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I. Introduction

Protection of the religious freedom of prison inmates requires not only that inmates be affirmatively permitted to freely exercise their faiths, but also that inmates not be coerced in any manner to submit to religious proselytization and that they not be subjected to any form of religious discrimination. The spread of efforts at rehabilitating prisoners through programming that intensively immerses them in the teachings of a particular faith risks the latter dangers. For example, the U.S. Court of Appeals for the Eighth Circuit recently declared that the State of Iowa's support of an intensive religious treatment program known as the InnerChange Freedom Initiative was unconstitutional in part because inmates in the program received many special material benefits not available to other inmates.

Numerous prison systems across the country have adopted similar programs, despite the church-state concerns they present, and despite a lack of scientific evidence that such programs reduce recidivism. To comply with the constitutional requirement of church-state separation and protect the constitutional rights of prisoners, prison officials should ensure that religious treatment programs are supported privately, that inmates' participation in such programs is not linked to any material benefits or conditions of confinement, and that personnel of such programs are not given any authority over the discipline or day-to-day lives of inmates.

II. Legal Background

The First Amendment of the U.S. Constitution contains both a Free Exercise Clause that protects the rights of prison inmates to freely exercise their religions¹ and an Establishment Clause that "commands a separation of church and state."² The Religious Land Use and Institutionalized Persons Act, whose enactment was supported by Americans United for Separation of Church and State, provides additional protection for the religious-exercise rights of prisoners.³

¹ U.S. CONST. amend. I.

² *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005).

³ 42 U.S.C. § 2000cc-1.

The U.S. Supreme Court has held that the Establishment Clause bars the government from engaging in conduct that has the purpose or effect of advancing religion.⁴ Governmental conduct can have the unconstitutional effect of advancing religion in a number of ways: The government must not sponsor or finance religious indoctrination, or otherwise provide direct aid to religious organizations that use the aid to support religious activity.⁵ The state cannot discriminate among persons based on religion.⁶ The government must not coerce individuals to take part in religious activity⁷ or otherwise provide individuals “any incentive to modify their religious beliefs or practices” or “to undertake religious indoctrination.”⁸ And the state is prohibited both from becoming excessively entangled in the affairs of religious institutions⁹ and from delegating governmental power to such institutions.¹⁰

Governmental action that would otherwise be in violation of the Establishment Clause may be upheld as an “accommodation of religion,” however, if — among other requirements — the government’s conduct lifts a government-imposed burden on the free exercise of religion, does not favor one religious sect over others, and does not “devolve into an unlawful fostering of religion.”¹¹ Pursuant to this principle, in order to alleviate the burdens that incarceration and military service impose on religious exercise, the courts have held that the Constitution permits the government to fund chaplains in prisons and the military — *but only if* the chaplains’ services are reasonably necessary to enable those whose movement is restricted to freely exercise their religions; are non-sectarian and provided to all religions on a non-discriminatory basis; are non-proselytizing; and are only provided to the extent desired by their recipients.¹²

III. The InnerChange Freedom Initiative: A Faith-Based Prison Program That Trampled Upon Inmates’ Rights and Church-State Separation

A federal lawsuit concerning a religious treatment program in Iowa called the InnerChange Freedom Initiative illuminated an enterprise that ran afoul of the above-described constitutional requirements in numerous ways.¹³ InnerChange is a 24-hours-a-day, seven-days-a-week program that immerses inmates in Bible studies and classes that are thoroughly suffused

⁴ *Zelman v. Simmons-Harris*, 536 U.S. 639, 648-49 (2002); *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 592-93 (1989); *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

⁵ *See Mitchell v. Helms*, 530 U.S. 793, 840, 845-48, 857 (2000) (O’Connor, J., concurring); *Agostini v. Felton*, 521 U.S. 203, 219, 230 (1997); *Bowen v. Kendrick*, 487 U.S. 549, 621-22 (1988); *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 754-55 (1976); *Hunt v. McNair*, 413 U.S. 734, 743 (1973); *Tilton v. Richardson*, 403 U.S. 672, 683 (1971); *Everson v. Bd. of Educ.*, 330 U.S. 1, 15-16 (1947); *Americans United for Separation of Church & State v. Prison Fellowship Ministries*, 509 F.3d 406, 424 (8th Cir. 2007).

