UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AMERICAN CIVIL LIBERTIES UNION of MASSACHUSETTS, Plaintiff, v. KATHLEEN SEBELIUS, *et al.*, Defendants.	)	Civil Action No. 1:09-cv-10038-RGS

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

INTRODUCTION

Thousands of individuals, predominately women, are trafficked into the United States each year, and many are physically or sexually abused by their traffickers or are forced to work in the sex trade. Though it is readily apparent that these individuals will need reproductive health care, Defendants nevertheless awarded a multi-million dollar grant to the United States Conference of Catholic Bishops (USCCB) with knowledge that USCCB would prohibit its subgrantees – organizations that provide services to trafficked individuals – from using federal tax dollars to provide contraception and abortion referrals and services. The sole basis for this prohibition is USCCB's religious beliefs.

Plaintiff – as an organization whose members pay federal taxes – has standing to challenge this violation of the Establishment Clause. Under well-established and undisturbed U.S. Supreme Court precedent, a federal taxpayer has standing to bring an Establishment Clause challenge to the "'disbursement of funds pursuant to Congress'

taxing and spending powers,'" that "'call[] into question how the funds authorized by Congress'" are being disbursed pursuant to the statute by a federal agency. *Hein v. Freedom From Religion Foundation*, 127 S. Ct. 2553, 2567 (2007) (plurality) (quoting *Bowen v. Kendrick*, 487 U.S. 589, 619-20 (1988)). Because that is precisely the type of challenge Plaintiff brings here, Defendants' motion to dismiss for lack of standing should be denied.

REQUEST FOR ORAL ARGUMENT

Plaintiff agrees with Defendants that oral argument may assist the Court and therefore Plaintiff also requests an opportunity to present oral argument.

FACTUAL BACKGROUND

The parties agree that human trafficking is a form of modern-day slavery that disproportionately affects women and girls. Pl.'s Compl. ¶¶ 1, 14-16; Defs.' Br. at 3. Trafficking occurs when individuals are compelled through force, fraud, or coercion, to engage in commercial sex or to provide other forms of labor. *Id*. Many women who are trafficked are raped by traffickers, pimps, and acquaintances of traffickers and pimps. Pl.'s Compl. ¶ 19. Some women who have been trafficked become pregnant as a result of rape, and trafficking plays a role in spreading sexually transmitted diseases, such as Human Immunodeficiency Virus (HIV). *Id*. ¶ 22; *see also* 22 U.S.C. § 7101(11). Trafficking victims frequently need reproductive health care referrals and services to lead safe lives, become self-sufficient, and protect themselves and others. Pl.'s Compl. ¶ 23.

For approximately the last decade, the federal government has assisted people trafficked into the United States, namely by funding services to help them become self-sufficient. Pl.'s Compl. ¶¶ 27-29. In April 2006, Defendants awarded a multi-million

dollar contract – renewable each year for up to five years – to USCCB to administer a program to provide grants to nonprofit organizations that deliver social services to trafficking victims.[1] Pl.'s Compl. ¶¶ 51, 64. Though Defendants' grant announcement specifically required the grantee to provide funding for medical services for trafficked individuals, Defendants nevertheless allowed USCCB to further its religious beliefs by prohibiting subgrantees – nonprofit organizations that provide services to trafficked individuals – from using federal funds for contraception or abortion referrals and services. Defs.' Br. Ex. 1 at 9, 11; Pl.'s Compl. ¶ 46.

Specifically, USCCB's grant proposal, which was incorporated into the final contract between Defendants and USCCB, stated that "as we are a Catholic organization, we need to ensure that our victim services funds are not used to refer or fund activities that would be contrary to our moral convictions and religious beliefs. Therefore, we would explain to potential subcontractors our disclaimer of the parameters within which we can work. Specifically, subcontractors could not provide or refer for abortion services or contraceptive materials . . . ." Pl.'s Compl. ¶ 46. Presumably concerned about this restriction, Defendants asked USCCB to consider applying a "don't ask, don't tell" policy to allow subgrantees to provide their clients with referrals to reproductive health care. *Id*. ¶ 49. USCCB, however, refused and insisted on an outright prohibition. *Id*. ¶ 50. Defendants allowed this restriction – based solely on USCCB's religious beliefs – to be imposed on approximately 90 subgrantee agencies and their clients, many of whom do not share USCCB's religious beliefs. *Id*. ¶¶ 55, 68.

