

OMB Watch Analysis of Bush Administration's Charitable Choice Initiatives

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Background

As one of his first actions in the White House, George W. Bush established an "Office of Faith Based and Community Initiatives" which will handle granting federal funds for social service programs run by religious organizations. These programs are nothing new - groups like Catholic Charities are a very important part of the country's social safety net. However, these groups have traditionally been separate charitable entities, distinct from their houses of worship, and required to adhere to the same standards that govern all charities. The Bush plan allows for direct federal funding of religious congregations' programs. The initiative blurs the line between church and state, and early indications are it provides preferential treatment to religious groups.

Charitable choice refers to direct government funding of religious congregations for the purpose of carrying out government programs. In 1996 the first version was championed by then-Senator John Ashcroft and passed as part of welfare reform legislation. A similar provision was included in last year's Substance Abuse and Mental Health Services Administration's (SAMHSA) block grants. In all, the 106th Congress included the provision in seven bills, impacting programs on juvenile justice, mental health, fatherhood and child support, and community economic development.

The 1996 charitable choice legislation has established four guidelines:

- the government cannot discriminate against a nonprofit on the basis of its religious character
- congregational grantees cannot discriminate against a program beneficiary on the basis of religion, and cannot force them to participate in worship activities (the Bush proposal would allow mandatory religious activity);
- accessible secular alternatives must be made available to beneficiaries that object to participation in the congregation's program
- the government cannot exercise control over the religious beliefs of the congregational provider.

The effects of these provisions have been hard to discern because participation by congregations has been low, and the Clinton administration interpreted the law as prohibiting mixing federally funded services with worship activities or proselytizing. In contrast, the Bush administration is aggressively pushing for a mechanism that will allow direct funding for religious congregations, even though many of them are wary of accepting the money and some outright oppose the idea. There are both practical and constitutional problems inherent to the concept of funding congregational programs. Even supporters of the concept have said that the "devil is in the details."

This analysis will review the rationale and evaluate the need for "charitable choice" legislation, and the discuss issues presented by current proposals.

OMBRationale for Charitable Choice Proposals

- Neutrality in Grantmaking

The stated goal of charitable choice is to level the playing field and end “discrimination” against religious congregations in the awarding of federal grants. These statements beg the question of the appropriate role of religious congregations in administering federally funded social service programs. As the Friends Committee on National Legislation has pointed out, “The central issue in charitable choice is *not*, as its sponsors claim, discrimination against all programs sponsored by religious groups. Rather, the issue is the use of public funds to support programs that have a pervasive religious content.” (FCNL *Perspectives*, No. 4, February 2001).

- Program Effectiveness

Proponents of a pervasively religious approach to social services claim it is more effective than programs traditionally offered by government. These claims rarely address the traditional role of secular nonprofits in providing social services, but assume religious groups get better results than community based nonprofits. There is very little evidence that either supports or contradicts these claims. Most of what has been offered is anecdotal. There is a small body of research on the impact of religion on behavior, which tends to show that religious devotion deters some behaviors, but not others, and that faith-based programs may be better at rehabilitation than deterrence. However, other studies indicate that religion is no more statistically significant in deterring crime or rehabilitating addicts than educational ability and aspiration, gender, or family and community connectedness. The best that can be said about the few studies focusing on this issue is that the findings are inconclusive. For a summary of this research see *In God We Trust? Assessing the Potential of Faith-Based Social Services*, by Lewis D. Solomon and Matthew J. Vlissides, Jr., Policy Report, February 2001, The Progressive Policy Institute, at www.ppionline.org.

- Leveraging resources

In 1997 a study by the Aspen Institute Nonprofit Sector Research Fund found that faith-based social service organizations spend \$15-\$20 billion a year on social services. On average, congregations spend about 20% of their budgets on direct services. Most of the effort goes to emergency services that supplement income from work or government assistance. It is not necessary to allow congregations to mix religious activity with administration of government programs in order to leverage these resources.

Legislative History and Current Status of Charitable Choice

Section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (welfare reform) requires that religious congregations be equally eligible to receive federal grants as other charities, banning discrimination in grantmaking based on the religious character of the applicant. It stipulates that federal funds cannot be used for worship or proselytization, but prohibits any conditions of funding that would impair the religious character of an organization. There were no hearings and only 2 minutes of floor debate before the bill passed, despite the obvious constitutional issues involved.