⁶ *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 590 (1989).

⁷ *Lee v. Weisman*, 505 U.S. 577, 587 (1992).

⁸ *See Agostini*, 521 U.S. at 231-32; *see also Zelman*, 536 U.S. at 650; *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 786 (1973); *Sloan v. Lemon*, 413 U.S. 825, 832 (1973).

⁹ *See, e.g., Agostini*, 521 U.S. at 232; *Lemon*, 403 U.S. at 613.

¹⁰ *Larkin v. Grendel’s Den*, 459 U.S. 116, 127 (1982); *accord Allegheny*, 492 U.S. at 590-91.

¹¹ *See Cutter v. Wilkinson*, 544 U.S. 709, 713-14, 720-24 (2005) (citation/quotations omitted); *Bd. of Educ. v. Grumet*, 512 U.S. 687, 706-07 (1994); *Allegheny*, 492 U.S. at 613 n.59.

¹² *See Montano v. Hedgepeth*, 120 F.3d 844, 850 n.10 (8th Cir. 1997); *Carter v. Broadlawns Med. Ctr.*, 857 F.2d 448, 451, 455-56, 458 (8th Cir. 1988); *Baz v. Walters*, 782 F.2d 701, 709 (7th Cir. 1986); *Katcoff v. Marsh*, 755 F.2d 223, 228, 235 (2d Cir. 1985).

¹³ The author of this Written Statement is lead counsel for the plaintiffs in this litigation.

with the teachings of a particular form of Christianity, as well as worship activities of that version of the faith.¹⁴ Program inmates are housed in a separate unit of a prison in Newton, Iowa.¹⁵

All InnerChange classes and program components are used to indoctrinate inmates in and convert them to InnerChange's religious teachings.¹⁶ And, until June 2007, the State of Iowa paid public funds to InnerChange that the program used to support such indoctrination,¹⁷ in violation of the cardinal constitutional prohibition against the provision of governmental funds for religious activity.¹⁸

What is more, testimony during the federal court trial revealed numerous instances in which InnerChange personnel denigrated or discriminated against faiths other than the form of Christianity presented in the program, as well as other minority groups. For example:

- An InnerChange volunteer stated to an InnerChange class that a Pope would be the Antichrist.¹⁹

- When one inmate went to his InnerChange counselor to complain about what had happened, the counselor responded by making an analogy between the Pope and Adolf Hitler.²⁰

- An InnerChange counselor stated in class that two of the books of the Catholic Bible were absolute nonsense.²¹

- InnerChange staff prohibited InnerChange inmates from reading out of books that are part of the Catholic Bible but not part of the Protestant Bible during InnerChange devotions and community meetings.²²

- When an InnerChange counselor explained at an InnerChange community meeting why such reading was being prohibited, he disparagingly likened the books of the Catholic Bible to the Koran.²³

¹⁴ *Americans United for Separation of Church & State v. Prison Fellowship Ministries*, 432 F. Supp. 2d 862, 870-78, 893-912 (S.D. Iowa 2006), *aff'd in part and rev'd in part on other grounds*, 509 F.3d 406, 413-16, 424 (8th Cir. 2007).

¹⁵ *Id.*, 432 F. Supp. 2d at 890-91; 509 F.3d at 414.

¹⁶ *Id.*, 432 F. Supp. 2d at 905-07, 913; 509 F.3d at 424-25.

¹⁷ *Id.*, 432 F. Supp. 2d at 884-87, 919 n.37, 924-25, 933, 935, 939-40; 509 F.3d at 417-19, 423-26.

¹⁸ *Id.*, 509 F.3d at 424.

¹⁹ Trial transcript at 240, 259-60, 1927, *Americans United*, 432 F. Supp. 2d 862.

²⁰ *Id.* at 241, 263.

²¹ *Id.* at 1917-18.

²² *Id.* at 403, 410-411, 624.

²³ *Id.* at 403-05.