[1] Plaintiff uses the terms "grant," "grantee," and "subgrantee" but there is no difference between those terms and "contract," "contractor," and "subcontractor" for the purpose of this motion. The bottom line is that the challenged government activity involves the disbursement of congressionally-appropriated funds.

Prior to contracting with USCCB, Defendants administered these funds themselves by providing block grants to nonprofit organizations that provided direct services to trafficked individuals, and during this time Defendants did not prohibit the use of federal funds from being used to pay for contraceptives or for contraception and abortion referrals. *Id*. ¶¶ 30-32.

STATUTORY BACKGROUND AND LEGISLATIVE HISTORY

Defendants' trafficking grant announcement references two sources of statutory authority: the Trafficking Victims Protection Act (TVPA) and the Immigration and Nationality Act (INA). Defs.' Br. Ex. 1 at 8-9. In 2000, Congress passed the TVPA, 22 U.S.C. § 7105, and reauthorized that Act in 2003, 2005, and 2008. *See* Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2005); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 112 Stat. 5044 (2008). The TVPA states that Defendants "*shall* expand benefits and services to victims of severe forms of trafficking in persons in the United States." 22 U.S.C. § 7105(b)(1)(B) (emphasis added). Pursuant to this statutory mandate, Defendants "expand[ed the] benefits and services" available to individuals under the INA, specifically 8 U.S.C. § 1522(c)(1)(A), by providing the grant at issue in this case. Defs.' Br. Ex. 1 at 8-9. The relevant INA provision states that Defendant Director of the Office of Refugee Resettlement (ORR)

> is authorized to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed . . . to [*inter alia*] provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services.

8 U.S.C. § 1522(c)(1)(A). Separate from the substantive statutory provisions discussed above, Congress annually appropriates funds specifically to be used to implement the TVPA. *See* Defs.' Br. at 4-5 & nn. 2, 3, 4.

Prior to reauthorizing the TVPA in 2008 and to making its annual TVPA-related appropriations in 2007-2009, Congress received reports indicating that Defendants had awarded to USCCB a multi-million dollar contract to provide subgrants to organizations that serve trafficking victims. For example, in May 2008, the Attorney General provided a report to Congress about trafficking, and specifically indicated that ORR continued its contract with USCCB to provide services to trafficking victims, and that USCCB had entered into 93 subgrants with NGOs in 125 locations to provide these services. *See* Attorney General's Annual Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons FY07, at 5 & Appendix D at 17, *available at* http://www.usdoj.gov/ag/annualreports/tr2007/agreporthumantrafficing2007.pdf. The Attorney General sent a similar report to Congress in May 2007. *See* Attorney General's Annual Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons FY06, at 7 (mentioning grants to USCCB), *available at* http://www.usdoj.gov/ag/annualreports/tr2006/agreporthumantrafficing2006.pdf.

STANDARD OF REVIEW

The standard for motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) is well-settled. As this Court has said, a court "must accept the allegations of the complaint as true, viewing the alleged facts in the light most favorable to the plaintiff." *Brown v. United States*, 410 F. Supp. 2d 3, 5 (D. Mass. 2006) (Stearns, J.) (citing *Hughes v. Rowe*, 449 U.S. 5, 10 (1980) (per curiam)); *see also Wilson v. Executive Office of HHS*,

606 F. Supp. 2d 160, 161 (D. Mass. 2009) (a court must construe the complaint liberally and accord the plaintiff the benefit of all reasonable inferences). A court should dismiss the case only if the "well-pleaded facts, evaluated in that generous manner, do not support a finding of federal subject-matter jurisdiction." *Fothergill v. United States*, 566 F.3d 248, 251 (1st Cir. 2009) (citing *Muniz-Rivera v. United States*, 326 F.3d 8, 11 (1st Cir. 2003)).

ARGUMENT

I. Plaintiff Has Federal Taxpayer Standing Under Well-Settled and Undisturbed Supreme Court Precedent Because Plaintiff Brings an Establishment Clause Challenge to the Disbursement of Federal Funds Pursuant to Congress's Exercise of Its Power Under the Spending Clause.

