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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BARRY CHRISTIANSON; the Rev. ALVIN FISCHER; the Rev. MARK GALLAGHER; JUANITA GREENWAY; HELEN HEWITT; JORDIS I. JENSEN; JON JORDENS; PAUL KING; NANCY MCCARTER; RALPH K. OLSON; BEVERLY SCHWARTZ; WILLIAM HUGH SHUFORD; and PAUL L. WHITING,

Plaintiffs,

v.

MICHAEL O. LEAVITT, Secretary of Health and Human Services, in his official capacity, and in his individual capacity; INSTITUTE FOR YOUTH DEVELOPMENT; and NORTHWEST MARRIAGE INSTITUTE,

Defendants.

Case No. C06-5520 FDB

ORDER DENYING PRELIMINARY INJUNCTION AND DISMISSING ACTION

This lawsuit, filed on behalf of thirteen Washington taxpayers, alleges that federal grants made to the Northwest Marriage Institute have been used to finance religious activities in violation of the Constitution’s Establishment Clause. Before the Court are Plaintiffs’ motion for preliminary injunction and the motions to dismiss of Defendants Northwest Marriage Institute and Institute for

1 Youth Development¹, and motion for summary judgment of Defendant Secretary of Health and
2 Human Services. Plaintiffs seek an order enjoining the Department of Health and Human Services
3 and the Institute for Youth Development from disbursing any additional grant monies to the
4 Northwest Marriage Institute and enjoining the Northwest Marriage Institute from spending or
5 otherwise using any additional grant monies that it has already received or may receive in the future
6 pending the resolution of this lawsuit.

7 The Court, after having reviewed all materials submitted by the parties and relied upon for
8 authority, is fully informed and hereby denies the request for preliminary injunction and grants the
9 Defendants' motions to dismiss.

10 **INTRODUCTION AND BACKGROUND**

11 Grants under the Compassion Capital Fund (CCF) are awarded under Section 1110 of the
12 Social Security Act, which authorizes "demonstration projects." 42 U.S.C. §1310. This program
13 was created in 2002 to help build capacity and knowledge among faith-based and community-based
14 organizations and encourage the replication of effective approaches and programs to better meet the
15 needs of poor and low-income individuals and families. The program is funded through annual
16 appropriations. CCF is administered by the Administration for Children and Families within the
17 Department of Health and Human Services. CCF provides demonstration program grants to
18 intermediary organizations, such as that the Institute for Youth Development, that provide capacity-
19 building sub-grants to faith-based and other community organizations. Capacity-building activities
20 are designed to increase an organization's sustainability and effectiveness, enhance its ability to
21 provide social services, diversify its funding sources, and create collaborations to better serve those
22 in need. CCF also provides one-time targeted capacity building program grants directly to faith-

24 ¹A motion to dismiss made under Rule 12(b)(6) must be treated as a motion for summary
25 judgment if either party submits materials outside the pleading and the court relies on those materials.
Therefore, the Court will treat the motions to dismiss as motions for summary judgment.

1 based and community-based organizations to help build the capacity of such organizations that
2 address the needs of distressed communities.

3 The Department of Labor, Health and Human Services regulations expressly and specifically
4 prohibits using CCF funds to support religious practices, such as religious instruction, worship or
5 prayer. Organizations that receive CCF funds may not engage in inherently religious activities, such
6 as worship, religious instruction, or proselytization, as part of the programs or services funded with
7 CCF funds. Any religious activities conducted by an organization receiving CCF funds must be
8 offered separately, in time or location, from the programs or services funded with CCF assistance,
9 and participation must be voluntary for beneficiaries of the CCF-funded programs or services. See,
10 67 Fed. Reg. 39,563; 70 Fed. Reg. 22,331, 22,341 (Apr. 29, 2005).

11 A separate program, the Healthy Marriage Demonstration Grant program, is authorized
12 under Section 603(a)(2) of the Social Security Act. The program funds “healthy marriage promotion
13 activities,” including “[m]arriage education, marriage skills, and relationship skills programs” and
14 “[p]re-marital education and marriage skills training for engaged couples and for couples or
15 individuals interested in marriage.” 42 U.S.C. §603(a)(2)(A)(iii).