- InnerChange staff even barred inmates from saying prayers before and after small group meetings as a result of Catholic InnerChange inmates giving Catholic “Hail Mary” prayers during those times.²⁴
- An InnerChange counselor prayed before a Catholic InnerChange inmate that Jesus lead the inmate away from Catholicism so that he would not burn in hell, and the counselor urged the inmate to become a Pentecostal Evangelical.²⁵
- InnerChange volunteers distributed to inmates pamphlets that were derogatory toward the Catholic faith.²⁶
- In an InnerChange class, an InnerChange counselor stated that Jews would be doomed to hell if they did not turn their hearts over to Christ.²⁷
- InnerChange’s counselors told a Native American inmate that his religion’s sweat lodge rituals were a form of witchcraft and sorcery, and they repeatedly asked him whether he had been saved, believed in Jesus, and had become a Christian.²⁸
- InnerChange has provided inmates with curricular materials that contain statements that denigrate or negatively portray the above-mentioned faiths and various others, including Islam, Hinduism, Buddhism, and Mormonism.²⁹
- InnerChange staff used terms such as “unsaved,” “lost,” “pagan,” “of Satan,” “of the devil,” “sinful,” and “of darkness” to refer to persons who hold non-Christian beliefs.³⁰
- Based on InnerChange’s interpretations of scripture, the program presents anti-gay teachings that depict homosexuality as wrong and sinful, and presents sexist teachings that call for women to be subordinate to men.³¹

Given these discriminatory facets of the program and its intensive focus on indoctrinating inmates in its particular religious beliefs, inmates of other faiths are effectively precluded from participating in InnerChange.³² And inmates in the InnerChange program receive many unique material benefits that are not available to other inmates, including an opportunity to complete treatment classes required for parole earlier than otherwise possible, the most attractive living arrangements in the Newton prison, greater contact with family members, and increased access

²⁴ *Id.* at 409-10.

²⁵ *Id.* at 1932-33.

²⁶ *Id.* at 241, 1925, 2264-65.

²⁷ *Id.* at 1927.

²⁸ *Americans United*, 432 F. Supp. 2d at 900; Appendix of Plaintiffs-Appellees at 1098-99, *Americans United*, 509 F.3d 406.

²⁹ See *Americans United*, 432 F. Supp. 2d at 899 & n.31; Appendix of Plaintiffs-Appellees, *supra* note 28, at 828-29, 1100; Trial transcript, *supra* note 19, at 235-42.

³⁰ *Americans United*, 432 F. Supp. 2d at 900; Appendix of Plaintiffs-Appellees, *supra* note 28, at 1030, 1055-56.

³¹ See *Americans United*, 432 F. Supp. 2d at 909-10; Appendix of Plaintiffs-Appellees, *supra* note 28, at 223, 603-04, 626-29, 635, 667, 682-83, 687, 1023-26, 1051, 1372; Trial transcript, *supra* note 19, at 1279-80.

³² *Americans United*, 432 F. Supp. 2d at 898-900, 910, 930-31; 509 F.3d at 425.

to computers.³³ As a result of the discriminatory nature of the InnerChange program and the special benefits associated with the program, the state's sponsorship of the program violated the constitutional prohibitions against discriminating among persons based on religion³⁴ and against coercing or giving persons incentives to undertake religious indoctrination.³⁵

In addition, InnerChange staff have command over the daily lives of program inmates, including the authority to impose discipline on inmates — discipline that often consists of religious mandates, such as writing biblical essays or passing tests on Bible verses.³⁶ The state's relationship with the program therefore violated the constitutional proscriptions against delegation of governmental power to religious institutions and “fusion of governmental and religious functions.”³⁷

IV. Many Other Faith-Based Units and Prisons Present Constitutional and Policy Concerns Similar to Those Associated with the InnerChange Program

Six states in addition to Iowa have InnerChange programs in their prisons,³⁸ and a substantial number of other states have established other kinds of “faith-based dorms”³⁹ — special housing units for prisoners that focus on religion-based rehabilitation — or even (in Florida) entire faith-based prisons.⁴⁰ Unfortunately, distressing facts similar to those disclosed about the Iowa InnerChange program during the federal court trial have been reported about many other faith-based prisoner rehabilitation programs (both InnerChange and non-InnerChange).

For example, newspaper accounts about InnerChange programs in Texas and Kansas have reported that participation in those programs is linked to many material benefits, such as better parole chances, housing in a desirable prison facility, a safer environment, opportunities to receive more visits, and access to computer labs and computer training.⁴¹ Likewise, participation

³³ *Id.*, 432 F. Supp. 2d at 892-93, 901, 904, 927-29; 509 F.3d at 414, 424.