Though the general rule in federal court is that taxpayers lack standing to challenge governmental actions, time-honored – and undisturbed – Supreme Court precedent carves out an exception to this rule: Federal taxpayers have standing to challenge a constitutional violation if the taxpayer can: 1) "establish a logical link between that status and the type of legislative enactment attacked," and 2) "establish a nexus between [their taxpayer] status and the precise nature of the constitutional infringement alleged." *Flast v. Cohen*, 392 U.S. 83, 102 (1968).[2] Applying this test, the Supreme Court has repeatedly held that federal taxpayers have standing to bring Establishment Clause challenges to administratively awarded grants of funds appropriated by Congress under the Spending Clause. *See id.*; *Bowen v. Kendrick*, 487 U.S. 589, 619 (1988) (holding plaintiffs had taxpayer standing to bring such a challenge

[2] *See also Members of the Jamestown School Committee v. Schmidt*, 699 F.2d 1, 3 n.1 (1st Cir. 1983) (holding taxpayers had standing to challenge state law that provided busing to nonpublic school students because it involved a "legislative enactment authorizing the expenditure of funds" in potential violation of the Establishment Clause); *Spacco v. Bridgewater Sch. Dep't*, 722 F. Supp. 834, 838 (D. Mass. 1989) (holding plaintiff taxpayer had standing to challenge public school's decision to hold classes in a facility owned by a Roman Catholic Church).

and citing other cases allowing taxpayers to bring Establishment Clause claims); *see also Hein v. Freedom From Religion Foundation*, 127 S. Ct. 2553, 2567, 2572 (2007) (plurality) (indicating that the Court's decisions in *Bowen* and *Flast* are undisturbed). That is precisely the type of challenge that Plaintiff here has brought: Plaintiff brings an Establishment Clause challenge to Defendants' disbursement of funds that were appropriated by Congress under the Spending Clause. Plaintiff therefore meets the test for taxpayer standing and Defendants' motion must be denied.[3]

In *Flast*, the Court considered whether the plaintiffs had standing to bring an Establishment Clause challenge to expenditures made pursuant to the Elementary and Secondary Education Act of 1965 (ESEA). Under the ESEA, Congress had appropriated $1 million to be distributed by a federal agency to state educational agencies, which in turn granted funds to local agencies that used the money to provide services and materials to religious schools. 392 U.S. at 90-91, 103 n.23. The Court held that the plaintiffs had taxpayer standing because they met the two-pronged test: first, their status as taxpayers was logically related to their challenge to an exercise of Congress's power under the Spending Clause; and second, they alleged that the money was spent in violation of the Establishment Clause, which "operates as a specific constitutional limitation upon the exercise by Congress of the taxing and spending power conferred by Art. I, § 8." *Id*. at 103, 104. Setting out a guide to future courts, the Court stated, "we hold that a taxpayer will have standing consistent with Article III to invoke federal judicial power when he

[3] Plaintiff American Civil Liberties Union of Massachusetts has representational standing "'to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individualized members in the lawsuit.'" *New Hampshire Motor Transport Ass'n v. Rowe*, 448 F.3d 66, 71 (1st Cir. 2006) (quoting *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)). Defendants do not contest the second and third prongs of this test, nor could they reasonably do so. *See* Pl.'s Compl. ¶ 10.

alleges that congressional action under the taxing and spending clause is in derogation of those constitutional provisions which [like the Establishment Clause] operate to restrict the exercise of the taxing and spending power." *Id*. at 105-06.

Twenty years later, the Court in *Bowen* reaffirmed *Flast* and gave further guidance to courts considering federal taxpayer standing. 487 U.S. 589 (1988). In *Bowen*, the Court considered both a facial challenge and an as-applied challenge to the Adolescent Family Life Act (AFLA), a federal program to prevent teen pregnancy. The Court rejected plaintiffs' facial Establishment Clause challenge because it held that the statutory language was neutral with respect to religion. *Id*. at 610. But the Court went on to consider the plaintiffs' as-applied challenge. The Court held that the plaintiffs had federal taxpayer standing to challenge whether the grants authorized by the neutral statute were disbursed by the Secretary of Health and Human Services in a manner that violated the Establishment Clause and/or whether grantees were using AFLA funds in a manner that violated the Establishment Clause. *Id*. at 618-621.

