

The Coalition Against Religious Discrimination

October 9, 2009

Dear Members of the President's Advisory Council on Faith-Based and Neighborhood Partnerships:

As you consider recommendations to reform the policies governing the partnerships between the government and faith-based organizations, **we write to urge you to restore longstanding religious liberty protections into these partnerships.** We believe that the policies pursued under the title "Faith-Based Initiative" by the previous Administration lack the proper constitutional safeguards and accountability measures that are necessary to preserve the independence of religious organizations, protect the religious liberty of government-funded program beneficiaries, and ensure proper use of taxpayer dollars.

The Coalition Against Religious Discrimination (CARD) is a broad and diverse group of leading religious, civil rights, educational, labor, health, and women's organizations. CARD formed in the mid-1990s specifically to oppose insertion of the legislative proposal commonly known as "charitable choice" into authorizing legislation for federal social service programs. Since then, CARD has continued to oppose efforts, such as the Bush Administration's Faith-Based Initiative, that further entrench and expand related policies in federal programs. Coalition members appreciate the important role religiously affiliated institutions historically have played in addressing many of our nation's most pressing social needs, as a complement to government-funded programs; indeed, many members of CARD are directly involved in this work. But we also recognize the dangers in many of the policy shifts pursued under the guise of charitable choice and the Faith-Based Initiative.

Recommendations

Before the implementation of the Faith-Based Initiative, religiously affiliated organizations already were among the main providers of social services. The Faith-Based Initiative, however, currently permits public funds to flow *directly* to houses of worship and other organizations that cannot or will not separate their religious and secular activities without the establishment of separate, religiously affiliated 501(c)(3) organizations.¹ Direct government funding of such organizations represents a radical erosion of First Amendment principles, endangering the integrity and autonomy of religious bodies by allowing government intrusion directly into the religious institution. **Accordingly, CARD believes that the Administration should amend current executive orders, regulations, and guidance materials to require houses of worship and other organizations that cannot or will not separate their religious and secular activities to separately incorporate in order to receive government funds.**

¹ Melissa Rogers, *Traditions of Church-State Separation: Some Ways They Have Protected Religion and Advanced Religious Freedom and How They are Threatened Today*, 18 J.L. & Pol. 277, 317 (2008).

CARD also remains deeply concerned that both charitable choice laws and the Faith-Based Initiative currently lack adequate religious liberty protections for program beneficiaries. Often the recipients of social service programming are vulnerable and in need of help from the government. Those in need should not be faced with the stark choice between services they need and the constitutional protections to which they are entitled. **Thus, the Council should recommend that the Administration amend executive orders, regulations, and guidance materials to ensure that government dollars fund only secular activities.** Currently, these documents prohibit government programs from including “inherently religious activities,” but this term is under-inclusive, permitting some religious activities that would violate the Constitution.²

CARD also believes the Council should recommend that the Administration amend executive orders, regulations, and guidance materials to require that program providers give proper notice to beneficiaries of their religious liberty rights. When beneficiaries enter a program, they should be informed of their right to object to the religious character of a provider and be transferred, within a reasonable period of time, to a reasonably accessible alternative provider that provides comparable services. They should also be informed that providers may not condition service upon beneficiaries’ participation in or attendance at any religious activities, whether within or outside the program.

Another deficiency in the current Faith-Based Initiative policies is the lack of clear directives, oversight, enforcement, and transparency. The current Faith-Based Initiative has failed to provide uniform guidance and training to ensure that providers understand constitutionally required religious liberty safeguards.³ **Accordingly, the Council should recommend that the President institute uniform guidance materials and training to ensure that providers understand constitutionally required religious liberty safeguards. The guidance should be inserted into contracts and grant agreements. Furthermore, providers should be required to demonstrate their adherence to the safeguards and government agencies should engage in oversight to ensure compliance.**⁴

Finally, the Initiative has lacked transparency: it is often difficult to even discern what organizations have received government, how much they have received, and what programs are being funded within the organization. This is particularly true when money is funneled through non-government intermediaries. **The Council should therefore recommend that government agencies make all guidance materials, grant announcements and agreements, contracts, and lists of recipients of funds, whether they received the funds from the agency or an intermediary, available on their website and otherwise available to the public.**

² See Ira C. Lupu & Robert W. Tuttle, *State of the Law 2008: A Cumulative Report on the Legal Developments Affecting Government Partnerships With Faith-Based Organizations*, at 19 (December 2008), http://www.religionandsocialpolicy.org/docs/legal/state_of_the_law_2008.pdf.

³ See “Faith-Based and Community Initiative,” GAO-06-616.

⁴ The vast majority of federal and state agencies were not monitoring whether the organizations were adhering to safeguards related to non-allowable religious activities and nondiscrimination against beneficiaries. *Id.* at 7, 36.

Conclusion

Charitable choice statutes and the loosening of safeguards in the Faith-Based Initiative have been counterproductive, undermining fundamental religious liberty protections. Past partnerships between government and religiously affiliated organizations have demonstrated well that necessary constitutional safeguards do not interfere with these organizations' ability to provide excellent service to Americans participating in federal programs.

CARD strongly believes that it is entirely possible to encourage charitable works and provide services to communities in need without weakening longstanding religious liberty protections. Therefore, we urge you to adopt our suggestions in your recommendations to the President. We urge you to recommend that the Administration restore religious liberty protections as critical components of the Faith-Based Initiative.

Thank you for your consideration. We look forward to working with you on this very important matter.

Respectfully,

Coalition Against Religious Discrimination