³⁴ *See* County of Allegheny v. ACLU Greater Pittsburgh Chapter, 492 U.S. 573, 590 (1989); *Americans United*, 509 F.3d at 425.

³⁵ *See supra* note 8.

³⁶ *Americans United*, 432 F. Supp. 2d at 865 n.3, 901-03, 912, 923, 933; 509 F.3d at 416, 423.

³⁷ Larkin v. Grendel's Den, 459 U.S. 116, 126-27 (1982) (quoting School Dist. v. Schempp, 374 U.S. 203, 222 (1963)).

³⁸ *Americans United*, 432 F. Supp. 2d at 871.

³⁹ *See generally* David Crary, *Faith-Based Prisons Multiply*, ASSOCIATED PRESS, Oct. 13, 2007, available at <http://www.religionandsocialpolicy.org/news/article.cfm?id=7208>; Lesley Stedman Weidenbener, *Prisons Try to Build Character — Programs Based on Faith, Values*, COURIER-JOURNAL (Louisville, Ky.), July 27, 2005, available at http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=3091&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs.

⁴⁰ Claire Hughes, *States Pursue Faith-Based Prison Programs Despite Murky Legal Climate*, ROUNDTABLE ON RELIGION & SOC. WELFARE POLICY, Jan. 9, 2007, http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=5850&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs.

⁴¹ *See* Ben Paynter, *Jesus Is in the Big House: Putting Its Faith in a Prison Ministry, the Kansas Department of Corrections Saves Money if Not Souls*, PITCH WEEKLY (Kan. City), Feb. 12, 2004, available at http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=1260&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs; Scott Nowell, *Doing Time With JC in the TDCJ*, HOUSTON PRESS, Sept. 18, 2003,

in non-InnerChange faith-based treatment programs in various states has been linked to early release from prison,⁴² provision of otherwise unavailable substantive instruction on topics such as finance and computers,⁴³ safer environments that result from strict program admission policies under which only inmates with good disciplinary records may enroll,⁴⁴ and special physical amenities and equipment such as ceiling fans, musical instruments, sound systems, and computers.⁴⁵

available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=914&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs.

⁴² See Russ Bynum, *Prisons Devoting Dorms to Bible Studies to Help Set Inmates Straight*, ASSOCIATED PRESS, Feb. 26, 2005, available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=2423&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs; Brian Lazenby, *Judges Give Mixed Reviews to Faith-Based Option to Jail*, CHATTANOOGA TIMES FREE PRESS, Sept. 19, 2006, available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=4976&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs; John Leland, *Offering Ministry, and Early Release, to Prisoners*, N.Y. TIMES, June 10, 2004, available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=1594&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs.

⁴³ See Jeff Coen, *Inmates Find “Christian Tier” a Haven from Troubles of Jail*, CHICAGO TRIBUNE, Oct. 10, 2005, available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=3317&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs; Alan Cooperman, *An Infusion of Religious Funds in Fla. Prisons: Church Outreach Seeks to Rehabilitate Inmates*, WASH. POST, Apr. 25, 2004,

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=1432&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs; Christina Murphy, *Faith-Based Partnerships on Saxman’s List*, DAILY NEWS LEADER (Stanton, Va.), Apr. 28, 2005, available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=2677&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs; Lindsay Pollard, *Inmates Escape — Through Faith*, TALLAHASSEE DEMOCRAT, Jan. 22, 2005, available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=2283&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs; Kerry Sanders, *Religious Rehabilitation in a Florida Prison*, NBC NEWS — TODAY SHOW, Feb. 22, 2004, available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=1275&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs; Don Schanche, Jr., *Prison Program Aims to Help Inmates Develop Faith, Skills to Make It in Outside World*, MACON TELEGRAPH, Aug. 23, 2004, available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=1844&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs.