16 Regulations prohibit the use of Healthy Marriage Demonstration Grant funds for “inherently
17 religious activities, such as worship, religious instruction, or proselytization, as part of the programs
18 or services funded with direct financial assistance from the Department of Labor, Health and Human
19 Services. 45 C.F.R. §87.1©).

20 Dr. Robert Whiddon, Jr., is the founder and director of the Northwest Marriage Institute.
21 Dr. Whiddon earned his Ph.D. in Biblical Counseling in 1996 at Trinity Theological Seminary,
22 Indiana. He is a licensed clinical pastoral counselor and has twenty-five years experience in ministry
23 and counseling. He is a registered counselor in the State of Washington.

24 The Northwest Marriage Institute, based in the Pacific Northwest, was loosely organized in
25 June of 2004, to provide biblical marriage counseling. On September 13, 2004, the Northwest

1 Marriage Institute was recognized as a tax-exempt non-profit. The Marriage Institute’s mission
2 statement provides: “The Northwest marriage Institute exists to serve the community by providing
3 Bible education in marriage and related subjects, and to provide professional, Bible-based pre-marital
4 and marriage counseling. We believe that every problem can be resolved and every troubled
5 marriage can be saved. To this end we will promote successful biblical principles for every day life.
6 The Northwest Marriage Institute is a non-profit service available to all people regardless of their
7 beliefs.”

8 The Institute provided six to eight workshops based on biblical principles beginning in
9 January 2005 and ending in April 2006. The Institute started a monthly newsletter with religious
10 content, entitled Marriage Works!, in January 2005. A web site was launched in early 2006 that also
11 contained religious content.

12 According to the deposition testimony of Dr. Whiddon, beginning in April 2005 and
13 culminating in the formal change in its mission statement in October 2006, The Marriage Institute
14 shifted its mission from providing Bible-based marriage workshops and counseling to providing
15 marriage workshops without religious references. This change was prompted by a desire to qualify
16 for operational funding from the federal government. The Marriage Institute conducted its last
17 Bible-based workshop in April 2006 and is no longer offering Bible-based workshops. The Marriage
18 Institute has conducted two secular marriage workshops from August 2006 to January 2007. Dr.
19 Whiddon states that the curriculum for the workshops is based on secular psychological and
20 sociological principles, studies, and writings that Dr. Whiddon has encountered over the years. Dr.
21 Whiddon reworked his Bible-based written curriculum materials by rewriting the first two lessons,
22 adding chapters on domestic violence and marital affairs, and deleted all religious references
23 throughout the remaining materials. The curriculum includes the notice that “[b]ecause this project
24 is made possible because of federal grant funds, there will be no religious content included in the
25 written materials or workshop presentations. Any questions or discussions regarding religious

1 aspects of marriage must be addressed in a separate place or at a separate time than the scheduled
2 workshop sessions. Please respect [this] arrangement.”

3 The first federal grant awarded the Northwest Marriage Institute in June 2005 was for
4 \$47,750. through the Institute for Youth Development. These funds were awarded for targeting
5 capacity building. The funds were expended for the purchase of a computer, computer workstation,
6 printer, copier, LCD projector, and public address system. The Institute also purchased accounting
7 software and hired a financial consultant to perform an audit and train an employee on use of the
8 accounting software. None of these funds were used for any workshops and nothing purchased with
9 these funds was ever used in Bible-based workshops.

10 The second grant, a targeted capacity building grant of \$50,000. awarded in September, 2005
11 through the CCF, was used for staff salaries, computer software and a web consultant. Again, Dr.
12 Whiddon states that no funds from this grant were used for any workshops, and nothing purchased
13 was used in a religious workshop. As to both the capacity-building grants, Dr. Whiddon testifies that
14 receipt of these funds did not free up other funds to permit the Institute to provide religious
15 workshops.

