

Responding to KrisAnne Hall and others of like mind
August 27, 2012

Throughout the history of our country, federal, state and local governments have partnered with non-profit groups, including religious organizations, to provide essential community, educational and social services to those in need. These much-needed services are most often provided at a lower cost to taxpayers and with greater care than can governmental agencies. In some instances these religiously affiliated organizations are not only the best, but also the only willing provider to serve the underserved in our communities.

These partnerships have always existed within the safeguards of the U.S. Constitution that protect religious freedom when used to a secular end. However, these partnerships are vulnerable in Florida because of antiquated and anti-religious language currently in Florida's constitution. Should Amendment 8 not pass in November and the "no-aid to religion" clause remain, the stage has been set for legal challenges to faith-based activities many here in Florida take for granted.ⁱ

In an article appearing her website on August 10, 2012, KrisAnne Hall urges opposition to a Florida ballot issue. Her analysis seems incomplete to many supporters of Amendment 8. To this point:

Concern over title of the Amendment

Opponents, including Ms. Hall, have seized upon the amendment's title as a "misnomer," an argument used in the early court challenge to this Amendment. Judge Terry Lewis acknowledged that the actual title of the section of the Constitution amended by Amendment 8 is "Religious Freedom" and ruled against opponents in this regard. Ms. Hall should take note.

Claim that Am. 8 allows funding for religious activities; Am. 8 pertains to secular services

Ms. Hall has joined many Amendment 8 critics in asserting that proponents are seeking funding for a "religious activity." She does not define the term, nor does she nuance the term as decades of jurisprudence have, in ways that address her great and sincere concerns both for church and state. There are existing federal protections against requiring participation in a *religious activity* (such as participation in a prayer service) that would remain in place; what amendment 8 protects are religious providers who receive public funds to undertake a secular service, such as feeding the hungry.

Can there be an overlap? Can religiously-motivated people collaborate with the state? Opponents of Amendment 8 might say "no," but yes they can and do collaborate today.

The mutual autonomy of religious organization and public sector does not entail a separation that excludes cooperation. Both of them, although by different titles, serve the personal and social needs of the same people. Religious and public entities are structured not as "ends in themselves" but are intended to serve people, to help us exercise rights fully as citizens and to fulfill correctly the corresponding duties. Religious and governmental bodies can more effectively render such service for the good of all if each works better for wholesome mutual cooperation in a way suitable to the situation that arises. Ms. Hall, under the pretense of protecting religious bodies, would not allow any such cooperation.

Mischaracterization of Amendment

Unfortunately, Ms. Hall characterizes the Amendment 8 text as a "demand" for public funds by religious organizations. In actuality, it should be viewed as an opportunity to collaborate to the benefit of those in need and maintain the *status quo*.

Poor Historical Treatment

Her historical treatment is narrow and gives short shrift to the full history at the inception of Florida's Blaine-like amendment and the religiously-based sentiments of the day. Our country was founded on principles of religious freedom; Blaine amendments are rooted in religious discrimination. She uses examples of "religious activities" that were at one time considered by Congress (and rightfully rejected) rather than a full range of what is at risk in the current debate over this amendment.

What is at risk is continued participation of religious entities that provide secular – not "religious" – services in Florida in cooperation with state and local governments. She does not consider in any way the development of federal policy and jurisprudence that has been in place since the founding of our nation and addresses her apparently sincere and greatest concerns - both for church and state.

Key Constitutional Issues – Protecting both Church and State

Consider the following commentary on direct and indirect aid to religious institutions that provide services in public (government) programs. The key policies stem from the United States and Florida Constitutions.

A. Subject to US Constitution

Amendment 8 explicitly states that it is subject to the First Amendment of the United States Constitution, which contains the Federal Establishment Clause; therefore, Amendment 8 does not in any manner modify the Federal limitations that apply to direct and indirect aid.

B. Direct Aid

The Federal and State Establishment Clause limit the nature of the religious activities that can be undertaken by recipients of "direct aid." Direct aid includes funds such as grants transferred directly to a qualified provider of public services. As mentioned above, clients of direct aid recipients cannot be required to participate in inherently religious activities.

C. Indirect Aid

The Federal and State Establishment Clause also require that individuals who receive "indirect aid" have a bona fide choice between religious and secular providers. Indirect aid includes coupons for funds given to a beneficiary who can "redeem" them from a qualified provider of public services. The beneficiary cannot be required to spend the coupon at a religious provider of public services. S/he must have a secular choice.

D. Leaves majority of FL Constitution on Church/State Unchanged

Amendment 8 also does not modify in any respect the Florida's Establishment Clause or State constitutional provision guaranteeing that religious freedom shall not justify practices inconsistent with public morals, peace or safety. No new rights for religious organizations are created to allow inappropriate activity; no new burdens or vulnerabilities are established for religious bodies.

Conclusion – Honor Time-Honored Partnerships

Florida should preserve time-honored partnerships between government and social service organizations so the work of religious hospitals that provide Medicare and Medicaid services, eldercare and indigent care; substance abuse treatment, hospice care, housing assistance for the homeless and disabled; soup kitchens and other food programs for the poor; faith-based prison and disaster relief services and certain educational scholarships may continue uninterrupted.

ⁱ The Council for Secular Humanism issued a press release in their case CSH v. McNeil calling the recent decision “a potential watershed moment” and note that “more than half the states have no-aid provisions similar to Florida’s in their constitutions and... (that) this case will likely be a springboard for mounting similar challenges elsewhere.”