DRM programs. Therefore, even if the STAR program itself is

secular, the grant to DRM could still be unconstitutional because it may support other, inherently religious programs. Unless your investigation shows that the STAR program is entirely secular, and effective safeguards are put in place to ensure that the grant funds are used lawfully — including that furniture and equipment purchased with grant funds, as well as building facilities improved with grant funds, must not be used in any religious programming — the grant should be terminated.

Straight Ahead Ministries, Boston, Massachusetts (Juvenile Justice grant of \$94,000)

According to its grant application, Straight Ahead Ministries (SAM) would use the grant to launch the “Ready4Work project” — a community reentry program for detained or incarcerated youths that is already running in several cities — in Worcester, Massachusetts. Specifically, SAM would use the grant, among other things, to pay part of the salary of its Executive Director, as well as the full salary of the Director of Worcester Aftercare. SAM’s website states that SAM “train[s] and equip[s] Christians to lead Bible studies in juvenile facilities.” See <http://www.straightahead.org>. SAM’s “vision” is to “create an international movement whereby every juvenile offender has the opportunity to hear and respond to the Gospel and grow in his or her relationship with Jesus Christ.” See <http://www.straightahead.org/internal.cfm?page=3>. The website also features an article by SAM’s President, Dr. Scott Larson, entitled “Ministering to Today’s Juvenile Offender.” See <http://www.straightahead.org/article.cfm?Article=77>. The article advises SAM volunteers how to offer Bible studies to incarcerated juveniles. See <http://www.straightahead.org/pdf/Ministering.pdf>. Thus, it appears likely that the Ready4Work project involves proselytizing to youthful offenders, and funding the program would therefore support inherently religious activity in violation of the Constitution and DOJ regulations.

Moreover, even if SAM were to insist that the Ready4Work project is entirely secular, it appears that the DOJ has failed to put in place “effective means of guaranteeing that the [grant] will be used exclusively for secular, neutral, and nonideological purposes.” *Nyquist*, 413 U.S. at 780. Despite the fact that SAM’s overall purpose is to proselytize to as many juvenile offenders as possible, neither the grant application nor the other FOIA documents we have obtained indicate that the DOJ has placed any restrictions on SAM’s use of the grant. Unless your investigation shows that the Ready4Work project is entirely secular, and effective safeguards are put in place to ensure that the grant funds are restricted to secular activities by SAM, the grant should be terminated.

World Impact Youth Program, St. Louis, Missouri (Juvenile Justice grant of \$282,000)

In its grant application, World Impact St. Louis (WISTL) states that it would use the grant to expand its existing empowerment program — intended to combat the effects of the “pervasive atmosphere of academic failure” in inner-city St. Louis — by offering an Elementary School Program, a Junior High Program, and a Tutoring Program. It is clear from WISTL’s website that WISTL is a thoroughly religious organization whose mission is to proselytize:

World Impact is a Christian missions organization seeking to reach the unchurched urban poor in the inner cities of America with the gospel of Jesus Christ.

World Impact is an incarnational ministry — we live where we minister, in the inner city.

We present Christ to the unchurched through all our ministries.

We nurture people to maturity in Christ, and train them to teach others.

See <http://worldimpactstl.org/AboutUs.htm>.

The website also shows that several of WISTL's programs involve proselytization: during its Spring Break Youth Outreach, WISTL hosts a week-long Day Camp for youth that includes "daily Bible lessons" (see <http://worldimpactstl.org/STLMinistries.Youth.htm>); during its Summer Youth Outreach, WISTL runs "Bible clubs in [its] missionaries' backyards" (see *id.*); each week WISTL "hosts a Basketball Outreach for our local men," and "halfway through the evening, all games cease and the group gathers for a brief Bible study" (see <http://worldimpactstl.org/STLMinistries.Adults.htm>); and, as touted in WISTL's Urban Missionaries bulletin, one member of WISTL's staff "helped lead six young men to Christ in [WISTL's] junior-high program" (see http://www.worldimpact.org/winews/bulletin/2008/jan2008-urban_missionaries.pdf (bulletin at 3)).