In 1998 the Human Service Reauthorization Act extended these charitable choice provisions to the Community Services Block Grant Program. In 2000 Congress extended it to drug treatment and prevention programs in the Public Health Services Act.

The 107th Congress is also involved in the push for expanding federal funding to social service programs run by congregations. Versions of charitable choice have already been added to a drug abuse prevention and education funding bills. In the House of Representatives a bill introduced by Rep. J.C. Watts (R-OK) and Tony Hall (D-OH) would extend it further, and even allow congregations to sue state and local governments if their funding applications are denied.

Charitable Choice Issues:

1. No New Dollars for Poverty and Social Service Programs

In the flurry of activity and debate that the President's faith based initiative has generated, it is easy to lose sight of the biggest thing it fails to offer: adequate funding for discretionary domestic programs. A church or mosque will run out of funds for assistance just as quickly as a secular non-profit or government agency. Where concrete help is needed- an affordable apartment, money for the gas bill, access to health care- Americans need more resources. Combining what limited assistance is available with prayer won't change the reality faced by low-income families. This "faith healing" approach to social services denies reality and shirks responsibility for what should be an important priority of government.

The administration's proposals imply an assumption that faith can somehow replace concrete assistance, and that government can turn over responsibility for people and communities in need to the religious community. Cooperation between government and community groups, including religious congregations, can leverage resources and widen the reach and strength of the social safety net, and this should be encouraged. But no one should ever expect it to replace the role of government. The contribution of religious groups is not their spiritual message, but their roots in their communities. It is not necessary to allow congregations to mix religious activities with federally funded services to take advantage of this resource.

Government has a larger role, since it is in a position to address the root causes of poverty through its domestic policies and spending priorities. Insufficient public investment in low income communities is still insufficient, whether federal grants are awarded to religious congregations or other nonprofits. Unless and until this issue is addressed, the debate over the faith-based initiative is a fight over half a loaf.

2. Definition of "Faith-Based Organization"- Congregations vs. Charities With Religious Affiliations

In the debate around charitable choice and the role of faith-based organizations in the social safety net, it is important to distinguish between two kinds of groups: religious congregations and organizations affiliated or controlled by religious congregations. Both are "faith-based". By blurring the distinction between the two, the President has misled the public into believing he is opening a door that has already stood open for decades. Religious affiliated groups such as Catholic Charities, Lutheran Services and United Jewish Communities and a host of small, inter-faith community ministry organizations are separate 501(c)(3) charities that provide services with federal funds, but do not force beneficiaries to participate in religious activities or be subjected to proselytizing. They meet the same licensing and safety standards as other charities and are financially accountable. Congregations, on the other hand, operate social service programs with private funds, and are not subjected to these restrictions. They can and do integrate prayer and evangelism with their programs. Charitable choice would allow them to continue and expand that practice at public expense.

This distinction is important to public understanding of what is being proposed. The Pew Forum on Religion and Public Life released a poll that found 75% of Americans support government funding for “faith-based organizations”, but 78% oppose allowing religious discrimination in hiring for federal programs and 60% worry that congregations would try to convert program participants. In addition, 60% feel that religious groups that encourage conversion should be barred from receiving federal funds. This poll shows clearly that charitable choice does not enjoy popular support, but that services of groups like Catholic Charities do.

3. Discrimination in the Grantmaking Process

- Favoritism Toward Religious Organizations Over Secular Organizations?

Despite claims that the goal of charitable choice is to achieve neutrality in awarding grants and level the playing field for congregations, the rhetoric and follow-up activity to the President’s “faith-based” initiative clearly demonstrates a desire to re-direct federal grants to religious congregations whenever possible. Other nonprofits, including those allied with denominations or inter-faith providers, are relegated to the status of “other” groups. They might be surprised (or offended) to hear themselves described by the President as “good people of no faith at all.” (Forward to Rallying the Armies of Compassion.)

Any preference shown toward religious congregations in grant activities, from outreach to potential applicants and technical assistance with completing grant applications, to the awarding of grants, would violate even the most flexible of standards for separation of church and state. It is one thing to declare religious groups should not be excluded, but another altogether to actively favor them in the process.

Early implementation activities are cause for concern in this area. When Stephen Goldsmith, architect of the administration’s plan, conducted a briefing in Augusta, Georgia in February, only “churches” were sent invitations, according to Cynthia Parr, wife of an Augusta rabbi. She learned about the meeting from “a small blurb” in the local newspaper. Both Jewish congregations and secular nonprofits were not invited. Mr. Goldsmith’s home state of Indiana has aggressively pursued charitable choice programs. A look at the FaithWorks Indiana website (www.state.in.us/faithworks) clearly demonstrates that public resources were directed to recruit and assist religious organizations, while community based groups are not mentioned.

