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*Should Faith-Based Initiatives Be Implemented by Executive Order?*

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Abstract by Melissa Sutton

The author discusses President Bush's Faith-Based Initiative plan which requires several agencies to follow specific guidelines that promote faith-based groups receiving increased federal funding. The article proposes that President Bush's plan raises separation of powers concerns because the Executive Order implements controversial policies that may violate the First Amendment and civil rights laws.

The article argues that Executive Order 13,279 was an impermissible use of executive power that circumvented the lawmaking power and will of Congress. In order to implement the Order, agencies have proposed and finalized rules that will likely be targets for litigation. The article uses final rules from the Department of Housing and Urban Development (HUD) as an example of the issues faced by federal agencies when implementing the faith-based Executive Orders.

Part I of the article discusses the historical use of Executive Orders and the limitations placed on Presidential Power. Part II describes the specifics of Executive Order 13,279 and the resulting HUD regulations as an example of implementation of the Executive Order's policies. Part III evaluates three main constitutional concerns raised by commenters to the HUD final rules including the funding of "pervasively sectarian" organizations, oversight and excessive entanglement, and further damage to the separation of church and state. The article concludes that Executive Order 13,279 is likely an unconstitutional use of executive power.