

EXECUTIVE SUMMARY

Few topics have been more durably contentious over our nation's history than those involving intersections of church and state. And since few matters of domestic public policy were more controversial or associated more closely with President George W. Bush than his effort to expand government partnerships with religious providers of social services, it is all the more surprising to see the Faith-Based and Community Initiative appear to live on in fair measure, despite the current of sweeping change coursing through Washington with the historic election of President Barack Obama. A closer look suggests time will reveal both continuity and change in the Obama and Bush approaches toward service partnerships between the government and religious groups.

The Bush administration and its supporters in Congress set out with high hopes for adopting laws to expand opportunities for faith-based social service providers in government programs and, through the tax code, to strengthen incentives for charitable contributions to their efforts. But this was not to be. Efforts on comprehensive legislation regarding the Faith-Based Initiative were stymied. Separate bills were attempted in three areas: financial incentives to encourage private giving to religious organizations; statutory authorization to explicitly partner with religious organizations in certain governmental programs; and new programmatic initiatives involving faith-based and other service providers, often as part of omnibus appropriations legislation. Few legislative successes on the faith agenda were achieved over the eight-year period however.

Incentives to encourage charitable giving to religious and other charities were adopted, after many years of debate, as part of the Pension Protection Act signed into law by Bush in August 2006. But those incentives were scaled back compared with what was originally proposed. More divisive and ultimately even less satisfying were legislative efforts to modify statutory provisions in a number of existing federal programs that presented barriers, perceived or real, to wider participation of faith-based organizations.

The principal barrier – in statute and to achieving new legislative agreement – involved the right of religious organizations to base employment decisions on matters of religious faith when hiring for positions paid for with taxpayer dollars. The Bush administration sought to clarify, protect and extend that right for religious charities across all federal programs, but several significant federal programs – among them Head Start, the preschool education program for low-income families, and the Workforce Investment Act, the principal program for job training and placement services for adults and youths – make no such provision for religious employers. As those programs and others with similar provisions came up for reauthorization, heated debate centered on whether legislation extending them into the future would maintain or change language that, among other things, permitted or precluded religious organizations receiving federal money from hiring and firing employees based on religious beliefs.

The politics of religious hiring rights proved too difficult for Congress to resolve. No bill to modify existing language on hiring rights was able to pass both chambers of Congress during the Bush presidency. Inclusion of hiring rights provisions doomed attempts to reauthorize the Workforce Investment Act, extended only temporarily and without desired reforms. Congress approved a five-year overhaul of Head Start in 2007, but only by excising the proposal backed

by Bush to allow faith-based groups to consider religion when employing Head Start staff. The proposed Citizen Service Act, legislation authorizing volunteer programs administered by the Corporation for National and Community Service, could not clear the legislative bottleneck of religious hiring. Conversely, Democrats in Congress failed in their efforts to remove existing religious hiring rights provisions included under the Charitable Choice elements of Temporary Assistance for Needy Families when that program was reauthorized. Attempts to grant any permanency to Bush's administrative efforts to expand partnerships with religious groups failed.

In part, this legislative record reflects the disinclination of Democrats in the highly charged partisan climate following the contested election of 2000 to go along with a personal initiative of the Republican president. But the Bush legislation also lacked a strong external constituency to support passage in Congress. Conservative Christian organizations, one natural base, were somewhat divided; some groups believed the initiative would encourage too much government intervention in religion. Another possible base of support – the low-income and mostly minority communities most likely to receive government services from faith-based organizations – lacked the coalescence, infrastructure and connections with leadership necessary to be a formidable force with members of Congress. Few were more dismayed than the strongest supporters for faith-based initiatives in Congress, who contended that the Bush administration's legislative record on the faith agenda reflected a desire to have the continuing fight work as a political issue.

In the absence of new legislative authority, Bush moved aggressively to advance the Faith-Based Initiative through executive orders, rule changes, managerial realignment in federal agencies and other innovative uses of the prerogatives of his office. Chief among those innovations was the creation of the high-profile special White House Office of Faith-Based and Community Initiatives (FBCI). Complementing the White House office, FBCI centers were created by executive order in 11 government agencies, each with a carefully selected director and staff empowered to articulate, advance and oversee coordinated efforts to win more financial support for faith-based social services. Other agencies and quasi-governmental entities established similar offices and functions in areas ranging from citizen service to homeownership and business development to energy conservation.

Bush's executive orders directed all federal agencies to review their rules and internal operations to ensure that they provided equal treatment for faith-based groups. The Bush effort undermined and overcame the "culture of resistance" that had existed in the federal government toward faith-based organizations' participation in social service contracts. "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," said Robert Tuttle of George Washington University School of Law.

The legacy of this effort, to its architects and admirers, included: 16 federal rules rewritten to help faith-based organizations provide government services on a "level playing field" with secular groups and without diminishing their religious character; training and assistance provided to more than 100,000 religious and secular grassroots organizations through regional conferences around the country; 36 states and more than 100 cities encouraged to create faith-based offices or designate liaisons to religious communities; about \$300 million in government money set aside to help small faith-based and community organizations apply for grants and build their

organizational capacity; and the use of vouchers advanced so government money could flow to even the most intensely religious organizations without violating constitutional laws separating church and state.

