

I. SETTING THE STAGE FOR THE BUSH FAITH-BASED AND COMMUNITY INITIATIVE

Few matters of public policy are associated more closely with President George W. Bush than the Faith-Based and Community Initiative – his effort to expand government partnerships with religious providers of social services. From his earliest days in office, Bush sought legislation, signed sweeping executive orders, restructured White House and agency administrative functions, directed significant changes in federal regulations, pushed to fund federal grants, and fostered similar state and local activities – all as a way to expand government partnerships with religious groups. He used the bully pulpit of the presidency to extol the promise of faith-based social services at nearly every opportunity.

A strong general awareness of Bush’s interest in a faith-based agenda has not extended to the particulars however. The specifics about the scope, character and consequences of efforts to expand government partnerships with religious groups are not widely known. Nor has increased attention translated into broader understanding. With core American principles about religious freedom at stake and the issue highly politicized, the debate over faith-based initiatives over the past eight years has tended to be hotter than illuminating. A spotlight has been trained on the topic, to be sure, but the harsh glare has revealed the subject’s outline rather than its details.

WHAT IS A FAITH-BASED ORGANIZATION?

That the Bush initiative focused on the “faith-based” moniker probably did not aid the interests of greater clarity. There is considerable ambiguity about the term and the daunting range of organizations to which it applies – congregation-based faith-based organizations, independent religiously affiliated nonprofits, faith-based coalitions and faith-based intermediaries.

Faith-based organizations (FBOs) typically are affiliated with a religious denomination, and religious principles often inspire their work, even when the organizations are providing services of a secular nature. The extent to which the underlying faith of an organization is apparent in its services varies widely however. Some FBOs consider faith to be integral to the effectiveness of the services and either mandate or suggest that clients participate in religious activities. An example would be a faith-based provider of substance abuse treatment that considers religious conversion essential to addiction recovery. Others view the offering of a service itself as evidence of their faith and make no specific religious references.

Similarly, there is wide variation in the extent to which religion is apparent in the place where FBO services are offered or through the employees who deliver the services. Staff may share the beliefs of the organization; in conversations, FBO leaders have frequently said that people who share the organization’s beliefs are most likely to respond to its job postings. But that is not always the case, and FBOs that accept government money for the services they provide must be careful to follow applicable laws on selectivity in hiring.

FBOs may be congregation-based, that is, a church, synagogue, mosque or other house of worship that provides social services directly, instead of through a distinct and separate nonprofit arm. This type of FBO is most likely to offer services at the same location used for worship, with

religious symbols present and religious content included in the program. But this is not always the case. It is a relatively new development that public funds, under certain circumstances, may support social services offered by such groups.

FBOs may also take the form of independent religiously affiliated nonprofit organizations and may be local, regional or national in scope. A local religiously affiliated nonprofit is a social service provider that is connected to a faith community but has incorporated as a distinct and separate nonprofit. While organizations of this type typically have religious roots in their origin or philosophy, the services they provide do not necessarily have explicit religious content. FBOs may also form coalitions and join with intermediaries in support of their work.

Some of the largest providers of social services in the nation are religiously affiliated nonprofit organizations. Programs offered by multi-state or national FBOs are usually quite secular. But shared religious tenets may be apparent in their mission statements, hiring decisions, volunteer recruitment, board membership or funding sources. Most FBOs of this type tend to be older and more established and have a history of contracting with the government to provide a range of services to people in need, regardless of clients' religious affiliation. Examples include Catholic Charities, Jewish Family Services, Lutheran Social Services, the Salvation Army and Volunteers of America.

Other large religiously affiliated nonprofit organizations provide a singular service to a specific population. Examples include Habitat for Humanity, which builds houses for low-income people; Prison Fellowship, which provides services to inmates, ex-offenders and their families; and Teen Challenge, which offers recovery programs for addicts. These groups are more likely to contain explicitly religious elements in their activities.

HISTORY OF GOVERNMENT FUNDING OF RELIGIOUS INSTITUTIONS

There is a long history of involvement by religious organizations in publicly funded social service delivery in the United States. FBOs have received federal funds for generations – either directly from federal agencies or funneled through state government – to provide an array of social services.