Thus, WISTL's website strongly suggests that the DOJ grant is being used to support a project that involves proselytization and other inherently religious activity, in violation of the Constitution and DOJ regulations. While the grant application states that "[i]nherently religious activities at World Impact St. Louis youth programs will be separated by time slot from secular activities" and that "OJJDP Congressional Earmark Grant money will not be used to fund inherently religious activities," those statements fail to refute the fact, evident from the application's Budget Detail, that the grant is funding expenditures integral to WISTL's youth programs — including the salaries of four staff members and ten summer interns responsible for programming, as well as equipment and supplies that support the programming, such as training materials for a "[l]ifeskills curriculum to teach successful principles/values." If, as WISTL's website suggests, those programs involve inherently religious activity, then the DOJ grant is unconstitutional. WISTL's attempt to divide its programs into secular and religious "time slots" and then apply the DOJ funds only to the secular time slots is the kind of "attempt[] to unbundle religious activities through statistics and accounting" that "[t]he Supreme Court has systematically rejected." *McCallum*, 179 F. Supp. 2d at 974. Unless your investigation shows that the programs being funded by the grant are entirely secular, and effective safeguards are put in place to ensure that the grant funds are not in any manner used to support other, religious activities by WISTL, the grant should be terminated.

Grace College, Winona Lake, Indiana (Byrne grant of \$1,128,000)

According to its grant application, Grace College would use the three-year grant to create an Integrated Community Emergency Response Training Center (ICERT Center) inside Grace's Orthopaedic Capital Center, and would help train Community Emergency Response Teams for Kosciusko County, Indiana. While the ICERT Center and the emergency response training themselves appear to be secular, the program is constitutionally suspect because part of the grant would be used to remodel the Orthopaedic Capital Center — a 56,000-square-foot facility on Grace College's campus that Grace College also uses for religious activities. The grant application explains that the DOJ grant would be used for "[r]enovation of office space into a computer lab and moving displaced offices to another area of the building," as well as for equipment to be installed in classrooms inside the Orthopaedic Capital Center ("Classroom Electronics," "Classroom Audio Visual," and "Classroom Shades & Blinds"). There is no indication, however, that the moved offices and the new computer lab and classroom equipment will be used exclusively for ICERT training and not for other, religious activities. According to its website, "Grace College is an evangelical Christian community of higher education" that "wants students to make fruitful contact with God's Word" (see http://www.grace.edu/about/mission/college_values.php), and the Orthopaedic Capital Center "is the home of Grace College athletics, chapel, and the school's Business Department" (see http://graceschools.blogspot.com/2008/02/occ-receives-excellence-award_04.html). Consistent with Grace's religious mission, the Business Department offers "an opportunity to develop one's personal Christian commitment" (see <http://www.grace.edu/academics/undergrad/business.php>) and promotes "the application of Scripture to all aspects of life including business" (see <http://www.grace.edu/academics/registrar/assets/08-09/business08-09.pdf> (catalog at p. 3)). Because no restrictions appear to have been placed on Grace's use of the moved offices and the new computer lab and classroom equipment, nothing would prevent the DOJ grant from being used to support chapel activities or religious Business Department classes at the Orthopaedic Capital Center. We therefore ask that you investigate this grant and put in place effective safeguards to ensure that the new facilities and equipment are not, and will not be, used for religious activities.

For the foregoing reasons, we ask that you terminate the first five grants discussed above. With respect to the last four grants, it is possible that they need not be terminated if, after careful investigation, you are able to put in place effective measures — including demanding signed assurances by grant recipients and performing on-site monitoring visits — to ensure that DOJ funds do not support religious activities or religious discrimination in hiring. We further ask that you put in place measures to prevent future federal funding of the above-named programs and entities (except to the extent that some of them might be eligible for aid with appropriate safeguards) or similar programs and entities. We also ask that you inform us within sixty days of the actions you plan to take. Please do not hesitate to contact Alex Luchenitser or Jef Klazen at (202) 466-3234, or at luchenitser@au.org or klazen@au.org, if you have any questions or would like to discuss this matter.

Sincerely,

The image shows two handwritten signatures in black ink. The signature on the left is 'Alex' and the signature on the right is 'Jef Klazen'. Both are written in a cursive, flowing style.

Ayesha N. Khan, Legal Director
Alex J. Luchenitser, Senior Litigation Counsel
Jef Klazen, Madison Fellow*

* Admitted in New York; supervised by Ayesha N. Khan, a member of the D.C. Bar.

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