Under the test developed in *Flast*, and further clarified in *Bowen*, Plaintiff here has standing. Just like the plaintiffs in *Flast* and *Bowen*, Plaintiff has brought an Establishment Clause challenge to the manner in which agency officials have disbursed government funds pursuant to the TVPA's mandate, and which were authorized under Congress's tax and spend power.

II. Defendants' Arguments Do Not Alter the Conclusion That Plaintiff Has Standing.

Faced with a scenario virtually indistinguishable from *Bowen*, Defendants make three arguments, none of which has merit.

First, Defendants argue that Plaintiff lacks standing "because the TVPA does not expressly mandate spending in alleged violation of the Establishment Clause." Defs.' Br. at 12. But this suggestion is squarely foreclosed by the Court's holding in *Bowen*. In *Bowen*, the Court rejected a facial challenge to AFLA, holding that Congress's statute *did not mandate* any activities in violation of the Establishment Clause. *See, e.g.*, 487 U.S. at 610. As is the case here, although Congress "was aware that religious organizations had been grantees" under AFLA's predecessor statute, Title VI, *id*. at 604 n.9, Congress did not *require* HHS to provide any grants to religious organizations at all, *id*. at 596, 604.[4] The Court nevertheless held that the plaintiffs had standing to challenge how the program worked in operation - specifically, how the agency disbursed those funds and how the religious groups used government funds they received from discretionary grants by an executive agency. Rejecting an argument similar to that made by Defendants here – that the plaintiffs lacked standing because their as-applied challenge did not involve congressional action – the Court held:

> We do not think . . . that appellees' claim that AFLA funds are being used improperly by individual grantees is any less a challenge to congressional taxing and spending power simply because the funding authorized by Congress has flowed through and been administered by the Secretary [of HHS]. . . . . [W]e have not questioned the standing of taxpayer plaintiffs to raise Establishment Clause challenges, even when their claims raised questions about administratively made grants.

[4] Defendants suggest that for Plaintiff to have standing, Congress must have "explicitly contemplated the involvement of religious organizations." Defs.' Br. at 14. Though this prerequisite is not necessary to establish taxpayer standing, Plaintiff nevertheless meets such a requirement. Indeed, Congress explicitly knew that USCCB was administering millions of dollars under the statute when it reauthorized the TVPA and approved additional appropriations.

Id. at 619.[5]

Bowen is determinative of the issue here. As in *Bowen*, tasked by Congress to "expand benefits and services" to trafficking victims, and specifically empowered to make grants, *see supra* at 4-5, agency officials awarded funds, which were specifically appropriated by Congress, in a manner that Plaintiff alleges violates the Establishment Clause. Plaintiff, like the taxpayers in *Bowen*, has standing to challenge those awards. Accordingly, to hold that Plaintiff lacks standing would require this Court to disavow *Bowen*. *See also Americans United for Separation of Church and State v. Prison Fellowship Ministries*, 509 F.3d 406, 420 (8th Cir. 2007) (holding that although legislature did not expressly mandate a violation of the Establishment Clause, the plaintiffs had standing to bring an as-applied Establishment Clause claim to challenge a government grantee's use of government funds); *Murray v. Geithner*, -- F. Supp. 2d --, No. 08-15147, 2009 WL 1469637, at *7 (E.D. Mich. May 26, 2009) (holding plaintiffs had standing to bring an Establishment Clause challenge to the Economic Stabilization Act of 2008 as applied to a grant to American International Group, Inc. (AIG) even though the federal statute did not dictate "the manner in which funds were to be distributed and to which entities," nor did it explicitly mention AIG or that federal funds would be used for AIG's Islamic financial products).[6] Indeed, if Defendants' argument

[5] *See also Winn v. Arizona Christian School Tuition Organization*, 562 F.3d 1002, 1010 (9th Cir. 2008) (holding plaintiffs had taxpayer standing to challenge state tax credit to private schools noting that "the Court has recognized that taxpayer standing exists even when a legislature does not directly allocate funds to religious organizations, but instead mediates the funds through another agency").

