
Faith-based Initiatives

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Faith-based Initiatives

The Establishment Clause of the United States' Constitution forbids the making of any law, federal, state, or otherwise, regarding the establishment of religion or restricting the free exercise of religious beliefs. This constitutional requirement has delineated the relationship of government to religion through most of the history of the United States. While the Establishment Clause and the many United States' Supreme Court rulings cover the vast range of state and church relations, this paper focuses on this relationship in the context of government funding for social services.

In the United States, faith-based organizations have for many years provided services, largely on their own accord, to individuals in need. Government involvement with providing social services greatly expanded in the twentieth century. Federal and state governments continued to acknowledge the role of faith-based organizations in providing social services, but allowing these organizations to access government dollars raised constitutional concerns. Most of these concerns focused on separation of church and state issues as determined by the U.S. Supreme Court. Starting in the mid twentieth century, the Supreme Court determined, through a series of rulings, that it was unconstitutional for government dollars to be used by a faith-based organization to proselytize. As a result, any organization wishing to access government dollars would have to go to great lengths to differentiate between providing religious services and social services.

Essentially two tracks were taken by faith-based organizations. Smaller faith-based organizations continued to provide services to the needy but declined to pursue government assistance. Larger organizations, such as the Catholic Church, established affiliated nonprofit entities, i.e., Catholic Charities, to provide government funded social services.

Charitable Choice

Revolutionary changes were made to the federal welfare program in 1996. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) eliminated the Aid to Families and Dependent Children program and established the Temporary Assistance for Needy Families (TANF) program. For the first time since its inception in the 1930s, federal welfare assistance would no longer be an entitlement, and benefits would be terminated after 60 months. The focus of the TANF program is on work. With the shift in focus, the U.S. Congress recognized the value of faith-based organizations in helping families achieve independence by providing families with the necessary skills to succeed in the workplace. Congress also recognized the difficulties faith-based organizations could face if they wanted to participate in the TANF program.

PRWORA included a charitable choice provision that precluded states from excluding faith-based organizations from participating in government contracts because they are sectarian. Therefore, states were required to treat religious organizations the same as any other nongovernmental service provider with regard to awarding service contracts “without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries...” As a result of charitable choice, faith-based organizations would no longer have to set up nonprofit affiliates to provide government funded services. Or, more simply put, faith-based organizations could participate in certain government programs without having to lose their religious identity.

Federal Faith-based Initiatives

Almost immediately after being sworn into office in 2001, President George W. Bush established a White House Office of Faith-Based and Community Initiatives. The executive order establishing the office stated that its purpose is to “enlist, equip, enable, empower, and expand the work of faith-based and other community organizations to the extent permitted by law.”

In addition to establishing the White House Office, the President, through a series of executive orders, established adjunct faith-based offices in various federal departments. “Executive Department Centers for Faith-Based and Community Initiatives” were created in the following federal agencies:

- Department of Justice;
- Department of Education;
- Department of Labor;
- Department of Health and Human Services;
- Department of Housing and Urban Development;
- Department of Agriculture; and
- Agency for International Development.

The White House Office oversees and coordinates the activities of these “centers.” The centers’ responsibilities include coordinating department-wide efforts to “incorporate faith-based and community organizations in department programs and initiatives” when possible; and developing

“pilot and demonstration programs to increase the participation of faith-based and other community organizations in federal as well as State and local initiatives.”

Another executive order laid the framework for which faith-based and community organizations could access federal grants. The order specified that federal assistance could include grants, contracts, loans or loan guarantees, property, cooperative agreements, food, or direct appropriations. Tax credits, deductions, or exemptions, however, were not included. Further, social service programs were defined as programs “administered by the Federal government or by a State or local government using Federal financial assistance” providing services that reduce poverty, revitalize communities, promote self-sufficiency for low-income families and individuals, and generally help needy people. The order also stated that any organization receiving federal funds cannot discriminate on the basis of religion or religious belief. In addition, the order reiterated that, following the Supreme Court’s determination, faith-based organizations cannot proselytize using federal assistance, but faith-based organizations may compete for federal assistance without affecting their ability to conduct overtly sectarian activities.

Federal Implementation

As mentioned above, the White House Office is responsible for disseminating information to faith-based organizations interested in obtaining federal grants and for coordinating the activities of the various faith-based and community centers located in other federal agencies. The White House Office established a web page providing a “how to process” that faith-based and community organizations may use to access federal grants. The web page lists grants that may be of interest to faith-based and community organizations and provides Internet links to the various federal agencies that administer the relevant grant programs.