The involvement of religious organizations in social services also reflects a broader trend: the increasing reliance on nongovernmental charities for delivery of these types of services. We hear a lot about privatizing government services. However, the big story for social welfare and community development services is “nonprofitization.” Over the past 35 years, state and local governments increasingly have contracted with nonprofit organizations for these services, and an extensive, complicated pattern has evolved linking the government and these organizations in new partnership.¹

For decades there has been a shift away from the government directly providing services, away from large public care facilities in favor of smaller community-based organizations, and away from centralized federal control in programs like welfare and toward more local autonomy. Testifying before Congress, researchers from the Government Accountability Office (GAO) estimated that federal money to nonprofit organizations increased more than 230 percent from

1980 to 2004, when adjusted for inflation. And the number of registered public charities has grown more than 30 percent since 2000, from about 646,000 to 851,000.²

The GAO also looked at the dynamics of nonprofit organizations and their relationship with the federal government. It found that nonprofit organizations are more flexible and have greater access to underserved populations to deliver services. Yet, in terms of scale and intensity, this relationship has grown to interdependence. There have been striking increases in government contracting with nonprofits to deliver social services, particularly in areas such as day care, child welfare, homeless shelters, programs for older adults, public health and mental health. But researchers have found that while nonprofits may gain prestige and funding through government contracts, they also may find themselves distracted from their mission by management challenges and the demands of regulation and oversight.

Increasing reliance on nongovernmental organizations, faith-based or otherwise, for social service delivery is a long-established trend. In fact, many of the contours of Bush's Faith-Based and Community Initiative were shaped well before he assumed national office. The idea was the brainchild of a neo-conservative movement of academics, religious leaders and elected officials in the 1970s and 1980s who sought to redefine the roles of government and civil society to stem what they perceived to be the ill effects of social and moral crises. These advocates viewed the causes of poverty to lie beyond the scope of government, in such things as substance abuse and joblessness.

Religious organizations, by contrast, were perceived as better equipped for the challenge. Their caring and compassionate staff were purportedly able to move beyond the secular and bureaucratic limitations of the government to correct social ills by changing people's hearts and lives. They had the additional advantage of possessing a credible and effective presence in poor neighborhoods, making them especially well-positioned in strengthening families and communities. Partnerships with FBOs, to their advocates, would also allow the government to leverage private resources and achieve an even larger, overarching goal of reducing government spending.

LEGISLATIVE BEGINNINGS

Important legislative developments have permitted and accelerated these trends. Over the past two decades, laws have eased the way for an increase in governments contracting with FBOs to provide social services. Smaller, grassroots FBOs have been particularly encouraged to compete for social service grants.

In 1981, the Adolescent Family Life Act (AFLA) was enacted, authorizing education for teenagers about sexual health and reproduction and encouraging the involvement of "family members, religious and charitable organizations" in that effort. The law, which also supports programs of care for pregnant teenagers, prohibited AFLA funding for programs that "advocate, promote or encourage abortion." In 1983, the American Civil Liberties Union filed a lawsuit challenging AFLA grants to FBOs, alleging that such grants violated constitutional protections intended to separate church and state. The case eventually reached the Supreme Court, which held that the religious character of some AFLA grantees did not, in itself, represent a constitutional violation. The case was returned to the district court for further development of the

facts; the parties subsequently reached a settlement, which imposed a set of restrictions on FBOs that receive grants under AFLA.

In 1990, the Child Care and Development Block Grant Act required states that received grants under the act to include religious institutions among eligible child care providers. The stated intention was to expand child care choices.

By 1995, this movement had produced a series of policy proposals designed to empower local private institutions – including religious organizations – to address social problems. The most successful and far-reaching was the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the sweeping overhaul of welfare programs, which included a series of provisions championed by then-Sen. John Ashcroft, R-Mo., that significantly revamped the relationship between the government and FBOs that provide social services. The government would no longer exclude faith-based groups from receiving federal grants because of their religious character. Instead, the portion of PRWORA addressing religious organizations stated:

The purpose of this section is to allow states to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers or other forms of disbursement under any program described in subsection (a)(2), on the same basis as any other nongovernmental provider without impairing the religious character of such organization, and without diminishing the religious freedom of beneficiaries of assistance funded under such a program.

