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Michael O. Leavitt
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

By Federal Express

Re: Notice of Constitutional Violations in Abstinence-Only-Until-Marriage Programs

Dear Secretary Leavitt:

We write to express concern about the disbursement of abstinence-only-until-marriage funds by the Department of Health and Human Services (HHS) to the Eugene Pregnancy Center d.b.a. Lane Pregnancy Support Center (Lane) and to the Northern Hills Pregnancy Care Center (Northern Hills, or NHPCC). Evidence strongly suggests that this funding violates the Establishment Clause of the United States Constitution. We ask that you immediately investigate this matter and provide the results of your investigation to us. Anticipating that your investigation will confirm our own, we request that you take the steps necessary to remedy this misuse of public funds. If HHS does not satisfactorily respond to these requests by the end of this month, the ACLU will consider all necessary and appropriate measures to remedy the situation, including legal action.

Northern Hills has received from HHS a three-year Community Based Abstinence Education (CBAE) grant running from September 30, 2005 through September 29, 2008; Lane has received a similar CBAE grant running from July 1, 2004 through June 30, 2007. Lane has also received Title V, Section 510 abstinence-only-until-marriage funding through the Oregon Department of Human Services.¹

¹ See Exhibit A, Letter from Carolyn Ross, Food Stamp and Prevention Program Manager, Office of Self Sufficiency Programs, Oregon Department of Human Services, to Chakshu Patel, American Civil Liberties Union Foundation (June 5, 2006) (stating that Oregon uses Section 510 funding to contract with the "Lane Pregnancy Resource Center"). We are simultaneously sending a letter to the Oregon Department of Human Service regarding Lane's potential misuse of public abstinence-only funds.

Lane uses its public abstinence-only-until-marriage funding to support its *Stop and Think* abstinence program.² In addition to creating the *Stop and Think* program and presenting it to Oregon adolescents, Lane contracts with other organizations to present *Stop and Think* in various states.³ Northern Hills is one of the organizations with whom Lane has contracted. Northern Hills uses its government funding to provide the *Stop and Think* abstinence program to adolescents in schools and other venues in South Dakota and Wyoming.⁴

The contract that Northern Hills signed in order to present the *Stop and Think* program was included in the appendix to its 2005 application for CBAE funding – which was submitted to HHS and later forwarded to the ACLU in response to our Freedom of Information Act request. The contract includes some fairly standard clauses, such as providing for the payment of fees and stating that Lane “maintains all copyrights to the program.” It also explicitly requires that Northern Hills adhere to Christian beliefs and present the *Stop and Think* program accordingly. Specifically, the contract contains the following language:

I agree to use the *Stop and Think* program according to the following conditions:

- 1) The presenter and supervisor:
 - a) possess an authentic relationship with Jesus Christ
 - b) possess knowledge of the Word of God, and the ability to communicate it’s (sic) truth
 - c) exhibit a loving and merciful spirit
 - d) attend a Bible believing local church or fellowship.⁵

² See Exhibit B, Lane Pregnancy Support Center, *Stop and Think*, <http://www.stopthink.net/history.html> (last visited May 2, 2007) (“Stop and Think in Oregon is funded in part through a grant from the Oregon Department of Human Resources [sic]. These funds have allowed the program to expand throughout Oregon . . .”).

³ See Exhibit C, Lane Pregnancy Support Center, *Stop and Think*, <http://www.stopthink.net/locations.html> (last visited May 2, 2007). The website lists the names and contact information for sixteen organizations, in addition to Lane, that present the *Stop and Think* program. Nine of these other organizations are also located in Oregon.

⁴ See Exhibit D, Northern Hills Pregnancy Care Center, *Stop and Think*, <http://www.stopandthink.org/funding.html> (last visited May 2, 2007).

⁵ See Exhibit E, *Stop and Think* Contract for Program Operation (July 15, 2002); see also Exhibit F, Application of Northern Hills for CBAE funding 23 (June 15, 2005) (“NPHCC is an accredited affiliate of the Stop and Think National Program through a contract for program operation since 2002. We abide by the policies and procedures set by their Board of Directors. (See agreement with National Stop and Think in the appendix.)”).