A number of program initiatives were adopted during the Bush presidency that potentially or explicitly included faith-based groups in the mix of providers, but without putting them front-and-center as principal to the effort. The most notable of these programmatic initiatives begun during the Bush presidency is PEPFAR – the President’s Emergency Plan for AIDS Relief. PEPFAR made a massive, \$15 billion commitment to AIDS relief in Africa. In July 2008, PEPFAR was extended through the end of 2013 and expanded for up to \$48 billion more to combat global HIV/AIDS, tuberculosis and malaria. Obama has highlighted the global AIDS initiative as a success of the Bush administration.

Using religious and other community-based organizations as social support networks was a central tenet of Bush administration approaches in several other programmatic initiatives that met with some success. The Mentoring Children of Prisoners and the Prisoner Reentry programs are examples of this approach, programs that establish mentoring relationships for people in need using the social networking apparatus of religious charities as a keystone. The Compassion Capital Fund, the only pot of new money established expressly as part of the Bush Faith-Based and Community Initiative, has as its primary purpose the building of organizational capacity, in part by connecting small and less-experienced community groups in mentor-like relationships with more-established intermediary organizations that provide training. Obama signaled similar goals and approaches in his own developing plans during the campaign and since.

Many faith-based organizations report that Bush’s Faith-Based Initiative raised public awareness of their social service work. On the upside for advocates of faith-based services, there appears to be increased openness among more government officials to the possibility of partnering with faith-based groups. Many governors, for example, followed the Bush administration’s lead in advocating for similar initiatives at the state level. 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.

Yet the Bush White House Office of FBCI did not function without controversy, and questions remain about its operation. Criticism was raised about politicization of the effort, and concern voiced in a number of quarters – including the operational oversight arm of Congress, the Government Accountability Office – about inadequate guidance and administrative oversight of contracting entities with regard to what activities could be supported legally with public dollars. The heightened visibility had negative impacts also. Conflict over the Bush Faith-Based and Community Initiative translated into a big organizational boon for 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 plan then-Sen. Obama outlined in his campaign struck various observers as a continuation of the Bush policy. Obama called for a Council on Faith-Based and Neighborhood Partnerships which, like the Bush administration's Faith-Based and Community Initiative, would invite religious as well as secular nonprofits to compete for government service grants or contracts, and would provide training on how to partner successfully with the government. Obama vowed to differ from the Bush approach, first, by training larger faith-based and community groups to mentor smaller religious groups, and second, by working more closely with state and local governments to encourage the efforts of faith-based groups and to move the initiative out of Washington. But both were significant elements in the Bush administration's program.

"This council will not just be another name on the White House organization chart – it will be a critical part of my administration," Obama said in July 2008. As a focal point, Obama's proposal called for \$500 million in funding for a summer learning program for about 1 million American children who lag far behind their peers.

But the pivotal difference in the Obama and Bush approaches to partnerships with religious groups could be seen in their stance on whether religious organizations hiring for positions funded with taxpayer money retained the right they have under the Civil Rights Act to base employment decisions on a person's faith. In his remarks and campaign fact sheet from July 2008, Obama said he would not support the right of faith-based groups that receive public funding to "discriminate against ... the people you hire on the basis of their religion."

Most of the organizations that have followed or participated in the faith-based policy debates in Washington over the past eight years are both expectant and fearful of the return of religious hiring rights to the fore. Obama's statements on what he has referred to as hiring "discrimination" indicate that his administration is likely to move in the opposite direction of Bush, by seeking to limit the ability of faith organizations to hire co-religionists when they accept government funds. But legal and policy moves made by the Bush administration will likely make it difficult for the Obama administration to move quickly.

"The goal of this office will not be to favor one religious group over another, or even religious groups over secular groups," Obama said. "It will simply be to work on behalf of those organizations that want to work on behalf of our communities, and to do so without blurring the line that our founders wisely drew between church and state," he said at the National Prayer Breakfast. On Feb. 5, 2009, Obama signed Executive Order 13199 establishing the White House Office of Faith-Based and Neighborhood Partnerships to be headed by Joshua DuBois, who was acclaimed for his work on religious issues and outreach for Obama's campaign.

At the same time Obama created a 25-member Advisory Council, naming 15 of its members then and the remaining 10 in concert with the first meeting of the council, which was held April 6, 2009. The members of the Advisory Council serve for one-year terms and include a host of people with significant experience and wide-ranging views on church-and-state matters, as well as accomplished innovators in social service delivery.

In one important respect there appears to be considerable continuity between the Obama and Bush approaches. 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 initiatives. 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 and Community Initiative was the connection of the White House office 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. That operational structure is left largely intact by Obama – a central White House office, networked to affiliate offices in 11 federal agencies.