[6] Perhaps recognizing that *Bowen* forecloses their argument, Defendants at times appear to suggest that Plaintiff could establish standing if Congress had mandated some form of spending, regardless of whether Congress required action that violated the Establishment Clause. *See* Defs.' Br. at 13. Although such a showing is not required, Plaintiff could easily meet that standard. Indeed, the TVPA mandates that Defendants expand benefits and services to victims of trafficking. 22 U.S.C. § 7105(b)(1)(B). Congress has expressly authorized Defendants to do this by making grants or entering into contracts with private,

were correct – that taxpayer standing only lies where Congress mandates spending in violation of the Establishment Clause – federal taxpayer standing could never be established in the context of an as-applied challenge to the operation of a government program, an argument clearly foreclosed by *Bowen*.[7]

Second, Defendants contend that Plaintiff lacks standing because the congressional appropriation to fund the TVPA may have been authorized by multiple constitutional powers, not solely under the tax and spend authority. This argument misunderstands both the language and the rationale in *Flast*. In *Flast*, the Court sought to adopt a rule that would delineate when plaintiffs have sufficient basis to bring a claim based on their status as federal taxpayers. The Court therefore demarcated the following line: For a taxpayer to have standing, there must be a "logical link between" the person's status as a taxpayer and "the type of legislative enactment attacked." *Flast*, 392 U.S. at 102. Thus, the Court held that a "taxpayer will be a proper party to allege the unconstitutionality only of exercise of congressional power under the taxing and spending clause of Art. 1, § 8." *Id*.

Contrary to Defendants' claim, Defs.' Br. at 15, the Supreme Court has *never* held that for plaintiffs to have federal taxpayer standing they must challenge congressional

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nonprofit agencies. *See id.* (requiring expansion of benefits and services under other programs); 8 U.S.C. § 1522(c)(1)(A) (authorizing Defendants to make grants and enter into contracts with private nonprofit agencies to provide services); Def. Br. at Ex. 1 at 9 (Defendants' grant announcement stating that "[t]he statutory authority that will be expanded to provide benefits and services to" trafficking victims is under 8 U.S.C. § 1522(c)(1)(A)). This is even more of a "mandate" than the statute at issue in *Bowen*, which merely *permitted* the Secretary of HHS to enter into grants. *See* 42 U.S.C. § 300z-2(a).

[7] Nothing in *Hein* or the other cases cited by Defendants changes this result. Although the circuit cases cited by Defendants, such as *Freedom From Religion Foundation, Inc. v. Nicholson*, 536 F.3d 730 (7th Cir. 2008) and in *In re Navy Chaplaincy*, 534 F.3d 756 (D.C. Cir. 2008), *see* Defs.' Br. at 14, are incorrectly decided and rely on a misreading of *Flast* and *Hein*, they are, regardless, inapposite. Unlike those cases and *Hein* itself, which did not challenge grant disbursement programs, Plaintiff's taxpayer standing falls squarely within *Bowen*'s holding. As in *Bowen*, the challenged program here "is at heart a program of disbursement of funds . . . and [Plaintiff's] claims call into question how the funds authorized by Congress are being disbursed," 487 U.S. at 620, *see also Hein*, 127 S. Ct. at 2567 (quoting this language in *Bowen*).

action authorized *solely* under the Spending Clause. Rather, *Flast* used "only" to mean that congressional action was authorized by the Spending Clause and that the challenged action is not exclusively an exercise of some other governmental power. The Court required an exercise of the tax and spend power to ensure that there was a true link between the plaintiffs' status as taxpayers and the challenged governmental act. This point is made clear in the Court's opinion – right after stating that there must be such a link, the Court continued: "It will not be sufficient to allege an incidental expenditure of funds in the administration of an essentially regulatory statute." 392 U.S. at 102.[8]

There can be no doubt that the appropriation at issue here was an exercise of Congress's power under the Spending Clause and not an "incidental expenditure of funds in the administration of an essentially regulatory statute." *Id*. To the contrary, Congress appropriated millions of dollars to fund a program to provide services to trafficking victims by disbursing grants to organizations that serve these individuals. The instant action is therefore similar to *Bowen* and *Flast*. There were presumably several constitutional bases for the passage of the ESEA at issue in *Flast*, and AFLA at issue in *Bowen* – such as the Commerce Clause. But because the challenged programs disbursed congressionally appropriated funds, the Court held that there was sufficient exercise of Congress's authority under the Spending Clause.