As recently as late February of this year, Northern Hills ran a series of classified ads that make clear that this contract remains in effect. The ads – which seek a full-time abstinence program director “responsible for overall implementation of the Stop & Think abstinence-until-marriage program” – direct applicants to send both a resume and “letter of Christian testimony” to Northern Hills.⁶

The Constitution is violated when a direct grant of government dollars is used to fund specifically religious activities.⁷ The above-quoted language demonstrates that Lane requires, and Northern Hills has agreed, that all presenters of the federally funded *Stop and Think* program hold particular religious beliefs. Additionally, the requirement that *Stop and Think* presenters and supervisors have “the ability to communicate” the “Word of God” suggests that proselytization is an essential component of the *Stop and Think* program, and that the program contains religious or sectarian messages. The contract therefore calls into question the propriety and legality of the continued funding by HHS of Northern Hills, Lane, and/or *Stop and Think*.

In addition to the *Stop and Think* contract, we are concerned that Northern Hills is misusing federal dollars in connection with its presentation of religiously based purity balls. The budget included in its application for CBAE funding lists \$8,604 per year for “[p]rinted materials, facility rentals and decorations for father/daughter purity balls to be held in different regions.”⁸ However, on its *Stop and Think* website, Northern Hills actively solicits private donations for “activities that are faith-based and may contain religious messages and prayer, such as portions of the father/daughter purity ball.”⁹ While the website states that CBAE funding does not pay for faith-based activities, “which may include portions of the purity ball,” an audit is needed to ensure the legality of the funding of the purity balls.

⁶ See Exhibit G, LAWRENCE COUNTY JOURNAL, <http://www.lawrencecountyjournal.com/admarket/employment?query=nhpcc> (last visited Feb. 27, 2007); MEADE COUNTY TIMES-TRIBUNE, <http://www.meadecountytimes.com/admarket/employment/> (last visited Feb. 27, 2007); BELLE FOURCHE POST & BEE, *Classifieds*, <http://www.bellefourchepostandbee.com/admarket/employment/> (last visited Feb. 27, 2007).

⁷ See *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988) (construing Establishment Clause of First Amendment to the Constitution).

⁸ See Exhibit H, Application of Northern Hills for Carryover of CBAE funding 7 (August 24, 2006).

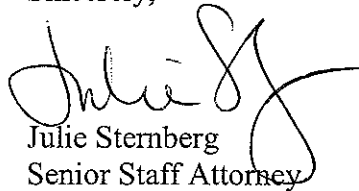
⁹ See Exhibit D.

Needless to say, HHS has an obligation to monitor the use of the public funds that it disburses, to ensure that those funds are being used in a manner that is lawful, and to remedy their misuse – for instance, by stopping the flow of funds to grantees who have used them unlawfully; declining to re-issue funds to such grantees; and seeking recoupment of funds that have been misused.¹⁰

Again, we ask that HHS immediately commence an investigation into its funding – whether directly through the CBAE program or indirectly through the Section 510 program – of Lane, Northern Hills, and/or *Stop and Think*. Specifically, we ask that HHS examine Lane’s contracts with other organizations to present the *Stop and Think* program, to ensure that this publicly funded program is available to all qualified presenters, regardless of their faith. We also ask that HHS examine the content of the *Stop and Think* program, as well as the public funding of the purity balls run by Northern Hills, to ensure that they do not violate the constitution. We ask that HHS immediately take the steps necessary to remedy unconstitutional use of public funds by these entities. We intend to pursue a resolution of this matter, through legal action if necessary, if by the end of the month HHS has not sufficiently established that the constitutional violation has been remedied.

Thank you in advance for your attention to our concerns. We look forward to hearing back from you in the near future.

Sincerely,



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¹⁰ See, e.g., *American Civil Liberties Union of Louisiana v. Foster*, No. Civ. A 02-1440, 2002 WL 1733651, at *7-8 (E.D.La. July 24, 2002) (holding that promotion of religion in publicly funded abstinence-only program violated constitution and ordering public officials to better monitor funding and to remedy misuses); see also *Laskowski v. Spellings*, 443 F.3d 930 (7th Cir. 2006) (recoupment is an appropriate remedy for constitutional violations in Establishment Clause context), *petition for cert. filed*, 75 USLW 3248 (Oct. 24, 2006) (No. 06-582).

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