

Institute for Science and Human Values

Charitable Choice and Faith-based Campaign

Charitable Choice, The Clinton/Ashcroft Legacy, the Faith-Based and Community Initiative, courtesy of Bush and now the Faith-based and Neighborhood Partnerships, Obama's Spin

Inconsistent with the constitution:

"Charitable choice" and "faith based initiatives" allow government funds to flow directly to houses of worship and other pervasively religious organizations. Government subsidies for religion violate the First Amendment's Establishment Clause. *The Institute for Science and Human Values* has, since its inception, (and prior due to the work of its current public policy director) worked to end Charitable Choice provisions in Congressional bills and Faith Based Offices in the Executive Branch of government since charitable choice was first introduced in Congress during the Clinton administration. Secular and religious groups joining together prevailed in the Congress during the George Bush presidency in stopping or deleting Charitable Choice provisions in bills and acts. The struggle moved to the White House where George Bush, determined to satisfy radical religious supporters opened the first office of *Faith-based and Community Initiative* funding religious organizations to provide taxpayer's beneficial programs with taxpayers dollars via federal government agencies. It was our hope that President Obama would end this cozy relationship between government and religion. Instead he put his own stamp on it; first by changing the name to the White House *Office of Faith-Based and Neighborhood Partnership*. He constituted the President's *Advisory Council on Faith-Based and Neighborhood Partnerships*. This council was originally created by President George W. Bush, and reorganized under President Obama by executive order on February 5th 2009. The President has tasked them with the creation of several new initiatives to find new ways for both secular and faith-based organizations to better serve their communities.

The Advisory council created and then met to discuss and deliberate the preliminary reports and recommendations of each task force assigned to one of six key areas. These areas included Responsible Fatherhood and Healthy Families, Economic Recovery and Domestic Poverty, Reform of the Office, Environment and Climate Change, Inter-religious Cooperation, and Global Poverty and Development. Overall, the general theme of all of the reports focused on new ways to connect nongovernmental organizations (NGOs) with organizations and agencies within the government. After all of the reports and deliberations there was an opportunity for public comment.

Perhaps the most important report came from the Reform of the Office Task Force. This subgroup was charged with reforming the *Office of Faith-based and Neighborhood Partnerships* to match President Obama's vision of the organization's mandate. Their recommendations included, "Strengthening Constitutional and Legal Footing for Partnerships," "Clarifying

Prohibited Uses of Direct Federal Financial Assistance,” “Emphasizing Separation Requirements and Protections for Religious Identity,” and “Increasing Transparency Regarding Federally Funded Partnerships.” All of these goals have the intent of ensuring that all federal assistance complies with constitutional requirements of separation of church and state and the Establishment Clause.

In this, the fifth year of his presidency Obama appointed Melissa Rogers as the Director of the *Office of Faith based and Neighborhood Partnerships*. In coalition with other organizations ISHV laid out important concerns on the state of President Obama’s Executive Order in a letter to Director Rogers.

In particular, we believe it is important to have exacting language in the following areas:

- the right of beneficiaries to have access to an alternative provider if they object to the religious character of a social service provider;
- the requirement that beneficiaries be informed of their rights;
- the constitutional requirement that government money may not fund “explicitly religious activities” and the definition of such activities; and
- the mandate that agencies perform oversight and provide transparency to ensure that constitutional mandates are respected.

Inadvisable:

Under current law, religion and government cooperate in the provision of social services without "charitable choice." Houses of worship and other pervasively religious organizations may create separate affiliates that use tax money to provide social services without integrating religious activities into the tax-funded services. Proposals to funnel government dollars directly into houses of worship and religious organizations endanger both the sanctity of religion and the integrity of government. The government is prohibited by the Constitution of favoring one religion over another religion.

Imprudent:

End Federally Funded Employment Discrimination

“Traditionally, religiously affiliated organizations that accepted government funds to provide social services were bound by the same rules as other non-religious providers, including the ban on discriminating in hiring based on religion for positions funded with taxpayer money. When the Bush Administration implemented its Faith-Based Initiative, it fundamentally changed these rules, allowing religious organizations to take government funds and use those funds to discriminate in hiring a qualified individual based on nothing more than her or his religious beliefs. We strongly opposed this change, as the federal government should never subsidize

workplace discrimination.” Instead of correcting this egregious ruling the Obama administration sidestepped it by referring complaints of hiring discrimination (if a beneficiary knows they have the right to submit a complaint) to the Justice Department for review and perhaps action on a case by case basis. Further in our letter to Director Rogers

“We ask that the Administration fulfill its campaign promise and end taxpayer-funded employment discrimination through the actions listed below.

Rescind Regulations, Policies, and Guidance that Permit Federally Funded Employment Discrimination

After Congress rejected legislation that would have sanctioned employment discrimination in most federally funded social service programs, the Bush Administration implemented that policy through executive orders and regulations across federal agencies. These remain in place today. In order to effectuate the promise of ending federally funded employment discrimination, the Administration must revoke the executive orders and regulations and any accompanying or supporting policies and guidance documents.

Review and Withdraw the June 29, 2007, Office of Legal Counsel Memorandum re: RFRA

The White House should direct the Justice Department’s Office of Legal Counsel (OLC) to review and withdraw its June 29, 2007, Memorandum interpreting the Religious Freedom Restoration Act of 1993 (RFRA), titled “Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act.” The OLC memo wrongly asserts that RFRA is “reasonably construed” to require that a federal agency categorically exempt religious organizations from explicit federal nondiscrimination provisions tied to grant programs. This interpretation of RFRA, which provides for a blanket override of statutory religious nondiscrimination provisions, is not justified under applicable legal standards and threatens core civil rights and religious freedom protections. Accordingly, CARD renews its request for the review and withdrawal of this OLC memo.

Restore Executive Order 11246

Executive Order 11246 prohibits religious discrimination in all government contracts. This Executive Order, signed by President Lyndon B. Johnson in 1965, expanded upon decades of executive orders signed by Presidents Roosevelt, Truman, Eisenhower, and Kennedy, which barred private organizations from discriminating in hiring using federal funds. Yet, in 2002, President George W. Bush rolled back these traditional safeguards and core civil rights protections. Section 4(c) of Executive Order 13279 exempts religious organizations that receive government contracts from the requirements of Executive Order 11246 and allows them to discriminate in hiring based on religion.

This civil rights rollback remains in place today. We ask, therefore, that the Administration restore Executive Order 11246 to its original form, reinstating the nondiscrimination provision for all organizations that contract with the government.