16 The current grant, a Healthy Marriage Demonstration grant of \$246,728., has been used to
17 pay staff salaries, rent office space and accommodations for marriage workshops, purchase
18 advertising, prepare curriculum materials, and purchase additional computer equipment. Dr.
19 Whiddon again testifies that none of these funds has ever been used for religious-based workshops.

20 The marriage Institute tracks its use of federal grant funds and privately donated funds,
21 respectively.

22 The Marriage Institute continues to produce the Marriage Works! Newsletter. The
23 newsletter includes religious content, however Dr. Whiddon testifies it is produced on his personal
24 computer at home rather than any computer purchased with federal grant monies. Only private
25 donations and private equipment are used to print, copy, and distribute the newsletter. A separate,

1 secular content newsletter is provided to participants in the secular workshops.

2 The Institute's web site was revised in 2006 to eliminate religious content in order that it
3 could be used as a reference for the secular workshops. No federal funds were used to maintain this
4 web site or to produce its content.

5 **REQUIREMENTS FOR A PRELIMINARY INJUNCTION**

6 To obtain a preliminary injunction, the moving party must establish either: (1) a combination
7 of probable success on the merits and the possibility of irreparable harm, or (2) that serious questions
8 regarding the merits exist and the balance of hardships tips in the moving party's favor. See,
9 Warsoldier v. Woodford, 418 F.3d 989, 993-94 (9th Cir. 2005); Rodeo Collection, Ltd. v. West
10 Seventh, 812 F.2d 1215, 1217 (9th Cir. 1987). These two alternatives represent extremes of a single
11 continuum, rather than two separate tests. Warsoldier, at 994. They represent two points on a
12 sliding scale in which the required degree of irreparable harm increases as the probability of success
13 decreases. Baby Tam & Co. v. City of Las Vegas, 154 F.3d 1097, 1100 (9th Cir. 1998).

14 **SUMMARY JUDGMENT STANDARD**

15 The purpose of summary judgment is to identify and dispose of factually unsupported claims
16 and defenses. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). On a motion for summary
17 judgment, the court is constrained to draw all inferences from the admissible evidence in the light
18 most favorable to the non-moving party. Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir.
19 2000). Summary judgment is appropriate where there is no genuine issue of material fact and the
20 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56©). The moving party
21 bears the initial burden to demonstrate the absence of a genuine issue of material fact. Celotex Corp.
22 v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met its burden, the opposing party
23 must show that there is a genuine issue of fact for trial. Matsushita Elect. Indus. Co. v. Zenith Radio
24 Corp., 475 U.S. 574, 586-87 (1986). A dispute as to a material fact is "genuine" if there is sufficient
25 evidence for a reasonable jury to return a verdict for the nonmoving party. Anderson v. Liberty

1 Lobby, Inc., 477 U.S. 242, 248 (1986). The opposing party must present significant and probative
2 evidence to support its claim or defense. Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
3 1551, 1558 (9th Cir. 1991). Affidavits made on personal knowledge and setting forth facts as would
4 be admissible at trial are evidence that a court may consider when determining whether a material
5 issue of fact exists. Fed. R. Civ. P. 56(e). Legal memoranda and oral argument are not evidence and
6 do not create issues of fact. See British Airways Bd. v. Boeing Co., 585 F.2d 946, 952 (9th Cir. 1978).
7 Nor will uncorroborated allegations and “self-serving testimony” create a genuine issue of material
8 fact. Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir. 2002); T.W. Elec. Serv. v.
9 Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir.1987). The nonmoving party must instead
10 set forth “significant probative evidence” in support. T.W. Elec. Serv., at 630. Summary judgment
11 will thus be granted against a party who fails to demonstrate facts sufficient to establish an element
12 essential to his case when that party will ultimately bear the burden of proof at trial.