This section in the welfare reform law has become known as the Charitable Choice provisions. They include the following:

- **Nondiscrimination in Funding:** If a state contracts with private organizations to provide services to welfare recipients, then FBOs may not be excluded from the list of eligible providers on the basis of religious character.
- **Providers' Religious Identity Preserved:** An FBO need not abandon its religious identity to receive government funds under PRWORA. It may maintain religious elements in its mission statement and criteria for selecting officers and board members, and keep religious art, references or symbols on its walls. It may also base hiring decisions on the faith of applicants, as long as that practice does not conflict with state or local laws.
- **Recipients' Religious Liberty Protected:** Providers funded through PRWORA, including FBOs, may not discriminate against service recipients on grounds of religion and may not condition delivery of services on recipients' participation in religious activities. Welfare recipients must not be forced to receive services through a faith-based provider but must have the choice of a secular provider as well.

- **Limited Audit:** If an FBO providing services under a PRWORA program establishes a separate account for government funds received for such services, the required government audit will be limited to that separate account.
- **Religious Activities Proscribed:** PRWORA specifies that “No funds provided directly to institutions or organizations to provide services and administer programs under [this act] shall be expended for sectarian worship, instruction or proselytization.” This limitation is important for two reasons. First, it makes it clear that the government may not directly finance these distinctively religious activities. Second, the limitation applies only to “direct” grants or contracts, not to indirect forms of financing such as vouchers. If an FBO receives only indirect government aid, the service provided does not need to be segregated from worship, religious instruction or proselytizing.

These Charitable Choice provisions applied originally to the Temporary Assistance for Needy Families (TANF), Food Stamps, Medicaid and Supplemental Security Income programs. Congress also added Charitable Choice provisions to the Welfare-to-Work program, to the Community Services Block Grant, and in 2000, to two remaining programs – the Substance Abuse Prevention and Treatment Block Grant and Projects for Assistance in Transition from Homelessness. Charitable Choice provisions were also part of discretionary funding programs for substance abuse treatment. The Bush administration extended the reach of these provisions via executive order to 11 federal agencies, while other federal and quasi-public agencies followed suit without the imprimatur of a presidential order.

LEGAL REINFORCEMENT

The series of laws and regulations leading up to and including the Charitable Choice provisions and the Faith-Based and Community Initiative were made possible by a dramatic change in the Supreme Court’s interpretation of the religion clauses of the First Amendment. Over the latter half of the 20th century, the court’s rulings emphasized a doctrine of separation between church and state, whereby religious organizations were deemed ineligible to receive public funds or in-kind support out of concern that aid to such “pervasively sectarian” entities would inevitably lead to actual or perceived endorsement of religion by the government or an “excessive entanglement” between the two.

But by 2000, the court adhered to a doctrine of neutrality, whereby religious organizations were to be treated equally with their secular counterparts. As long as funded institutions were treated in a religion-neutral way and aid was given for a secular purpose, participation of religious organizations was permitted. As a result of the neutrality doctrine, the faith character of an organization is no longer a determining factor. Instead, the secular content of the funded activities and the government’s monitoring of restrictions on use of public funds are the legal standards.³

When the government provides funds to religious organizations, it is responsible for ensuring the money is not diverted to religious use. That standard, set down by former Supreme Court Justice Sandra Day O’Connor in 2000 in *Mitchell v. Helms*, encompasses three distinct requirements. First, the permissible and impermissible uses of government aid must be clearly articulated to

faith-based grantees. Second, the government must ensure that grantees agree to comply with the restrictions on government aid. And third, the government must monitor grantees' conduct to ensure that they comply with the rules.

Most of the court challenges to government and faith-based partnerships since this time have centered on the question of what the government is constitutionally permitted to fund. Questions especially arise in programs whose primary purpose is secular – such as substance abuse treatment or prisoner rehabilitation – but are provided with some degree of religious content. Specifically, religious activities cannot be supported directly with taxpayer funding and must be separated in time and location from those activities that the government does fund.