⁴⁴ See Alexandra Alter, *Faith Finds a Home Behind Prison Walls*, MIAMI HERALD, Nov. 11, 2006, available at 2006 WLNR 19600533 (Westlaw); Bynum, *supra* note 42; Carlos Campos, *Faith Behind Bars: Programs Aim to Uplift, but Foes Say State Oversteps Bounds*, ATLANTA JOURNAL-CONSTITUTION, Aug. 22, 2004, available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=1843&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs; Coen, *supra* note 43; Bob Edwards & Barbara Bradley Hagerty, *Religion in Prisons*, NATIONAL PUBLIC RADIO — MORNING EDITION, Dec. 24, 2003, available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=1154&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs; Hughes, *States Pursue Faith-Based Prison Programs Despite Murky Legal Climate*, *supra* note 40; Ron Word, *Nation’s First Faith-Based Prisons Seek to Reduce Recidivism*, ASSOCIATED PRESS, May 12, 2004,

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=1498&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs.

⁴⁵ See Alter, *Faith Finds a Home Behind Prison Walls*, *supra* note 44; Cooperman, *supra* note 43; Jane Musgrave, *Religion as Rehabilitation*, COX NEWS SERVICE, Jan. 10, 2004, available at

http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=1161&SiteTopicRequest=17&TOPIC_

Some faith-based prison programs even openly discriminate in admissions based on religion. For example, a faith-based prison pod in Biloxi, Mississippi, is open only to inmates who show “a willingness to have a personal relationship with Jesus Christ,”⁴⁶ while a Maryland rehabilitation program admits only inmates who register themselves as Christians.⁴⁷ And a lawsuit against the Corrections Corporation of America charges that one of that company’s faith-based prison pods for women teaches them — based on fundamentalist religious beliefs — to be submissive to male authority.⁴⁸

V. No Scientific Evidence Exists That Faith-Based Prison Programs Reduce Recidivism

Proponents of intensive faith-based rehabilitation programs for prisoners often claim that they reduce recidivism. A recent scientific analysis of various studies that had been done on faith-based rehabilitation programs (both InnerChange and others) concluded, however, “To date, there simply is no credible evidence that such programs reduce recidivism or improve other post-release outcomes.”⁴⁹ The analysis explained that the studies conducted thus far have not been able to overcome the problem of “selection bias” — the likelihood that the inmates who enter and complete faith-based programs happen to be the ones with the motivation or other characteristics that make inmates less likely to recidivate in the first place.⁵⁰

For example, in 2003, InnerChange claimed that a study concerning its program in Texas showed that the program was successful. The study’s actual conclusion, however, was, “Simply stated, participation in the IFI [InnerChange] program is not related to recidivism reduction.”⁵¹ The study reported that while inmates who graduated from the InnerChange program fared better at staying out of prison after release than did a control group, those who entered the program but failed to complete it fared substantially worse, and the combined population of all inmates who entered InnerChange (both graduates and dropouts) fared worse than the controls.⁵² Moreover, the study showed that those inmates who already had characteristics associated with lower

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⁴⁶ Robin Fitzgerald, *Program Aims to Heal*, BILOXI SUN HERALD, Jan. 24, 2005, available at http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=2278&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs.

⁴⁷ Brett Zongker, *Maryland Prisons Adopt Religious Program from Popular Book*, ASSOCIATED PRESS, Aug. 9, 2004, available at http://www.socialpolicyandreligion.org/article_index/article_display.cfm?id=1824&SiteTopicRequest=17&TOPIC_TITLE=Prison%20Programs.

⁴⁸ Jane Lampman, *A Captive Audience for Salvation*, CHRISTIAN SCIENCE MONITOR, Apr. 19, 2006, available at <http://www.csmonitor.com/2006/0419/p14s02-lire.html>.

⁴⁹ Daniel P. Mears, *Faith-Based Reentry Programs: Cause for Concern or Showing Promise*, CORRECTIONS TODAY, Apr. 1, 2007, at 4, available at 4/1/07 CORT 30 (Westlaw) (summarizing conclusions of Daniel P. Mears, *Faith-Based Efforts to Improve Prisoner Reentry: Assessing the Logic and Evidence*, 34 J. CRIM. JUST. 351, 359-60 (2006)).

⁵⁰ See Mears, *Faith-Based Reentry Programs*, *supra* note 49, at 4; Mears, *Faith-Based Efforts to Improve Prisoner Reentry*, *supra* note 49, at 359-60.