13 ESTABLISHMENT CLAUSE

14 The Establishment Clause provides simply that “Congress shall make no law respecting an
15 establishment of religion.” U.S. Const. amend. I. The Establishment Clause prevents the
16 government from promoting any religious doctrine or organization or affiliating itself with one.
17 County of Allegheny v. American Civil Liberties Union, 492 U.S. 573, 589 (1989). It “is a specific
18 prohibition on forms of state intervention in religious affairs.” Lee v. Weisman, 505 U.S. 577, 591
19 (1992). One of the few absolutes in Establishment Clause jurisprudence is the “prohibit[ion against]
20 government-financed or government-sponsored indoctrination into the beliefs of a particular religious
21 faith.” Bowen v. Kendrick, 487 U.S. 589, 611 (1988). The greatest risk of impermissibly advancing
22 religion occurs when the government makes direct money payments to sectarian institutions.
23 Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819, 842 (1995).

24 The Supreme Court has noted, however, that it has never held that religious institutions are
25 disabled by the First Amendment from participating in publicly sponsored social welfare programs.

1 Bowen, at 609. The Supreme Court has consistently rejected the argument that any and all
2 government aid to a religiously affiliated institution violates the Establishment Clause. See Agostini v.
3 Felton, 521 U.S. 203, 225 (1997); Mueller v. Allen, 463 U.S. 388, 393 (1983). What the
4 Establishment Clause prohibits is not aid to all sectarian institutions, but aid to an “institution in which
5 religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission
6 or when it funds a specifically religious activity in an otherwise substantially secular setting.” Hunt v.
7 McNair, 413 U.S. 734, 743 (1973). The Establishment Clause requires: (1) that no state aid at all
8 go to institutions that are so pervasively sectarian that secular activities cannot be separated from
9 sectarian ones, and (2) that if secular activities can be separated out, they alone may be funded.
10 Roemer v. Bd. of Public Works of Md., 426 U.S. 736, 775 (plurality opinion)(1976).

11 Although the Supreme Court continues to struggle with Establishment Clause jurisprudence
12 and has rendered a number of fragmented Court decisions over the past decade, the principles set
13 forth in Lemon v. Kurtzman, 403 U.S. 602 (1971) continue to guide the inquiry. See, Community
14 House, Inc. v. City of Boise, Idaho, 468 F.3d 1118, 1129 nt.8 (9th Cir. 2006); DeStefano v.
15 Emergency Housing Group, Inc., 247 F.3d 397, 405 (2nd Cir. 2001). Under the Lemon test,
16 government action is permissible for purposes of Establishment Clause analysis only if (1) it has a
17 secular purpose; (2) its principal or primary effect neither advances nor inhibits religion; and (3) it
18 does not foster an excessive entanglement with religion. Lemon, at 612-13; Community House, Inc.,
19 at 1129-30.

20 In Agostini v. Felton, 521 U.S. 203, 222-23, 234 (1997), the Supreme Court refined the
21 Lemon test by folding the “excessive entanglement” inquiry into the “effect” prong. See Mitchell v.
22 Helms, 530 U.S. 793, 807-08 (2000) (Thomas, J., plurality); Mitchell, at 844-45 (O'Connor, J.,
23 concurring); Community House, at 1130. Thus, under the Lemon-Agostini test, the Court must ask
24 (1) “whether the government acted with the purpose of advancing or inhibiting religion,” and (2)
25 “whether the [governmental] aid has the ‘effect’ of advancing or inhibiting religion.” Agostini, at

1 222-23; Community House, at 1130.

2 Three primary criteria are used for evaluating whether government aid has the “effect” of
3 advancing or endorsing religion: (1) whether governmental aid results in government indoctrination;
4 (2) whether recipients of the aid are defined by reference to religion; and (3) whether the aid creates
5 excessive government entanglement with religion. See Agostini, at 234-35; see also Mitchell, at 808
6 (Thomas, J., plurality); Mitchell, at 845 (O'Connor, J., concurring); Community House, at 1130.

7 A. Secular Purpose

8 There is no plausible dispute that the grant programs have a valid secular purpose of the
9 promotion of healthy marriages and capacity-building in organizations providing social welfare
10 services. The first part of the Lemon- Agostini test is therefore not in question and need not be
11 discussed.