In other respects, developments to date indicate that Obama intends for his Faith-Based and Neighborhood Partnerships effort to diverge from the direction taken by Bush. The hallmark of the Bush initiative was a concentration on “leveling the playing field for federal contracting” to faith-based and other service organizations. By contrast, Obama has emphasized more of a policy developmental role. Four priority areas were outlined, each with considerable breadth and complexity: improving interfaith relations, both at home and abroad; strengthening the role of fathers in society; reducing poverty; and developing policies aimed at reducing the number of abortions.

There is another unresolved issue: whether and why religion influences differences in the effectiveness of services provided by faith-based organizations, if and where such differences do exist. Although anecdotes abound, there is scant evidence measuring or distinguishing the ways in which religion may explain differences in organizational performance. It may be that faith-based organizations are effective because they possess a higher probability of having certain traits – such as staff commitment, service range, community ties and strong relationships with clients – associated with strong performance.

It may be that faith-based groups resonate in a different way than secular groups with some clients; they may be able to respond more fully and effectively to the needs of individuals for whom religion is already important. Or, it may be that by strengthening religious belief and practices among people in their care, faith-related programs enhance individuals’ capacities to make fundamental changes in their lives and achieve secular goals of public social service programs. Unpacking these different pathways of influence on organizational performance will suggest very different avenues for public policy.

Other obstacles present themselves too. Resistance to government partnerships with religious organizations under the Obama administration may also come from the faith community, as it did under Bush. Some churches simply don’t want to accept government support because they see it as a potential source of unwanted control. Others are unaware of or unprepared for public funding. As noted in this report, a survey sponsored by the Rockefeller Institute’s Roundtable on Religion and Social Welfare Policy found that seven in 10 churches throughout the country sponsor social services, ranging widely from marriage counseling to food pantries. But relatively few congregations apply for or receive government funding to support such services. Many, in fact, don’t even know about changes in federal law over the past 10 years that were intended to make it easier for religious organizations to participate in taxpayer-funded services.

Among congregations that have sought government funds for social services, more than three-quarters found it hard to apply for and manage grants, according to the Roundtable's survey. Few have the organizational capacity and practices necessary to properly receive, manage and account for public funds. Several of the members of Obama's council are leading experts in working with and developing the capacity of smaller groups close to the community. It will be important to see what comes from this process.

Thus far, the Obama administration has begun to set out its own efforts to strengthen nonprofits and faith-based groups. The Strengthening Communities Fund, created by the American Recovery and Reinvestment Act of 2009, will make \$50 million worth of grants available for two programs:

- the Nonprofit Capacity-Building Program, which provides two-year matching grants of up to \$1 million to support faith-based and secular nonprofits.
- the State, Local and Tribal Government Capacity-Building Program, which provides two-year matching grants of up to \$250,000 to governments to help strengthen faith-based and secular nonprofits that are aiding families and communities during this economic downturn.

On the legislative front, extension of citizens' service programs was accomplished swiftly through the Edward M. Kennedy Serve America Act of 2009. However, reauthorization is still due this year for the Workforce Investment Act, whose programs are implicated in major ways in the American Recovery and Reinvestment Act, the massive effort by Obama and the 111th Congress to stimulate the economy. The Temporary Assistance for Needy Families program – and the core Charitable Choice provisions it contains – comes up for reauthorization in 2010. Both of those bills were the subject of intense debate in Congress over religious hiring rights, and one wonders whether advocates in those debates will again take up their positions in the trenches or be pulled toward consensus in a new environment.

“The big picture is that President Obama believes faith-based and smaller secular neighborhood organizations can play a role in American renewal. They can work with the federal government to address big problems. We're also going to make sure we have a keener eye toward the separation of church and state,” Joshua DuBois said in a February interview with The Associated Press.

In the *Christianity Today* blog on April 13, 2009, Melissa Rogers, director of the Center for Religion and Public Affairs at the Wake Forest University School of Divinity and a member of Obama's new Advisory Council, summarized the president's approach this way:

“The Obama White House has said that ensuring that these partnerships are in compliance with the Constitution is a priority, as is making sure that they are effective and sensibly arranged for both providers and beneficiaries. It has said it won't measure success by how many religious groups or secular groups get government money, but by whether its policy goals (like bringing about an inclusive economic recovery) are being achieved through these partnerships.

“The Obama office has a much broader mandate. There is an effort to see, for example, where the areas of agreement are on issues like encouraging responsible fatherhood, reducing the number of abortions, and promoting good stewardship of the environment. And the administration is involving religious and secular communities not only in discussions about social service partnerships but also about what the government’s policy should be on domestic and global poverty.”

The decisions of the new Obama administration and the next sessions of Congress will have a substantial effect on the continuation and expansion of the Faith-Based Initiative and related policies. The future rulings in the courts and the arc of interpretation of the First Amendment’s Free Exercise and Establishment clauses will also shape the course charted by this new White House Office of Faith-Based and Neighborhood Partnerships. Of course, much also depends on the competing social and economic challenges and priorities facing the nation.