⁵¹ BYRON R. JOHNSON, THE INNERCHANGE FREEDOM INITIATIVE: A PRELIMINARY EVALUATION OF A FAITH-BASED PRISON PROGRAM 18 (2003), available at http://www.manhattan-institute.org/pdf/crrucs_innerchange.pdf.

⁵² See *id.* at 5, 19; Mark A.R. Kleiman, *Faith-Based Fudging: How a Bush-Promoted Christian Prison Program Fakes Success By Massaging Data*, SLATE, Aug. 5, 2003, available at <http://www.slate.com/id/2086617/>.

recidivism when they enrolled in InnerChange were the ones mostly likely to finish the program.⁵³ As UCLA Professor of Public Policy Mark A.R. Kleiman has explained, what InnerChange did in Texas is called “creaming”: InnerChange cherry-picked as graduates those inmates who were least likely to recidivate in the first place, and then claimed that its program reduces recidivism.⁵⁴

Likewise, a 2007 State of Iowa study concluded, “There is no current credible research to demonstrate that institutional faith-based programs (i.e., Inner Change) reduce recidivism among its completers.”⁵⁵ Recidivism data recently received by the Oklahoma Sentencing Commission also showed that a state faith-based prison program had no statistically significant impact on recidivism, because although the recidivism rate of program graduates as a whole was lower than that of other inmates, a disproportionate percentage of inmates in the program were female, and male graduates of the program had the same recidivism rate as other male inmates.⁵⁶ And a recent Florida study concluded that, a year after release, there was no significant difference in recidivism between graduates of Florida faith-based prisons and a control group of inmates with similar characteristics from other Florida prisons.⁵⁷

VI. Conclusions

The disturbing marriages between religion and state that have occurred in the religious treatment programs described above have not only violated the constitutional rights of inmates and taxpayers, but also threaten the spiritual health of religious institutions and believers. In the words of James Madison, “Religion flourishes in greater purity, without than with the aid of Gov[ernment].”⁵⁸ The Supreme Court has explained that the “first and most immediate purpose” of the First Amendment’s Establishment Clause “rested on the belief that a union of government and religion tends to destroy government and to degrade religion.”⁵⁹ As stated by Alexis de Tocqueville, “when religion contracts an alliance of this nature . . . it risks that authority which is rightfully its own.”⁶⁰

To protect the rights of both inmates and taxpayers, and the welfare of both governmental and religious institutions, prison officials should ensure that participation in religious programming is not tied to where an inmate lives, to how an inmate obtains release, or to other material benefits or conditions. Public funds should not be used to support religious programming beyond what is reasonably necessary to enable prisoners’ free exercise of religion.

⁵³ See JOHNSON, *supra* note 51, at 18.

⁵⁴ See Kleiman, *supra* note 52; posting of Mark Kleiman to Reality-Based Community, *More Faith-Based Fudge from Charles Colson*, http://www.samefacts.com/archives/crime_control_/2003/08/more_faithbased_fudge_from_charles_colson.php (Aug. 14, 2003).

⁵⁵ DURRANT GROUP, STATE OF IOWA SYSTEMATIC STUDY FOR THE STATE CORRECTIONAL SYSTEM 45 (2007), available at <http://www.doc.state.ia.us/Documents/SystematicStudyForTheStateCorrectionalSystem.pdf>.

⁵⁶ Ron Jenkins, *Faith-Based Program Analyzed*, ASSOCIATED PRESS STATE & LOCAL WIRE, Aug. 23, 2007.

⁵⁷ *Study Hints at Efficacy of Florida’s Faith-Based Prisons*, ASCRIBE NEWSWIRE, Oct. 19, 2007, available at <http://www.religionandsocialpolicy.org/news/article.cfm?id=7222>.

⁵⁸ James Madison, *Memorial and Remonstrance Against Religious Assessments*, in THE COMPLETE MADISON 299, 309 (Saul K. Padover ed., 1953).

⁵⁹ *Engel v. Vitale*, 370 U.S. 421, 431 (1962).

⁶⁰ 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 315 (Henry Reeve trans., P. F. Collier & Son 1900).

And authority over the movement, activities, and discipline of inmates should be fully retained by governmental employees and should not be delegated to any religious personnel. Through such safeguards, the fundamental principles of our constitutional order — including the autonomy of religion from governmental interference — can be respected and vindicated.