12 B. Primary Effect

13 An absolute in Establishment Clause jurisprudence is the prohibition against
14 government-financed or government-sponsored indoctrination into the beliefs of a particular religious
15 faith. Bowen v. Kendrick, 487 U.S. 589, 611 (1988). See also Agostini v. Felton, 521 U.S. 203, 223
16 (1997)(Government inculcation of religious beliefs has the impermissible effect of advancing religion);
17 Levitt v. Committee for Pub. Educ. & Religious Liberty, 413 U.S. 472, 480 (1973)(The State is
18 constitutionally compelled to assure that the state-supported activity is not being used for religious
19 indoctrination); Zorach v. Clauson, 343 U.S. 306, 314 (1952)(The government may not undertake
20 religious instruction).

21 To determine whether particular grants of aid to particular institutions do not have the primary
22 effect of advancing religion, the court considers (1) whether the institutions receiving the aid are
23 pervasively sectarian² and/or (2) whether the aid is used to fund specifically religious activities.

25 ²The continued vitality of the “pervasively sectarian” test has come into question after Justice
26 Thomas commented in the plurality opinion in Mitchell v. Helms, 530 U.S. 793, 829 (2000)

1 Bowen, 487 U.S. at 621; Roemer v. Bd. of Public Works of Md., 426 U.S. 736, 775 (1976); Hunt v.
2 McNair, 413 U.S. 734, 743 (1973).

3 In moving for a preliminary injunction against the award of grant monies to the Marriage
4 Institute, Plaintiffs assert that the subject grants (1) constitute unconstitutional aid to a persuasively
5 sectarian institution,(2)support religious activity, (3) convey a message of endorsement of religion, (4)
6 unlawfully supplant the private funding of religious activity, (5) constitute divertable and unmonitored
7 grants to a religious organization, and (6) require monitoring that would excessively entangle the
8 government with religion.

9 Plaintiffs assert that the Northwest Marriage Institute is pervasively sectarian and any federal
10 aid is unconstitutional. An institution is pervasively sectarian if a “substantial portion of its functions
11 are subsumed in the religious mission.” Bowen 487 U.S. at 610. No state aid at all can go to
12 institutions that are so ‘pervasively sectarian’ that secular activities cannot be separated from sectarian
13 ones, and if secular activities can be separated out, they alone must be funded Roemer, 426 U.S. at
14 755. Funding of a sectarian institution is not forbidden when the inherently religious nature of the
15 institution can be separated from its secular work. Bowen, 487 U.S. at 621; Hunt v. McNair, 413
16 U.S. 734, 743 (1973). A religious motivation on behalf of a sectarian institution in providing secular
17 services does not transform the secular services into religious activity. Bowen, 487 U.S. at 613. The
18 pervasively sectarian inquiry does not consider the theological beliefs or dogmas cherished by the
19 institution in question. Instead, the inquiry looks at the recognizable factors that indicate whether, in
20 practice, aid flows to an institution in which religion is so pervasive that a substantial portion of its
21 functions are subsumed in the religious mission or when it funds a specifically religious activity in an

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23 (Thomas, J., plurality) that “nothing in the Establishment Clause requires the exclusion of pervasively
24 sectarian schools from otherwise permissible aid programs, and other doctrines of this court bar it.”
25 The plurality, however, is not a majority and the test was not expressly rejected by the full Court.
26 This Court remains bound by Supreme Court precedent that has not been overruled. See, Agostini
v. Felton, 521 U.S. 203, 237 (1997); Steele v. Indust. Dev. Bd. of Metro. Gov't Nashville, 301 F.3d
401, 408-09 (6th Cir. 2002)

1 otherwise substantially secular setting. Hunt, 413 U.S. at 743.

2 Were this Court concerned solely with the Institute’s initial Bible-based marriage counseling,
3 it would have no difficulty in finding a violation of the Establishment Clause. Without question, prior
4 to the change in mission and award of the federal grants, the Institute was pervasively sectarian.
5 Faith-based marriage workshops and counseling premised on the words of the Bible is a specifically
6 religious form of marriage counseling/education. The Bible-based model of marriage education
7 employed by the Marriage Institute makes it impossible to make a distinction between secular and
8 sectarian aspects of its marriage counseling. The pre-grant Institute is a pervasively sectarian
9 organization. See Americans United For Separation of Church and State v. Prison Fellowship
10 Ministries, 432 F. Supp.2d 862, 920-21 (S.D. Iowa, 2006)(Pre-release rehabilitation program,
11 conducted in state prison by private organization receiving funding from state, was pervasively
12 sectarian in nature, in violation of Establishment Clause, when all instruction was presented as aspect
13 of Evangelical Christianity, and participants were required to participate in devotional activities.)