- Grantmaking Standards

The President has stated that federal grants should be awarded on the basis of program results. This is an appropriate standard. However, two elements of the President’s proposal are inconsistent with this overall principle. First, the outreach program under the White House Office of Faith-Based and Community Initiatives seeks to recruit congregations that have not previously run social service programs to become involved. These new entrants into the field will not have any kind of track record. If grants are awarded to such groups when experienced nonprofit service providers have applied, then preference is given to pervasively religious organizations.

We believe that performance and outcomes are an appropriate basis for awarding federal grants to qualified nonprofits. However, the administration has not addressed how performance standards will be determined or measured. The White House blueprint fails to mention the Government Performance and Results Act (GPRA), which requires federal agencies to create strategic plans detailing goals and objectives and develop quantifiable measures for agency and program perfor-

mance reports. The first plans were released in 1997, and the first reports were due in March 2000. However, the GPRA process and information has not yet been fully integrated into the agencies' program management and evaluation process. There has been little communication between government and the nonprofit world on what GPRA goals and measurements should be, or how the information will be used. There has also been little interaction between those responsible for GPRA implementation and experts in the field of nonprofit performance measurement. (For more information on GPRA see www.ombwatch.org/gpra.)

Currently federal agencies are not required to seek input from nonprofits in development of GPRA measures. Nonprofits need to be actively involved in development of program goals and performance measures, since many are part of the service delivery system and will be asked to collect the data. This increased involvement should come from both nonprofits that deliver social services and those that represent the perspective of beneficiaries, so that the help being offered is the help that is needed.

A second area of concern is eligibility to apply for federal grants. Charitable choice legislation requires that religious groups be able to apply on an equal basis with secular nonprofits, but there is no definition of "religious". In the public debate over the President's proposal some commentators have raised the question of what entities are considered "religious". In an interview on *Face the Nation*, CBS correspondent Bob Schieffer asked Mr. Goldsmith if the Nation of Islam, which runs successful inmate rehabilitation programs, would be eligible to apply for a grant, even though some say Rev. Louis Farrakhan preaches hate. Mr. Goldsmith answered, "I would say, if they preach hate, if they can't perform the terms of the contract, they shouldn't be allowed to apply." (Transcript, February 4, 2001, CBS *Face the Nation*) This raises serious questions about what is considered religious, to what degree religious beliefs are or should be relevant to a grant application, and whether the government ought to be involved in making these distinctions. As one nonprofit asked us, "Do we really want the government in the position of defining "faith"?"

- Technical Assistance

Many nonprofits that operate successful social service programs would benefit from technical assistance on what grants are available and how to apply. Outreach for this assistance must be provided on a neutral basis. All meetings, memorandums, public notices and other communications relating to federal grants should be made equally available to faith-based and secular nonprofits. This technical assistance should include the following:

1. Simpler and faster payment technology and procedures, so that small organizations that cannot afford to advance funds for federal programs do not have to wait for reimbursement.
2. Full and timely implementation of the Federal Financial Assistance Management Improvement Act, which requires uniform grant application and reporting forms, so that nonprofits with grants from different agencies do not have to track and report information in different formats. Small nonprofits should be involved in development of these forms.
3. Expand outreach and technical assistance to make more nonprofits aware of federal grant opportunities.

4. Program Implementation

- Hiring Discrimination

Under the Bush Administration's proposal, congregations would be permitted to discriminate on the

basis of religious belief or affiliation in hiring for positions funded with federal grants. Section 702 of the Civil Rights Act of 1964 permits congregations to base hiring decisions on religious factors (for example, a Temple does not have to consider hiring a Methodist to be its rabbi). However, the intent of this exemption from civil rights laws is to respect the character of religious activities. Since federal programs are not supposed to include religious activity, the rationale for the exemption does not extend to staff hired to implement public programs. This provision was included in the original charitable choice legislation in the welfare reform, and is currently the subject of litigation. It should be removed from federal law, not extended.

We don't believe a position funded with public money should be advertised with a sign that says "Counselors Wanted, Only Church Members Need Apply". This does not mean that a congregation cannot apply religious requirements when hiring for positions funded solely with private dollars.