There is, as well, an important distinction in how the ban against public funding of religious activities operates. This depends on whether government funding is direct – as in the case of a service contract or grant award made by a public agency to an FBO – or indirect, as in the form of beneficiary choice, where an individual recipient of government services chooses the provider to receive payment. Vouchers, a form of beneficiary choice, have been employed as a way for the government to pay for services provided by private religious programs without breaching the constitutional separation of church and state. Court decisions have upheld the use of vouchers when recipients are able to make a “genuine, independent choice” among secular and religious schools and among drug treatment facilities. New rules from several federal agencies in recent years have recognized the greater latitude for religious content in voucher-financed services.

The interplay of federal, state and local laws is another significant element in setting the legal context for faith-based and community initiatives. State constitutions may present significant barriers to service contracts between government agencies and religious groups. Thirty-seven states have constitutional provisions forbidding state financing of religious organizations, and 10 states extend the barrier to indirect as well as direct financing, according to a study by the Roundtable on Religion and Social Welfare Policy.⁴ Moreover, the report showed that states and local governments usually have their own laws governing the right of religious organizations to hire based on religious beliefs, and many restrict such rights when public funding is involved. The legal setting for faith-based initiatives remains complicated, perhaps having grown more strained by increased litigation in recent years.

BIPARTISAN SUPPORT

Although it may seem like a remote memory, the political environment for federal efforts to partner with religious groups was not so divisive a few years ago. Both major party candidates in 2000 embraced the idea of “charitable choice” to combat problems of welfare and poverty. Democratic presidential candidates Al Gore and Bill Bradley both proposed to expand government partnerships with FBOs. “Today I give you this pledge: If you elect me your president, the voices of faith-based organizations will be integral to the policies set forth in my administration,” Gore declared in May 1999.

Vice President Al Gore said he had encouraged President Bill Clinton to sign PRWORA and added that he was in favor of extending its Charitable Choice provisions to deal with other social needs, specifically, drug treatment, homelessness and youth violence. Gore qualified his

endorsement, stressing Charitable Choice provisions already in law and the need to have secular alternatives and assurances that no one would be forced to participate in religious observances.

I have seen the transformative power of faith-based approaches through the national coalition I have led to help people move from welfare to work.... For too long, faith-based organizations have wrought miracles on a shoestring. With the steps I'm proposing today, they will no longer need to depend on faith alone. – Vice President Gore in a speech in 1999

Before becoming a presidential candidate, Bush advanced a faith-based initiative in Texas. As the newly elected governor of Texas in 1995, Bush brought a personal understanding of the transforming power of faith and salvation to his office. Shortly before becoming governor, he is reported to have had a spiritual awakening that changed his life. Believing religious organizations could be powerful partners in changing the lives of needy Americans, he worked closely with leaders of the movement such as Marvin Olasky, a professor of journalism at the University of Texas at Austin dubbed the “godfather of compassionate conservatism.” Olasky’s writings helped stir evangelical Christian and politically conservative groups to push for empowering private and religious charities to play a greater role in providing social services.

Bush became the first governor in the nation to apply the new federal standards at the state level. Within months of the passage of welfare reform, he signed an executive order directing Texas agencies to encourage FBOs to provide social services to needy Texans. “Government can hand out money, but it cannot put hope in our hearts or a sense of purpose in our lives,” then-Gov. Bush said. “It cannot bring us peace of mind. It cannot fill the spiritual well from which we draw strength day to day. Only faith can do that.”

Bush highlighted his faith-based initiative and introduced it on a national level during his campaign for president. At a campaign appearance in July 1999 in Indianapolis, he called for a partnership between the government and religious entities to combat social ills. Faith-based groups, he proclaimed, would constitute part of the “armies of compassion” in “the next bold step in welfare reform.” He promised to dedicate \$8 billion to faith-based and community groups in the first year of his presidency through a program of tax rebates and direct grants, and to establish an Office of Faith-Based Action to encourage faith-based groups to work with government agencies.

A NEW FAITH-BASED PRESIDENT

True to his campaign promise, and only nine days after his inauguration, Bush issued two executive orders on Jan. 29, 2001, creating the White House Office of Faith-Based and Community Initiatives – which he appointed John DiIulio, a widely respected academic, to direct – and additional centers for Faith-Based and Community Initiatives within five federal agencies: the departments of Education, Health and Human Services, Housing and Urban Development, Justice, and Labor. The White House instructed the departmental offices to complete an analysis with recommendations on eliminating barriers in their programs to expanding partnerships with religious social service groups. It also began work with like-minded members of Congress to enact a faith agenda into law.

