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May 25, 2010

Roger Werholtz, Secretary of Corrections
Kansas Department of Corrections
900 SW Jackson
4th Floor Landon State Office Building
Topeka, KS 66612-1284

RE: Oklahoma Christian Private Prison

Dear Mr. Werholtz:

As you know, the prison ministry Corrections Concepts, Inc is pursuing a faith-based prison project in Oklahoma, for which it is currently recruiting inmates. See Bill Sherman, *A faith-based prison is pushed*, TULSA WORLD, Nov. 2, 2009, at A1. The proposed prison would require inmates to participate in a Christ-centered curriculum and would employ only Christian staff. *Id.* We have received assurances that the Oklahoma Department of Corrections will not be sending prisoners to the proposed institution, but recent news reports indicate that your agency is engaging in talks with Corrections Concepts to house inmates at the facility. See Bill Sherman, *Ministry's prison plan still on hold*, TULSA WORLD, May 17, 2010, at A1. We write to inform you that housing inmates at the faith-based prison would likely violate the Establishment Clause of the First Amendment to the U.S. Constitution.

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). The U.S. Court of Appeals for the Eighth Circuit relied on this principle to strike down a program very similar to this one in *Americans United for Separation of Church and State v. Prison Fellowship Ministries*, 509 F.3d 406 (8th Cir. 2007). There, the state of Iowa provided funding to a private company for the operation of a faith-based program (the "InnerChange Freedom Initiative") housed in one wing of a state prison. That program, as here, was voluntary and featured a Christ-centered curriculum. *Id.* at 415. The court held that the provision of financial and material aid for InnerChange — including both direct payments and per diem payments — violated the Establishment Clause because the religious elements of the program were so pervasive that the government's aid supported the indoctrination of inmates. *Id.* at 423- 26. If the Department were to provide funding to Corrections Concepts' prison, indoctrination would be the inevitable result,

¹ Federal appellate courts have agreed that Justice O'Connor's concurrence, and not the plurality opinion, represents the holdings of *Mitchell*. See *Cnty. 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).

just as it was in *Prison Fellowship Ministries*. And, just as inevitably, the funding of such indoctrination would violate the Constitution.

Accordingly, we ask that you decline to send prisoners to Corrections Concepts, Inc.'s proposed faith-based institution. We would appreciate a response to this letter within thirty days to advise us of your plans. You may contact Ian Smith at (202) 466-3234 or ismith@au.org if you have any further questions about this request.

Very truly yours,



Ayesha N. Khan, Legal Director
Ian Smith, Staff Attorney

