persons, a close nexus between the government and the private person's activity can result in the courts treating the private person as a state actor. Rendell-Baker v. Kohn, 457 U.S. 830 (1982).

It is beyond question that the government itself cannot prefer members of a particular religion to work in a federally-funded program. The Equal Protection Clause subjects governments engaging in intentional discrimination on the basis of religion to strict scrutiny. *E.g.*, United States v. Batchelder, 442 U.S. 114, 125 n.9 (1979); City of New Orleans v. Dukes, 427 U.S. 297, 303 (1976). No government could itself engage in the religious discrimination in employment accommodated and encouraged by the proposed rule's employment provision. Thus, the government would be in violation of the Free Exercise Clause and the Equal Protection Clause for knowingly funding religious discrimination.

Of course, a private organization is not subject to the requirements of the Free Exercise Clause and the Equal Protection Clause unless the organization is considered a state actor for a specific purpose. West v. Atkins, 487 U.S. 42, 52 (1988). The Supreme Court recently outlined the conditions necessary to establish that there is a sufficient nexus between the government and the private person to find that the private person is a state actor for purposes of compliance with constitutional requirements on certain decisions made by participants in the government program:

[S]tate action may be found if, though only if, there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.' . . . We have, for example, held that a challenged activity may be state action when it results from the State's exercise of 'coercive power,' when the state provides 'significant encouragement, either overt or covert,' or when a private actor operates as a 'willful participant in joint activity with the State or its agents' . . .

Brentwood Academy v. Tennessee Secondary School Athletic Association, 121 S. Ct. 924, (2001) (citations omitted).

The extraordinary role that the current Administration—and the sponsors of H.R. 27—have taken in accommodating, fostering, and encouraging religious organizations to discriminate based on religion when hiring for federally-funded programs creates the nexus for constitutional duties to be imposed on the provider, in addition to the requirements already placed on government itself. The clear intent of the change in the civil rights provision in the Workforce Investment Act is to encourage certain providers receiving federal funds to discriminate based on religion.

The H.R. 27 provision allowing government-funded religious discrimination is part of a growing pattern of congressional, presidential, and regulatory actions taken specifically for the purpose of accommodating, fostering, and encouraging federally-funded private organizations to discriminate in ways that would unquestionably be unconstitutional if engaged in by the federal government itself. For example, in December of last year, President Bush signed Executive Order 13279, which amended an earlier executive order, which had provided more than 60 years of protection against discrimination based on religion by federal contractors. The Bush Order provides an exemption for religious organizations contracting with the government to discriminate in employment based on religion. In addition, the federal government is simultaneously proposing regulations to allow religious organizations to discriminate based on religion in employment for federal programs involving substance abuse counseling, welfare reform, housing, and veterans benefits.

Although religious employers enjoy an exemption from Title VII allowing them to apply religious tests when hiring for positions funded with their own money, the Constitution requires that direct receipt and administration of federal funds removes that exemption. In addition, the federal government itself has constitutional obligations to refrain from religious discrimination or from establishing a religion. H.R. 27 fails to meet any of those constitutional mandates.

For these reasons, the ACLU strongly urges you to support the Scott amendment to H.R. 27. Thank you for your attention to this matter, and please do not hesitate to call Terri Schroeder at 202–675–2324 if you have any questions regarding this issue.

Sincerely,

LAURA W. MURPHY,
Director.
TERRI A. SCHROEDER,
Senior Lobbyist.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE,
Washington, DC, February 24, 2005.

DEAR REPRESENTATIVE: Americans United for Separation of Church and State strongly urges you to support the Scott amendment to the Job Training Improvement Act (H.R. 27). The Scott amendment would restore longstanding civil rights protections in the Workforce Investment Act (''WIA''), which guards workers against discrimination in WIA-funded job training programs. Absent adoption of the Scott Amendment on the House floor, Americans United strongly urges you to vote ''No'' on final passage of H.R. 27.

Americans United represents more than 75,000 individual members throughout the fifty states, as well as cooperating houses of worship and other religious bodies committed to the preservation of religious liberty. The civil rights rollback contained in H.R. 27 would allow religious organizations operating government-funded programs under WIA to discriminate in employment on the basis of religion, religious practice, or religious beliefs. H.R. 27 thus has serious implications for the protection of civil rights and religious liberty, and must be opposed.

Section 128 of H.R. 27, entitled ''Non-Discrimination,'' exempts religious organizations that receive Federal funds from the prohibition against discrimination on the basis of religion that is standard practice for all other organizations receiving funding under WIA. Since its inception in 1982, when it was called the Job Training Partnership Act (''JTPA''), this program has served as the largest federal employment training service in the nation, serving dislocated workers, homeless individuals, economically disadvantaged adults, youth and older workers. When signed into law by President Ronald Reagan, this program contained the very language protecting against religious discrimination that H.R. 27 seeks to repeal as to religious organizations.

The 1998 WIA consolidated these earlier job-training programs and simply recodified the nondiscrimination provision included in the original JTPA. The 1998 legislation, which included this nondiscrimination provision, received strong bipartisan support from both the House and Senate at the time of its passage in the 105th Congress. The original JTPA was sponsored by then-Senator Dan Quayle, and was reported out of the Senate Labor and Human Resources Committee then chaired by Senator Orrin Hatch. Since its inclusion in the 1982 JTPA, it has enjoyed bipartisan support. This 23-year-old provision has worked well since the inception of this program, allowing religious organizations to provide government-funded services while maintaining America's bedrock commitment to protecting both civil rights and religious liberty.

Americans United strongly urges you to support the Scott amendment and to oppose the unjustified and unnecessary assault in H.R. 27 on our nation's longstanding commitment to eradicating employment discrimination in government-funded jobs. If you have any questions about H.R. 27 or would like further information on any other issue of importance to Americans United, please do not hesitate to contact Aaron D. Schuham, Legislative Director, at (202) 466–3234, extension 240.

Sincerely,

Rev. BARRY W. LYNN,
Executive Director.

TAIWAN STRAIT RELATIONS

HON. FRANK D. LUCAS

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 3, 2005

Mr. LUCAS of Oklahoma. Mr. Speaker, On December 29 of last year, the Standing Committee of the Chinese National People's Congress took a highly provocative action when it voted to submit an ''Anti-Secession Law'' to the full Congress which convenes on March 5.

The text of this proposed law was not made public, but there can be no doubt about its intent. It is intended to create in China's national law the legal justification for a military attack against Taiwan.

The law would spell out a range of activities which, if taken by the Taiwanese people and their democratically elected leaders, would legally constitute secession. Many of these activities, such as Constitutional reform and popular referenda, are the mainstay of any democracy. Yet the Chinese would use them as a legal excuse for a military attack.

Mr. Speaker, this proposed ''anti-secession'' legislation which the National People's Congress plans to take up in March, is a significant and dangerous development. It goes far beyond the usual bellicose verbal threats of Chinese leaders. It would use Chinese national law as a rationale for military aggression against its democratic neighbor.

The United States, for more than 25 years since the passage of the Taiwan Relations Act, has made clear its determination that the future of Taiwan must be decided only by peaceful means, not by force of arms, and that any final determination must be in accord with the wishes of the people of Taiwan.

These are the fundamental building blocks upon which the future of the Taiwan Strait must rest: peace, and mutual consent between both sides. I urge the leadership of the PRC to put aside this ill-considered law as inimical to both peace and goodwill.