Two types of federal grant programs may provide funding for faith-based organizations. Block grants are made generally to states or localities based on a formula. States or localities often distribute these funds based on their own laws, rules, or regulations. States or localities may award federal block grant funds to faith-based or community organizations. Block grants generally aid large populations; examples of this include the TANF block grant for families on welfare and the Workforce Investment Act, which provides job training and employment assistance. Discretionary grants are awarded on a competitive basis by a federal agency. Grant recipients may include state or local government agencies, nonprofit entities, and faith-based or community organizations. Examples of discretionary grants include the Youthbuild program, Healthcare for the Homeless, and Job Opportunities for Low Income Individuals.

While the federal government ultimately has little control over distribution of block grant funds, it does control the distribution of discretionary grant funds. If a faith-based or community organization requires assistance in applying for a discretionary grant, the White House Office’s web page lists a contact person for each grant program who can provide technical assistance. In

federal fiscal 2003, \$14.5 billion was available for discretionary federal grants in the five largest agencies in which centers for faith-based and community organizations were established. Of that \$14.5 billion, faith-based and community organizations received \$1.17 billion nationwide in federal fiscal 2003. **Exhibit 1** lists the federal agencies and the amount of funds available and distributed.

Exhibit 1
**Federal Discretionary Grant Funds Distributed to Faith-based and
 Community Organizations for Selected Federal Agencies**
Federal Fiscal 2003

<u>Federal Agency</u>	<u>Discretionary Grant Amounts</u>	<u>Amount to Faith-based and Community Organizations</u>	<u>Percent</u>
Health and Human Services	\$10,874,318,385	\$567,875,824	5.2%
Housing and Urban Development	2,197,738,326	532,073,257	24.2%
Education	134,699,000	6,817,999	5.1%
Justice	791,700,000	51,592,369	6.5%
Labor	512,362,317	11,342,124	2.2%
Total	\$14,510,818,028	\$1,169,701,573	8.1%

Source: White House Office of Faith-based and Community Initiatives, March 2, 2004

While discretionary grant programs are generally open to any type of organization, a specific discretionary grant program has been established that focuses exclusively on faith-based and community organizations. Capital Compassion Fund grants may be used to help faith-based and community organizations increase their ability to provide social services. In addition, the Capital Compassion Fund may provide grants to organizations that assist other faith-based and community organizations in obtaining federal discretionary grants.

Faith-based at the State Level

The enactment of the charitable choice provision of PRWORA in 1996, led many states to alter their criteria for participation of faith-based organizations. According to the National Conference of State Legislatures (NCSL), more than one-half of the states have created their own charitable choice provision or established an office of faith-based initiatives. Generally, NCSL reports that states have pursued one or more of the following regarding the implementation of a faith-based initiative:

- revising procurement policies to contract with faith-based organizations;
- conducting studies of the faith community to gauge their interest and involvement in offering social services;
- conducting workshops on grant writing and welfare reform for faith-based organizations in order to apply for government funds; and
- creating an office of faith-based initiatives or designating a state liaison.

At least nine states, according to NCSL, have altered procurement policies to allow faith-based organizations to compete for contracts. According to the White House Office, 15 states, including Maryland and the District of Columbia, have designated a liaison for faith-based initiatives, and seven states, including Maryland, have established a discernable Office of Faith-Based Initiatives.

Regardless of the requirements of PRWORA, many states already had provisions in their constitutions concerning faith-based organizations. A 2002 report by Ira C. Lupu and Robert W. Tuttle, entitled *Government Partnerships with Faith-Based Service Providers, State of the Law*, provided a summary of constitutional provisions of various states. Most of the provisions concerned the transfer of state funds to faith-based organizations.

- Ten state constitutions, including Maryland, grant faith-based organizations the same freedoms granted by the United States Constitution.
- Seven states' constitutions specifically prohibit financing faith-based organizations or places of worship.
- Twenty-nine states' constitutions specifically forbid financing for religious schools.
- Ten states' constitutions extend the previous limitations to direct and indirect financing of faith-based organizations.