14 However, the Court is not concerned with the pre-grant programs of the Institute. The
15 Institute altered its mission and no longer offers Bible-based marriage workshops. A religious
16 motivation of behalf of a sectarian institution in providing secular services dose not transform the
17 secular services into religious activity

18 Plaintiffs’ contend that the Institute was offering only religion-based workshops when it
19 received the first two grants and thus, the grants supported religion. This argument misconstrues the
20 facts. The two initial grants were directed specifically to capacity building. Capacity-building grants
21 are designed to increase an organizations effectiveness and enhance its ability to provide social
22 services. According to the testimony of Dr. Whiddon, these grant funds were used in the capacity-
23 building activity of preparing the Institute to provide the secular workshops. Plaintiffs have not
24 provided credible contradictory evidence.

25 Plaintiffs assert that the Institute’s grant-funded secular workshop curriculum is no more than

1 the religious curriculum, without reference to religion. Specifically, Plaintiffs claim that the new
2 workshop materials are a study presenting Bible-based messages without mention of the Bible, and
3 thus, are in actuality, religiously based. The Court is not persuaded by this argument. Without
4 reference to religion (God and the Bible), the Institute’s curriculum cannot be considered sectarian.
5 Otherwise, tenets of a healthy marriage, such as avoiding extra-marital affairs, could be considered
6 religiously based simply because the same admonition is contained in the Bible. A program does not
7 violate the Establishment Clause because it happens to coincide or harmonize with the tenets of some
8 or all religions. See Hernandez v. Commissioner, 490 U.S. 680, 696 (1989); Bowen v. Kendrick, 487
9 U.S. 589, 612 (1988); McGowan v. Maryland, 366 U.S. 420, 442 (1961).

10 Plaintiffs also contend that if not direct aid of religion, the grants have the effect of advancing
11 religion through governmental indoctrination. See Agostini, 521 U.S. at 234. To satisfy this
12 criterion, Plaintiffs must show (1) that public funding of the marriage workshops and capacity-
13 building constitutes or results in indoctrination, and (2) that such indoctrination is attributable to the
14 government. Id., at 226; Community House, 468 F.3d at 1131. To ‘indoctrinate’ means to instruct
15 in a body of doctrine or principles, to imbue with a partisan or ideological point of view. Community
16 House, at 1131. Indoctrination is used synonymously with ‘inculcation.’ To ‘inculcate’ is to impress
17 something upon the mind of another by frequent instruction or repetition; to instill. See, Agostini,
18 521 U.S. at 223- 24; Bowen, 487 U.S. at 621; Lemon, 403 U.S. at 619.

19 Plaintiffs’ assert that the Institute’s use of the words “Every Marriage Saved!” on its logo
20 convey a religious message. The logo depicts an ambulance and the afore-mentioned phrase, all
21 enclosed by a circle. In this context the word “saved” is more likely to convey a medical emergency
22 connotation than a religious one, such as rescuing a marriage from injury.

23 Plaintiffs also assert that religion continues to appear in the Institute’s newsletter. This
24 allegation belies the testimony that no federal funds are expended in the composition, printing and
25 distribution of the newsletter. The fact that a sectarian organization continues with separate religious

1 activities after receiving grant monies for sectarian endeavors does not constitute a violation of the
2 Establishment Clause. See Bowen, 487 U.S. at 621; Hunt, 413 U.S. at 743.

3 The fact that the principles taught in the secular workshops are consistent with Dr. Whiddon's
4 religious beliefs does not convert the secular mission into a religious one. See Bowen, 487 U.S. at
5 621; Children's Healthcare Is a Legal Duty, Inc. v. Min De Parle, 212 F.3rd 1084, 1100 (8th Cir.
6 2000).