Other courts have also taken this position. For example, the Second Circuit affirmed a district court decision that held that federal taxpayers had standing to

[8] Moreover, by establishing taxpayer standing in this context, the Court was fiercely protecting the separation of church and state. As the Court said, "[o]ur history vividly illustrates that one of the specific evils feared by those who drafted the Establishment Clause and fought for its adoption was that the taxing and spending power would be used to favor one religion over another or to support religion in general." *Id.* at 103. From this perspective, Defendants' argument is contrary to history. There is no reason to think that the drafters' fear of government entanglement with religion would be lessened if an additional congressional power was implicated in the challenged enactment.

challenge the funding of the Army's chaplaincy program, regardless of whether there were multiple sources of authority for the Congressional action. *Katcoff v. Marsh*, 755 F.2d 223, 231 (2d Cir. 1985), *affirming in pertinent part*, 582 F. Supp. 463 (E.D.N.Y. 1984). The district court in *Katcoff* held that:

> Because there is no litmus test to determine which power Congress exercises in enacting a given statute, some writers have suggested that it is wiser to regard "all government spending [as] an exercise of the congressional power to tax and spend." Davis, *Standing: Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 605 (1968). This view finds some support in *Flast* . . . . In limiting the scope of taxpayer standing, the [*Flast*] Court's concern was to block challenges to "essentially regulatory statute[s]." It may be fairly inferred that the *fact* of Congressional spending – rather than the nominal source of that spending – was the Court's central concern.

582 F. Supp. at 471 (internal citations omitted). The court ultimately concluded that "a federal court should not attempt to divine whether a particular statute authorizing spending is enacted under the Taxing and Spending Clause, or under some other, arguably appropriate, source of Congressional power," and therefore granted taxpayer standing. *Id*.; *see also Newdow v. Eagen*, 309 F. Supp. 2d 29, 39 (D.D.C. 2004) (holding that regardless of whatever other powers may have authorized Congress's payment of congressional chaplain's salaries, that appropriation was at least in part an exercise of the Spending Clause and therefore the plaintiffs had standing to bring an Establishment Clause claim).

Defendants rely on cases that misinterpreted *Flast*, Defs.' Br. at 15 (citing cases), and, more fundamentally, that are inapposite here. In none of the cited cases did the plaintiffs challenge a disbursement program, to which *Bowen* speaks directly. For example, the court in *Winkler v. Gates* specifically noted that, unlike in *Bowen*, the facts

in *Winkler* demonstrated that "[n]o governmental office gives out any grants to the [Boy Scouts of America] or any other group or institution, religious or otherwise." 481 F.3d 977, 985 (7th Cir. 2007). Rather, the court reasoned, the military is "just regulating its own property and manpower." *Id.* at 986. Here, the challenged program is "at heart a program of disbursement of funds," one that involves the expenditures of between $2 and $5 million a year. *Bowen*, 487 U.S. at 619.

Finally, Defendants half-heartedly argue that Plaintiff lacks taxpayer standing because taxpayer dollars have not been spent to further religion. Defs.' Br. at 16-17. To the contrary, the federal government awarded USCCB a multi-million dollar grant, and explicitly allowed USCCB to impose its religious beliefs on its subgrantees and their clients, many of whom do not share USCCB's religious beliefs. Indeed, as a condition of accepting federal funds administered by USCCB, subgrantees must agree that they will follow rules dictated by USCCB's religious beliefs. Following Defendants' logic, courts would have to deny taxpayer standing if a government grantee like USCCB prohibited governmentally-funded subgrants to organizations that did not share the same faith. Accordingly, because taxpayer dollars are used to further USCCB's religious beliefs, Plaintiff has taxpayer standing and Defendants' claim to the contrary is simply a red herring.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss should be denied.

Dated: June 25, 2009

Respectfully Submitted,

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*Motion for *pro hac vice* admission granted

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2009, I caused a copy of Plaintiff's Opposition to Defendants' Motion to Dismiss to be filed electronically. Notice of this electronic filing will be served on counsel for all parties to this action by operation of the Court's electronic filing system, which will also provide access to a copy of this filing.

Dated: June 25, 2009

/s/ Brigitte Amiri
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