



# Leadership Conference on Civil Rights

1629 K Street, NW  
10<sup>th</sup> Floor  
Washington, D.C. 20006

Phone: 202-466-3311  
Fax: 202-466-3435  
[www.civilrights.org](http://www.civilrights.org)

September 21, 2005

## Oppose Boustany Amendment to H.R. 2123

### *It Repeals Longstanding Civil Rights Protections in Head Start Program*

Dear Representative:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, with more than 190 member organizations, we urge you to oppose the Boustany amendment or any amendment to the School Readiness Act (H.R. 2123) that would repeal longstanding civil rights protections in the Head Start Program that have been in place since President Nixon signed the law in 1972. We strongly oppose any language that would allow federally-funded employment discrimination.\* If language repealing civil rights protections is added to the bill during consideration on the House floor, we urge you to oppose final passage of H.R. 2123.

LCCR opposes allowing government-funded employment discrimination. Religious organizations have always served as key partners in providing government services through the Head Start program and current law has not been a hindrance to their vigorous participation. There also is no controversy over the exemption under Title VII of the Civil Rights Act of 1964 that allows religious organizations to have a preference of hiring co-religionists when they are using private funds, but federal funds may not be used to discriminate. Such a drastic change to the current Head Start program would be inconsistent with the long held notion that federal dollars must not be used to discriminate.

The Boustany amendment would allow government-funded employment discrimination. Although the U.S. Supreme Court affirmed the Title VII exemption for privately-funded religious employers, it did not authorize federally-funded employment discrimination. *See Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327 (1987). We believe, based on analysis of *Amos*, that if federal funds are used by religious organizations to hire only persons of their own faith, then the federal government is affirmatively acting to advance employment discrimination.

*\*Some organizations in the Leadership Conference do not join in this position because they disagree that allowing religious entities, including those participating in federally funded programs, to consider religion in hiring constitutes a threat to or violation of fundamental civil rights.*

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National Asian Pacific American  
Legal Consortium

##### EXECUTIVE DIRECTOR

Wade J. Henderson

(\*Deceased)

In the 60 years since Franklin D. Roosevelt signed the first executive order prohibiting discrimination in federally funded activity, our nation has made significant progress in the struggle to end employment discrimination and advance equality. Any attempt to allow organizations to discriminate on the basis of religion with federal funds would drastically impede that progress and erode a longstanding principle of our nation's civil rights policy: that federal civil rights obligations follow federal dollars, regardless of who receives them.

The courts have affirmed the principle that federal funds cannot be used to discriminate. The leading case on the question of government-aided discrimination is *Norwood v. Harrison*, 413 U.S. 455 (1973). In a unanimous decision, the U.S. Supreme Court held that "the Constitution does not permit the state to aid discrimination." *Id.* 465-66. The principles set out in *Norwood* were affirmed in Justice O'Connor's opinion in *City of Richmond v. J.A. Croson Co.* 488 U.S. 469, 492 (1989), which stated, "It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice." Her opinion quoted *Norwood* with approval for the proposition that "[i]t is ... axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish." *Id.* at 492-93 (quoting *Norwood*, 413 U.S. at 465).

LCCR urges you to oppose Rep. Boustany's amendment because current law must not be changed to allow recipients of Head Start funds to have an explicit statutory right to engage in employment discrimination. If this amendment passes, or other language is added during floor consideration that repeals current law, LCCR urges you to oppose final passage of H.R. 2123. If you have any questions, please contact Nancy Zirkin, LCCR deputy director, at 202/263-2880, or Andrea Martin, senior counsel and policy analyst, at 202/263-2852, regarding this or any issue important to LCCR.

Sincerely,



Wade Henderson  
Executive Director



Nancy Zirkin  
Deputy Director