7 Plaintiffs contend that the federal grants run afoul of the Establishment Clause in that the aid
8 supplants funding of services that it otherwise would have to provide through private sources.
9 Government aid to a pervasively sectarian institution does not impermissibly advance religion where
10 the aid supplements rather than supplants the institution's core funding. Agostini, 521 U.S. at 226.
11 There is no factual basis for the argument that the grant funds supplanted other funding or services.
12 The grant funds did not free up any private funds that could be used for providing religious services.
13 Funding that supplements a sectarian organization's activities is that which adds a secular activity to
14 the agenda that did not exist prior to the funding. This is what occurred. The grants were used to
15 add capacity and provide entirely new services, the secular marriage education workshops. The
16 remaining religious component, the news letter, is entirely funded by private donations.

17 Plaintiffs argue that the grant funds can be diverted to religious purposes and are therefore
18 unconstitutional. In Mitchell v. Helms, 530 U.S. 793 (2000) a plurality of four Justices rejected this
19 contention, holding that government aid to a religious organization for permissible public purposes
20 does not violate the Establishment Clause so long as the aid itself does not include religious content
21 and the eligibility for the aid is determined on a religiously neutral basis. Mitchell, 530 U.S. at 818-25,
22 829-32 (Thomas, J., plurality). Justice O'Connor, joined by Justice Breyer, concurred in the result,
23 but indicated that they would hold such government aid impermissible if the plaintiff could show
24 actual diversion of the aid to religious purposes.) Mitchell, 530 U.S. at 844-45 (O'Connor, J.,
25 concurring). Here, the aid itself does not include religious content (Thomas) and there is no credible

1 evidence of actual diversion (O'Connor).

2 Plaintiffs final argument is that the grants constitute unmonitored grants to a religious
3 organization, and the amount of monitoring required to ensure public funds are not used for religious
4 purposes would excessively entangle the government with religion. The Court is unpersuaded by this
5 argument.

6 There is no presumption that sectarian organizations receiving government aid require
7 pervasive monitoring. See Mitchell, 530 U.S. at 861 (O'Connor, J., concurring). The CCF grant
8 programs require the Marriage Institute of submit detailed applications on how it intends to use the
9 grant monies along with a budget outlining all anticipated expenses. Federal regulations expressly
10 prohibit grant recipients from using public funds for religious activities. Recipients must sign an
11 agreement which includes an assurance by the recipient that no funds will be used for religious
12 purposes. Recipients are required to file financial status reports while the grant is ongoing and a final
13 performance report that details the project's accomplishments. The government has the authority to
14 audit any program that receives public money at any time. These monitoring requirements have been
15 found sufficient to satisfy constitutional safeguards and not result in excessive entanglement. See,
16 Mitchell, 530 U.S. at 861-63 (O'Connor, J., concurring); Roemer, 426 U.S. at 734, 746; Bowen, 487
17 U.S. at 617; Hunt, 413 U.S. at 748.

18 CONCLUSION

19 Plaintiffs have failed to demonstrate either probable success on the merits or that serious
20 questions regarding the merits exist. To the contrary, the Defendants have established that there are
21 no genuine issues of material fact that would support a finding that the grants to the Northwest
22 Marriage Institute violate the Establishment Clause. There is no basis, in the law or the evidence, that
23 the federal grants have the 'effect' of advancing religion.

24 ACCORDINGLY,


25 IT IS HEREBY ORDERED:

26 ORDER - 14

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- (1) Plaintiffs' Motion for Preliminary Injunction [Dkt. #35] is **DENIED**.
- (2) Defendant Michael O. Leavitt's Motion for Summary Judgment [Dkt. #57] is **GRANTED**.
- (3) Defendant Northwest Marriage Institute's Motion to Dismiss [Dkt. #61] is **GRANTED**.
- (4) Defendant Institute for Youth Development's Motion to Dismiss [Dkt. #63] is **GRANTED**.
- (5) This action is **DISMISSED** in its entirety, with prejudice.

DATED this 20th day of March, 2007.


FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE