

V. TAKING STOCK OF THE BUSH FAITH-BASED AND COMMUNITY INITIATIVE

Since its inception, President George W. Bush's Faith-Based and Community Initiative prompted divisions over the extent to which religious organizations should provide government-funded services and how government money can and cannot be spent by religious groups providing services. Reviews of the success or impact of the faith initiative have been decidedly mixed.

Supporters say the initiative removed discriminating barriers against religious organizations or "leveled the playing field" – to use the Bush administration's own phrase – for them to receive government grants and brought more compassionate and personalized government-funded services to the needy. Critics charge the initiative was used to woo political support, violated constitutional provisions for the separation of church and state, and failed to provide promised money for social programs. Some of the most ardent attacks have come from early supporters – even former staff – of Bush's Office of Faith-Based and Community Initiatives (FBCI).

When Congress balked at approving legislation sought by Bush and his supporters to allow more religious organizations receiving government money to employ staff based on their religious beliefs, he changed the federal rules to allow religious hiring in a number of programs and prompted an outcry from civil rights and religious liberty groups. Debate over religious hiring rights stalled key legislation renewing the nation's principal workforce training programs as well as citizen volunteerism programs and delayed for years passage of bills to reauthorize public assistance, Head Start early childhood education, and expanded substance abuse treatment programs.

The Bush White House moved aggressively to implement administrative and structural changes within the federal government in ways that would enable the Faith-Based Initiative to have lasting impact. These included regulations intended to ensure that faith-based organizations (FBOs) could compete for government contracts on an equal footing with secular nonprofits and the establishment of centers within federal agencies whose mission included eliminating obstacles to the participation of faith-based groups in providing social services.

THE UPSIDE

The management capability built by the Bush administration to implement its faith initiative received the most positive attention from observers of the effort. Supporters credited the initiative because it identified a key problem – pervasive institutional bias across a host of federal programs – and acted with dispatch and organization to address it. *Unlevel Playing Field*, the administration's overview of federal departmental barriers to government partnerships with religious charities, stated that "there exists a widespread bias against faith- and community-based organizations in federal social service programs." In a 2008 interview with the Roundtable on Religion and Social Welfare Policy, John Bridgeland, former head of USA Freedom Corps and White House domestic policy advisor, echoed similar concerns. "Legislation requires some restrictions on the full participation of faith-based organizations, but many of the regulations are needlessly burdensome administrative creations."

Bridgeland noted the Bush White House set out and advanced a management approach “to identify and eliminate barriers that impede full participation” administratively in agencies, by working with state and local governments implementing federally funded programs and moving on legislation where needed. The effort added a host of key programs to address important needs, such as mentoring children of incarcerated parents and prisoner reentry.

The Bush administration’s Faith-Based Initiative “went a long way, to use the phrase, to ‘level the playing field,’ ” said Nathan J. Diament, public affairs director for the Union of Orthodox Jewish Congregations. “They brought in a significant number of new partners by holding these conferences around the country, educating groups. It was useful in terms of enlarging the pool of partners for the government.”⁵⁵

“The heart – the core – of the Faith-Based and Community Initiative is a commitment to equal treatment of faith-based social welfare providers,” said George Washington University Law School Professor Robert Tuttle, co-director of legal research for the Roundtable on Religion and Social Welfare Policy, at a Dec. 2, 2008 presentation. “Now, eight years into this, it doesn’t seem like such a radical proposition.” Court interpretations were not enough to spur the flow of government funds to faith-based groups, Tuttle noted. For that to occur, “administrative energy” was required. That was what the Bush administration added, he said, by engaging in a multi-agency effort to remove the obstacles that had previously deterred faith-based groups from competing for government social service contracts.

The Bush effort undermined and overcame the “culture of resistance” that had existed in the federal government toward FBOs’ participation in social service contracts, Tuttle said. “Measured by that standard, the initiative has been, I think, a success that really doesn’t have a parallel in contemporary administrative law, where you have a complete change in culture,” Tuttle added.

“I think back to four, five, six, eight years ago, to the attitudes people had about the role of faith-based organizations in services, what the government can and cannot do,” said Stanley Carlson-Thies of the Institutional Religious Freedom Alliance and a former deputy director of the White House Office of FBCI, in an April 2006 interview with the Roundtable. “There wasn’t any encouragement that came from the federal level. You’d have to say that things were extremely thin. I think that attitude has really significantly changed, and you can see that in actual regulations and in outreach meetings and in partnerships that have developed. There’s just been a very significant sea change in attitudes.”

On the upside for advocates of faith-based services, there appeared to be increased openness among more government officials to the possibility of partnering with faith-based groups. Many governors, for example, took the Bush administration’s lead to advocate for similar initiatives at the state level. At the end of the Bush administration, 36 governors (19 Democrats and 17 Republicans) and more than 100 mayors had established FBCI offices or liaison positions.⁵⁶ And there has been increasing acceptance among many Democrats – President Barack Obama among them – about encouraging such partnerships while being careful about constitutional concerns.

The 2004, 2006 and 2008 elections saw more than a dozen new governors take office, including a sizeable number involving a changeover in party control. In no case during that period did a change in tenure result in a decision to end a state faith-based and community initiative in any of the roughly two-thirds of the states that had such a policy in place. Significant changes were made in isolated cases. Ohio Gov. Ted Strickland overhauled the Governor's Office of FBCI, replacing staff and ordering an audit of its contracts under the previous administration. He also ordered an investigation of a private organization that administered federal grants to small faith-based and community organizations through a contract with the office. But Ohio's faith-based initiative continued to advance.

MIXED REVIEWS

Other perspectives on the Bush administration's efforts were less positive. "The aim of Bush's [Faith-Based Initiative] to expand the role of FBOs in meeting human needs and to level the field for such organizations to compete for federal funding of service projects is perhaps more widely shared," said former Sen. Harris Wofford, D-Pa., in a 2008 Roundtable interview. "Progress has been made in that direction throughout the government, more notably in some departments and agencies than in others. The opposition to this approach, however, has become more entrenched.... A majority in Congress appeared to want a federal program that did succeed in leveraging more support to and from FBOs, consistent with the constitutional limits of the First Amendment. But the center did not hold, and legislation to facilitate that result got entangled in partisan politicization of the issue."

"The president's executive order and the White House Office of Faith-Based and Community Initiatives did get efforts underway by new units in the major pertinent departments and agencies, and valuable work was done in assisting and encouraging smaller faith-based organizations to apply and receive funds to expand their service programs," Wofford added. "But all this was clouded by charges of political bias determining the programs aided."

Critical comments about the politicization of the Bush faith initiative come from all across the political spectrum and include many strong supporters of expanded government aid for religious social service groups. Jim Wallis, a liberal evangelical Christian who is chief executive of Sojourners and an early supporter of the initiative, said in a July 2008 Roundtable interview that the initiative fell short of its promise for a variety of reasons: "No. 1, things weren't funded very well. No. 2, it became a substitute for good social policy instead of an addition. And No. 3, it became very partisan, very political."

Republican Rep. Souder, an early supporter of the initiative, said in a May 2008 interview that he lost confidence in the agenda as it became more politically oriented. "When [Bush] talks about it, it's the way he started, which is, 'Government hasn't been serving the needs of low-income groups, especially in the inner city, and churches and faith-based groups are far more effective, and we need to get some dollars in their hands because they leverage it, and it's just about getting the goods there.' Is the argument economic or is it social? It's both and Bush has never really wavered from that. But inside the administration, there has been bobbing and weaving. I think they tilted in the wrong direction," Souder said.

Many FBOs reported that the effort raised public awareness of their social service work, but that heightened visibility had both positive and negative impacts also. Yet, it is not at all clear that opportunities for FBOs to win federal contracts have actually increased. While the Bush administration spotlighted some new initiatives that encourage the participation of FBOs, it simultaneously cut funding to programs that traditionally supported social service providers, including faith-based providers.

While there is more attentiveness among federal officials in administrative agencies about “leveling the playing field” for FBOs to compete for government grants and more awareness of public funding, concerns were also raised about heightened hopes for grants that may not actually have expanded in availability.

In addition, other obstacles to government contracting appear to remain for the smaller, locally based faith groups that the initiative targeted. A research study conducted for the Roundtable by political scientist John Green of the University of Akron and released in December 2007 reveals that while nearly 70 percent of American congregations provide government services, only slightly more than 7 percent do so with government money. As reasons for not seeking government grants, congregation leaders cited practical considerations rather than philosophical opposition to the initiative. Their reasons included lack of staff or space for expanded services, fear of external control, or lack of knowledge regarding their eligibility for grants.

UNEXPECTED BENEFITS FOR INTERESTS GROUPS

Conflict over the Bush faith initiative translated into a big organizational boon to the entrenched interest groups arrayed on either side. Particularly as the issue gained prominence in political circles and the courts, special interest groups grew in size and wealth as they waged legal, legislative and public relations battles over religious liberty and the separation of church and state.

The Freedom From Religion Foundation gained thousands of members and increased donations by nearly 20 percent. The Alliance Defense Fund, a large and powerful Washington, D.C.-based group, saw its budget more than double for its legal defense and advocacy of religious freedom. The American Civil Liberties Union saw its membership more than double. Likewise, the Becket Fund for Religious Liberty, a Washington, D.C.-based legal and educational institute that supports free expression of religious traditions, saw its annual budget double. Americans United for Separation of Church and State reported an increase of more than one-quarter in their membership and about one-third in their annual budget.

LEGAL TRENDS

The legal trends and developing constitutional theories that undergird the Faith-Based Initiative had their origin long before the Bush administration. But there have been several significant developments over the past eight years in the law concerning government partnerships with religious social service providers.

The White House Office of FBCI faced a legal challenge in a case known as *Hein v. Freedom From Religion Foundation* that charged the office with advancing religious interests and

questioned its constitutionality. The case was never argued on its merits, as the U.S. Supreme Court decided in June 2007 that the taxpayers bringing the lawsuit did not have the right to challenge discretionary expenditures of the executive branch. The Supreme Court ultimately ruled that taxpayers may not mount legal challenges against the government over funding of religious organizations unless Congress has specifically authorized the programs that provide the money. That finding had its own impact, in limiting the number of lawsuits alleging church-state violations in courts throughout the country.