That effort began with a push to adopt comprehensive legislation to broaden opportunities and protections for religious organizations in a host of federal social service programs, and creating additional incentives for private giving in support of faith-based and other charitable groups. When the comprehensive approach proved unsuccessful, efforts were later narrowed to remove barriers from specific programs as they were renewed; to protect and expand rights for religious social service programs where they already existed in law; and to create new initiatives addressing social needs that would involve religious and other groups as service providers. Receptivity in Congress, even with the contracted goals, was limited.

The absence of legislative authority did little to slow the Bush administration from changing a number of federal rules and regulations and from creating an elaborate, active administrative apparatus to involve religious groups in public services. Bush issued additional executive orders in December 2002 and June 2004 adding more FBCI centers to federal departments and agencies.

“We must bring the hope and healing of faith-based services to more and more Americans. Government has often been slow to recognize the importance of faith-based and community efforts. That’s changing. And more changes are needed.” – President Bush, Dec. 12, 2002

In essence, Bush’s Faith-Based and Community Initiative sought to extend the Charitable Choice provisions of PRWORA throughout the federal government. To boost participation among religious organizations providing social services, especially smaller faith-based groups, Bush sought to reduce barriers in the federal grant-making process that he said discriminated against such groups and to allow them to retain their religious identity. For example, his initial executive order permitted faith-based groups to retain religious symbols in the spaces where they provide social services, to retain references to religion in their mission statements, and to retain religiously affiliated board members.

Bush also used the presidential bully pulpit to hammer home the faith-based message at nearly every opportunity. In the single month of July 2001, for example, he gave seven speeches on his Faith-Based and Community Initiative in a 17-day stretch. Over his tenure Bush devoted more than 50 speeches explicitly to the initiative, and he endorsed it in his State of the Union addresses. He also brought up the Faith-Based Initiative in dozens of speeches centered on other topics. As in his first campaign for the presidency, the faith-based effort and related activities were central themes in Bush’s 2004 re-election campaign. Indeed, critics – including former staffers – claimed various activities stemming from the initiative were structured to benefit Bush and like-minded members of his party in the 2004, 2006 and 2008 campaigns.

A number of programmatic initiatives were put in place during the Bush administration – piggy-backed onto other legislation – to provide services through new partnerships with religious groups or in concert with other sorts of service providers. Of particular note were new programs for substance abuse treatment, prisoner reentry, children of prisoners and global outreach on HIV/AIDS.

“The days of discrimination against religious groups just because they are religious are coming to an end,” Bush said during a speech to 1,600 religious leaders in Philadelphia in December 2002. “We’ve reformed welfare in America to help many, yet welfare policy will not solve the deepest problems of the spirit.... No government policy can put hope in people’s hearts or a sense of purpose in people’s lives. That is done when someone, some good soul, puts an arm around a neighbor and says, ‘God loves you, and I love you, and you can count on us both.’ ”

Speaking at the same December 2002 event in Philadelphia, then-Secretary of Housing and Urban Development Mel Martinez decried the problems faced by religious organizations trying to work with his department. “A Catholic organization in Sioux City, S.D., was declined a \$63,000 federal HUD grant because the city demanded that it change its practice of praying before serving meals to homeless people. It was suggested they substitute with a moment of silence,” Martinez said. “HUD reviewed the case and the grant went to the organization without any request that they change their religious practice. This type of discrimination is not well-founded in law and should not be tolerated,” he added. “Faith-based organizations should be judged on one central question: Do they work?”

The same question may be asked about the Bush Faith-Based Initiative itself, and in both cases clear answers are elusive. Amid very complicated terrain, little research has yet been conducted that is able to show that FBOs are more effective than secular organizations in addressing social problems. While more elaborate scientific studies are underway, the Bush White House relied on largely anecdotal evidence to support the view that faith-based approaches produce better long-term results, should be funded directly, and should be included as choices for clients to voluntarily select from in receiving publicly funded services. Little documentation exists to show that religious character or content affects the effectiveness of social services, but more should be known soon.