- Adequate Standards

In past incarnations (SAMSHA), charitable choice legislation allowed religious congregations to substitute "life experience" for training and education in determining the qualifications of employees. A provision like this could be a disaster for drug and alcohol treatment centers, where qualified medical supervision is often critical to the patient's health. For example, in Texas, where Bush implemented many elements of charitable choice, a drug rehabilitation program approached drug addiction as a moral failing, not a disease, and provided Bible reading and prayer as treatment. This could be deadly for a patient who is encouraged to quit a heroin addiction "cold turkey" and offered prayer instead of methadone. The provision also creates a more lenient standard for congregations than is applied to secular nonprofits, a preference that violates constitutional standards.

A sad example from Texas underscores this concern. In 1997 then-Gov. Bush exempted faith-based groups state health and safety regulations. Roloff Homes, which ran a residential program for troubled youth using Christian teachings, had been forced out of Texas years earlier after complaints of physical abuse of teenage girls became public. They returned to Texas and reopened as a faith based provider in the late '90s. Within three years two employees were arrested for physical abuse that landed one teenage boy in the hospital.

There is concern that unless specifically addressed, congregations could be immune from federal safety regulations, such as OSHA requirements or FDA rules. This could put the federal government in the position of funding daycare centers with unsafe electrical systems or soup kitchens without adequate sanitation facilities, endangering the recipients of the services as well as employees.

- Financial Accountability

Because of their unique separation from the federal government, it is difficult to envision an accountability and enforcement system for church-based service providers where federal funds are not strictly segregated from congregational funds. In the past congregations have been largely immune from government interference. For example, religious organizations are not required to file annual information returns with the IRS but secular nonprofits must do so. Since any entity that accepts government funds should be accountable to the public to ensure those funds are spent for the purposes of the grant, congregations that accept federal grants but do not segregate the funds put themselves in the position of opening their entire operations to public scrutiny. This would result in unwelcome and unwarranted government intrusion into congregational affairs that are unrelated to public programs. It can and should be avoided through a requirement of a separate, segregated

fund.

The most efficient way to achieve this is to create a separate organization, which could be affiliated with the congregation, but not part of it. It also would protect the congregation from liability for any mishaps that occur as result of publicly funded program activities.

A group of faith-based organizations has developed a code of conduct for congregations that receive federal funds to run service programs. The code requires that congregations only participate in federal programs to the extent the activity is part of their overall mission. It also requires compliance with federal regulations, transparency with the public, protection of their religious character and financial accountability. Coercion of beneficiaries to participate in religious activities is prohibited. (See *A Code of Conduct*, The Christian Century, July 5, 2000, at 2000 WL 9857739)

- Evaluation of Effectiveness

Although Mr. Bush has stated that church-based programs will be judged according to their effectiveness, no detail has been offered on how this will be done, how standards will be developed and outcomes defined. The administration should consult with nonprofits to establish appropriate performance measures and goals for federally funded social service programs, and ensure that evaluation factors are equally applied to faith-based and secular nonprofits. There should be no presumption that a “faith-factor” makes a program more effective. (See discussion of the Government Performance and Results Act above.)

- Beneficiary Rights

The most important stakeholders in the debate on the President’s faith-based initiative are the people in need of assistance offered through federal programs. These beneficiaries are forced by circumstances or even court orders to seek help with meeting basic needs, such as food, shelter and health care. The system that offers this help should be easily accessible and equally available to all who qualify. It should not further burden beneficiaries with unnecessary delays or administrative requirements.

Charitable choice currently fails to meet this standard by placing the burden on program beneficiaries to object to placement in a religious based program, participation in worship activities or being subjected to proselytizing. This burden makes charitable choice far from neutral, by creating a catch-22 for our most vulnerable households. People in need of service usually do not have the option of objecting to a particular service provider and starting over. They face real and immediate crises, and cannot afford to risk having the lights turned off or delaying medical treatment in order to seek a secular alternative. The opt-out approach is unfair to program beneficiaries, placing an affirmative burden on exercise of their religious freedom. It is not realistic or fair to expect beneficiaries to speak up and object to religious activities when they are vulnerable and seeking help.

Usually a household must go through a screening process conducted by a service provider to qualify. During this process all applicants should be informed of the religious nature of any service offered by the provider, and given information about secular alternatives, whether they ask for it or not. Once a beneficiary begins participation in a program, they should not be required to participate in worship activities, either actively or passively.