Charitable Choice and Faith-based Initiatives in Maryland

Maryland has a long history of involvement with faith-based organizations. Over the years Maryland has provided State funds to religiously affiliated hospitals, nursing homes, and private institutions of higher education. These funds primarily are for service-related activities such as patient care. Recently, although not without some controversy, the State has also earmarked specific funds for textbooks in private schools, some of which may also have

religious affiliations. In addition, the State's capital program may directly fund religious organizations. These funds, however, are given with strict requirements for the use of the funds and the legislation that authorizes the disbursement of State funds prohibits their use in order to proselytize.

Maryland has participated in charitable choice since 1996. Article 88A, Section 47, contains the following language regarding faith-based organizations:

“(a) In providing assistance under this subtitle, the Department (Human Resources) may contract with charitable organizations, private organizations, religious organizations, and institutions of higher education.

(b) Except as provided in subsection (c) of this section, a religious organization may participate in the Family Investment Program on the same basis as any other nongovernmental entity.

(c) An individual may not be required to accept assistance from a religious organization if acceptance would violate the individual's bona fide religious beliefs and practices.”

Additional language was proposed in 1997 that would have guaranteed that any religious organization receiving funds could not proselytize in any way. The language was rejected because the United States Constitution and Supreme Court rulings already addressed that issue. Ultimately, however, compromise language was included in the Maryland Code that states, “an organization funded under the Family Investment Program may not discriminate on the basis of religion, religious belief, or refusal to participate in a religious practice with respect to any individual's receipt of service under the Program.” Again, this language mirrors language at the federal level.

The purpose of Charitable Choice was to make it easier for faith-based organizations to participate in certain government programs, particularly programs that provide social services. Since the inception of welfare reform, Maryland's experience has been mixed. When PRWORA was passed in 1996 many faith-based organizations, particularly in Baltimore City, opposed participating in a system with which they fundamentally disagreed.

In the early years of welfare reform, the Department of Human Resources' (DHR) local departments of social services entered into few contracts with faith-based organizations. Only the Baltimore City Department of Social Services contracted directly with a faith-based organization. In 1997 the city's local department contracted with Pain Memorial, a local church, to provide job placement services for welfare recipients. The contract expired in 2000 and was not renewed because in the open bidding process the church did not submit a competitive bid. Faith-based organizations have subcontracted with local department contractors to provide support services such as child daycare and clothing.

Because the Pain Memorial contract was the only one of its type and the contract was not renewed, the previous administration was dubious about the effectiveness of Charitable Choice. The concern was that faith-based organizations lacked the administrative infrastructure to efficiently and effectively implement a contract. These groups also could not effectively compete with other nonprofit and private groups that also bid on contracts. Despite PRWORA’s charitable choice provision and President Bush’s efforts to empower faith-based and community organizations, DHR did not receive any unsolicited bids from faith-based organizations to provide services from 1996 through July 2001.

Equally unsuccessful were the State’s efforts to enlist faith-based organizations to serve as “third-party payees” for children in families that exceeded the 60-month time limit on the receipt of welfare benefits or who were sanctioned for noncompliance with program requirements. It was thought that faith-based organizations would “step up” and serve as third-party payees. This provision of the State’s 1996 welfare reform law was repealed in 2001 because of the difficulty DHR had in locating persons, including faith-based organizations, to serve as third-party payees.

Regardless of the State’s experience with Charitable Choice, faith-based organizations have accessed government grants in Maryland. Although DHR is prohibited from asking potential bidders from identifying whether they are a faith-based organization, DHR was able to provide a list of faith-based organizations that have contracted with the State. **Exhibit 2** lists the organizations and the services provided.

Exhibit 2
Faith-based Organizations under State Contract

<u>Faith-based Organization</u>	<u>Type of Services</u>
Lutheran Social Services National Capital Area	Employment services for refugees in the Baltimore metropolitan area, Montgomery County, and Prince George’s County
YWCA of Annapolis and Anne Arundel County	Domestic violence and victims of crime assistance for victims of domestic violence in Anne Arundel County
Marian House, Inc.	Domestic violence and victims of crime assistance for victims of domestic violence in Baltimore City
Sinai Hospital of Baltimore	Domestic violence and victims of crime assistance for victims of domestic violence in Baltimore City
Mercy Medical Center	Two domestic violence and victims of crime assistance contracts for victims of domestic violence and rape/sexual assault in Baltimore City

Source: Department of Human Resources, September 22, 2004

Current Status

With the election of a new Maryland Governor in 2002, the faith-based and community initiative was reinvigorated in the Executive Branch. It was anticipated that the Governor would submit legislation establishing an office similar to the White House Office of Faith-Based and Community Initiatives. A bill establishing an office was not part of the Governor's legislative package during the 2003 or 2004 sessions. Instead, legislation was introduced and passed by the House of Delegates in 2003 that would have established a Community and Faith-based Partnership Council. The legislation ultimately failed, but for the past two sessions language was included in the budget bill that prohibited the establishment of a faith-based or similar type office, unless the office was authorized by the General Assembly.