The Supreme Court decided two other cases with particular bearing on the Faith-Based Initiative during the Bush years. The court ruled that while the Constitution allows government funding of religious institutions, it does not require it. That was the lesson of *Locke v. Davey*, a case decided in 2004 that had profound implications for faith-based initiatives – especially had it been decided the other way.

In another ruling upholding a program of school vouchers in Cleveland, the Supreme Court in *Zelman* underscored a distinction in indirect vs. direct funding and outlined the course for the use of vouchers where there is a genuine, independent choice between service providers for a secular purpose. The decision provided the predicate for a number of programmatic initiatives advanced by the Bush administration to permit the use of vouchers for substance abuse treatment, mentoring children of prisoners and other services. Concern and controversy continue over questions about how best to structure vouchers so that well-informed decisions are made by consumers, free of limited information, coercion and limited choices.

Across a host of programs, concern continues to be raised about the adequacy of guidance provided to service groups about the types of activities that tax dollars can and cannot support. According to the Roundtable’s legal experts, the guidelines provided are not wrong, but they are inadequate. While official documents warn religious groups that they must not use government funds to support “inherently religious activities,” Professor Tuttle has noted that these guidelines fail to explain that programs containing religious content are also subject to legal challenge, even if the programs have a secular purpose.

Throughout his two-year stint as director of the White House Office of FBCI, from August 2006 to August 2008, Jay Hein said his office went to great lengths to inform, educate and train FBOs about the “legal dos and don’ts” of using government money, including the prohibition against using direct government grants for religious activities. Outside legal experts remain concerned that the federal government’s limited guidance to faith-based groups that enter into government contracts has left many faith-based service providers defending themselves in court.

A Government Accountability Office report issued in July 2006 said that government-issued guidelines to religious organizations about separating government-funded social services from religious activities were ambiguous and confusing, and some organizations appeared to violate the stipulations. The report also questioned the effectiveness of the Faith-Based Initiative, saying that in fiscal 2005, five federal agencies that helped carry out the federal effort were spending most of their allocated funds on staff salaries and benefits.

“The Bush administration’s Faith-Based and Community Initiative was a very mixed program precisely because its lack of accountability evoked some public mistrust and allowed a bit of faith community misconduct,” said Robert M. Franklin, a scholar and ordained minister who is president of Morehouse College in Atlanta. “At the end of the day, I believe it did more good than harm, and many worthy people were assisted. The [Faith-Based Initiative] deserves proper credit for the laudable accomplishments – but we are disappointed by the good that might have been achieved had it been administered differently.”⁵⁷

WHAT REMAINS?

“I think the issues have been on the agenda,” said Professor John DiIulio, the first director of the Bush administration’s White House Office of FBCI in a Nov. 26, 2007, interview with the Roundtable. “ ‘Faith-based’ is in the public vernacular. Some good things have happened. Certainly some very good things have happened at the state and local level. I think we now have an opportunity to decide what the faith-based future is going to be and whether it is going to include significant centrist bipartisan efforts at all levels of government to work with religious organizations to serve the poor.”

Bush was not the first chief executive to create an office within the White House or to appoint Cabinet and sub-Cabinet-level staff in the federal agencies committed to carrying out his agenda. Activities like these, and the use of executive orders and budgetary powers, are hallmarks of activist presidents, from FDR to Ronald Reagan. But the innovation in the Bush Faith-Based Initiative is the connection of the White House Office of FBCI to mini-branches in the 11 government agencies, each empowered to oversee coordinated efforts to penetrate agency operations and win more financial support for faith-based and community groups. Finding ways to help small faith groups overcome obstacles will continue to be a challenge for any administration that seeks to further the initiative’s goals of encouraging more small, locally based faith groups to deliver social services.

Bill Galston, senior fellow at the Brookings Institution, urged attendees at a June White House conference to ask tough questions about the Faith-Based Initiative and to be cautious about accepting assumptions or stereotypes about faith-based service providers. Distinctions between secular and faith-based service providers tend to blur, Galston said. Little evidence exists to support the assumption that FBOs were ever discriminated against in contracting decisions, he added, nor that they seek out harder-to-serve populations or deliver better results, as some initiative proponents like to point out. And contrary to a common complaint of initiative opponents, most FBOs do not aggressively proselytize, he said.⁵⁸

Questions remain. The full extent of public funding for faith-based social services is largely unknown. The substantial majority of federal support for such purposes flows through contracts or grants awarded by state and local governments rather than in Washington, and few public programs record whether contractors are faith-based. Unresolved questions also persist regarding the capacity of religious groups to provide social services and the role faith plays in the effectiveness of services provided. Whatever the future may hold, however, and whether or not one agrees with the policy objective, the methodical character, breadth, depth and scale of the Bush Faith-Based Initiative mark it as a remarkable example of executive action.