This pressure is the inevitable outcome of mixing government services with religious activity. But that is what the administration wants to allow, and it is the only reason to promote charitable choice legislation. Presidential advisor Stephen Goldsmith answered a question on this issue on *Face the*

Nation's February 4th program, by stating that if an individual has options and chooses a faith-based provider, they should be required to pray. At a White House press briefing in late January Mr. Goldsmith was joined by Rev. Mark Scott, director of the Ella Baker House in Boston, who answered a question as follows:

Q: So what you're after is to get these kids who are in trouble to see the light, to accept a truth that you think is important, and you would use federal money to do that.

Reverend Scott: Right.

The religious freedom of those who seek public assistance can best be protected by requiring that all federal grantees provide services that are separate and distinct from inherently religious activities, as separate affiliated organizations do now.

- Availability of Secular Alternatives

Although charitable choice legislation and the President's initiative state that secular alternatives will be available, they have not provided a mechanism for making that a reality. The need for secular alternatives only arises if congregations are allowed to mix federally funded services with religious activities. A requirement to separate these functions would avoid numerous practical problems that may be impossible to solve.

For example, charitable choice legislation does not define "religious". If, as the President proposes, a congregation could mix federally funded service with religious activity funded by its own treasury, who would decide how the costs are allocated? What standards would the government use to determine "religious" activity as opposed to "services"? What would be the geographic range for making alternatives available? Could an applicant for assistance in a rural area be required to travel to the next town or county in order to avoid forced exposure to religious material they wished to avoid? Could someone be forced to pray in order to eat or receive medical care? Mr. Goldsmith's assumption that when a person goes to a congregation for services it is because they wish to share in religious activities cannot be supported. People go to the providers that are most geographically accessible, are open hours when they do not need to miss work, provide a range of services or provide bi-lingual staff. The fact that a program is run by a congregation may or may not be a factor in the decision. In many instances, there are no other meaningful options.

- Vouchers

Proponents of charitable choice have sought to solve the many constitutional problems and contradictions inherent in the plan by proposing social service vouchers. The theory is that people in need will be able to shop for services, and only choose a program with religious content if they wish to share in the religious activity. While vouchers create an appearance of choice by providing federal dollars directly to program beneficiaries, the net result is the same as directly funding pervasively religious services.

The voucher concept assumes there is a social service marketplace, and that service providers can afford to front the money for federal programs in the hope that people will come with their vouchers, and that vouchers will be swiftly paid by federal agencies. None of these assumptions bears up to reality. Social service agencies are more often than not in short supply. While there may be a limited market for day care or affordable housing, there is no market for many services, such as heating assistance or homeless shelters.

Vouchers also destroy a provider's ability to plan and budget effectively, since there is no way of knowing how many clients may come through the door. Resources that are needed for services would have to be spent on advertising. Only the largest agencies could participate, because the small, grassroots groups the President says he wants to involve could never afford to hire staff, lease office space or purchase equipment and supplies without knowing whether or not they would ever be reimbursed.

The federal government would abdicate responsibility for ensuring an adequate infrastructure for administering federal programs if it left this issue up to a non-existent marketplace. What would happen if no providers were able to offer services in a particular city? In addition, a voucher system creates new administrative headaches, since qualifications for providers must be established, and a process for approval of agencies and expenses would be necessary for accountability purposes. In the end, vouchers create more headaches than they avoid.

- Religious Art

Display of religious art or use of a religious name by a congregation providing social services does not, in and of itself, mix religious activity with government funded services. Any regulations that artificially limit the ability of a congregation to display religious art in a setting that provides non-religious social services can be changed without instituting the entire charitable choice legislative package, with all its constitutional problems.

Freedom of Religion and Constitutional Standards

Perhaps the most obvious of the concerns, Mr. Bush's initiative violates the First Amendment separation of church and government, by having the federal government directly fund the religious activities of churches. While supporters have been careful to point out that churches cannot use federal money for religious purposes, religious content can be seamlessly included with social services. This means that a church could run a program where a religious service is held seamlessly between a morning job training session and lunch.

Further, "charitable choice" would put the government in the position of deciding which religions are "worthy" of federal funding, a situation dangerously close to federal endorsement of some faiths over others. It is hard to imagine that the government would be able to show equal deference to both the Nation of Islam and a Presbyterian church.

Conclusion

While religious organizations may indeed be good providers of service, but this initiative is, as stated by the Baptist Joint Committee on Public Affairs, "the wrong way to do right."