During deliberations on the language in the 2004 session, the Administration argued that the language would affect Maryland's ability to receive federal grants. There are no indications that the language actually prevents a Maryland governmental entity or a Maryland faith-based and community organization from receiving federal funds. A review of federal web sites concerning faith-based programs and funding revealed no evidence that the creation of a state office is a condition for receiving federal grants. While eligibility criteria may vary for each discretionary grant listed in the White House Office's web page, no program specifies the existence of a state office or even a designated state liaison as a condition for grant eligibility. Finally, since the budget language has been in place, the State has continued to receive block grants, and several faith-based organizations have been awarded discretionary grants directly from the federal government including:

- the Associated Black Charities of Baltimore which received \$1.5 million from the Capital Compassion Fund; and
- the Community Ministry of Montgomery County, Inc. which received \$50,000 from the Capital Compassion Fund.

Other Maryland faith-based and community organizations may have also been awarded discretionary grants, but federal government web sites do not identify whether an organization is faith-based. For example, Mission of Mercy in Riverdale was awarded \$75,000 and was one of several Maryland organizations that received funds for Mentoring of Children of Prisoners. Mentoring Children of Prisoners was one of the grant programs highlighted on the White House Office's web page, but since the program is open to any qualified nonprofit organization, it cannot be readily determined that the Mission of Mercy is a faith-based organization.

Despite the prohibition against establishing an office, the Administration has taken steps to increase outreach to faith-based and community organizations. A person in the Lieutenant Governor's office was initially designated as the State liaison with the federal government to coordinate State activities regarding faith-based and community initiatives. As with a state office, there are no indications that designating a liaison is necessary to qualify for federal funds. DHR's web site provides information regarding federal grants available for faith-based

organizations. In addition, a staff person in DHR's Community Services Administration provides technical support for faith-based organizations wishing to access federal discretionary grants.

In October 2004 the Governor established the Office of Community Initiatives through an executive order. In addition to its delineated responsibilities, the office will coordinate the activities of the Governor's Office on Service and Volunteerism and the Volunteer Maryland Program. As specified in the executive order, some of the office's 14 responsibilities include:

- “coordinating community and volunteer service activities within the State;
- advising the Governor on policies and measures to enhance and improve the delivery of community programs and initiatives;
- serving as the principal liaison to the White House Office of Faith-Based and Community Initiatives;
- reviewing State and federal legislation to ensure that community organizations are afforded the fullest opportunity permitted by law to “equally” participate in the competitive process for federal, State, and private funding; and
- coordinating State programs providing health, social, educational, or other community services within the restrictions created by the Maryland General Assembly through language in the fiscal 2005 budget, which maintains the eligibility of faith-based organizations to receive monies under any program funded in the 2005 budget.”

As specified in the executive order, the office will primarily be coordinating, monitoring, and reviewing. Many of the office's responsibilities are similar to the responsibilities of the White House Office. The office's establishment does raise questions regarding compliance with the fiscal 2005 budget language. The budget language provides that “no funds in this budget may be expended pursuant to, or in furtherance of, any policy, program, or office, so named or otherwise, to purposefully promote or facilitate participation of faith-based organizations in State programs...”

Except for acting as a liaison to the White House Office, the executive order does not directly address “faith-based organizations” in Maryland. Nevertheless, President Bush's initiative directly links faith-based and community organizations, so it can be assumed that the State office will also include faith-based organizations in its activities. The executive order's wording appears benign enough so that it does not contradict the budget language, and it does mention that the office will work within the restrictions of the budget language. By staying focused on all types of community organizations, the office should operate within its bounds. If the office increases its focus on faith-based organizations or develops programs that directly

benefit faith-based organizations similar to the federal Capital Compassion Fund, the actions of the office may violate the budget language.

A person familiar with the President's Faith-Based and Community Initiative indicated that the value of a state office is at the "grass roots" level. A state faith-based and community initiative office could mobilize local groups to obtain discretionary grants and could eliminate or navigate around obstructions for these groups.