

Conclusions and Recommendations

The current counterterrorism framework is not working well when it comes to the U.S. nonprofit sector. The negative impacts harm charitable programs and the people they serve, and by undermining the independence of the nonprofit sector, weaken our democracy. The ability of the nonprofit sector to improve the common welfare and human security has been diminished in the myriad ways detailed in this report. These costs far outweigh any national security benefits gained.

Our counterterrorism regime was created hastily, in a climate of urgency and fear after 9/11, with little consideration for its effectiveness or potential consequences. Our review of this framework and its impacts on nonprofits has led us to the following conclusions:

- The USA PATRIOT Act was a short-term response to the attacks of 9/11. These short-term solutions are now having long-term consequences, based on flawed assumptions that charities and foundations are somehow a national security threat.
- A double standard applies when the counterterrorism framework is enforced. For-profit corporations are given opportunity to cure their infractions of counterterrorism laws and pay fines, while nonprofits are immediately shut down with no real opportunity to defend themselves.
- Congress has not utilized its oversight powers to review counterterrorism programs and weigh the pros and cons of alternative approaches. It has a responsibility to hear diverse points of view on the impacts and ideas for long-term changes, especially for nonprofits.
- As a result of the "war on terror," the work of humanitarian aid, development, and conflict resolution programs is hindered at best, politicized at worst. This counteracts the positive role charities and foundations can play in fighting the root causes of terrorism.
- Freedom of speech and association are undermined by policies that equate dissent with terrorism.

- The nonprofit sector's attempts to resolve the problems caused by counter-productive counterterrorism laws have been largely unsuccessful. The court system is overly deferential to the executive branch when it comes to national security, upholding the shut-down of charities under circumstances that violate fundamental fairness and the Constitution. As a result, federal agencies ignore nonprofits' calls for change.
- Compliance with U.S. counterterrorism laws can be in direct conflict with international standards of aid as defined by the International Red Cross.

These problems are not insurmountable. The following steps should be taken to address them:

- The nonprofit sector must think beyond its immediate programmatic concerns and address the larger threat to the sector as a whole.
- Charities and foundations must devote the time and resources needed to develop a consensus behind reform proposals and then advocate for them.
- Congress should conduct effective oversight and re-assess the current approach to charities, grantmakers, and other nonprofits.
- The Department of State's *Guiding Principles for Government Treatment of NGOs* is a good starting point for reforming the way the U.S. treats its own nonprofit sector.

As Alexis de Tocqueville noted in *Democracy in America*, the coming together of people for a common purpose is one of the fundamental aspects of a democratic civil society. Americans are famous worldwide for the vast number and diversity of organizations they have created and continue to create for a wide variety of purposes. Nonprofit organizations, and their ability to exercise the fundamental rights and freedoms protected by the Constitution, are at the heart of American democracy and have been critical to the nation's success since its founding.

Government actions that erode and violate such freedoms strike dangerous blows to the very foundation of our country and our ability to provide aid and encourage democracy on the international stage. This is what has happened in the United States during the ongoing war on terror. With regard to the way it has treated and dealt with charities that have been accused of engaging in terrorist activities or providing material support to terrorist organizations, the federal government has overstepped its bounds and has operated far outside the authority granted to it by the Constitution.

In order to preserve the rights of all nonprofit organizations, and indeed, the rights of all people, all levels of government must conduct their counterterrorism activities in a way that consistently protects liberty and civil society. Otherwise, Americans and others lose safeguards that were designed to protect us all from creeping tyranny.

Additional Reading

Safeguarding Charity in the War on Terror (OMB Watch: October 2005).
http://www.ombwatch.org/pdfs/safeguarding_charity.pdf

Muslim Charities and the War on Terror (OMB Watch: February 2006).
http://www.ombwatch.org/pdfs/muslim_charities.pdf