

CAPITAL COMMENTARY

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Whose Social Services Are They?

Throughout the 20th century, only one case dealing with government funding of faith-based social service groups has made its way to the U.S. Supreme Court. The ACLU and other church-state watchdog groups, which typically leap to attack any government funding of faith-based K-12 education, have until now reacted to government funding of faith-based social service agencies with a collective yawn.

However, all that is changing. Strict separationist watchdogs are on the prowl, and a spate of cases dealing with government funding of faith-based agencies is in the lower courts. In Georgia a lawsuit against a Methodist children's home that receives state funding is charging employment discrimination because the home has a policy of only hiring Christians and recently fired a lesbian counselor. In Wisconsin the right of a Christian drug treatment program to receive government funds has been challenged in court because it integrates religious perspectives into its program. In Louisiana yet another case is challenging a state-funded abstinence-only sex-education program.

In the coming years, the courts will be faced with making decisions in these and similar cases. The outcome will have enormous import for the future of government partnerships with faith-based social service programs that President Bush and others are now touting. The issue is not whether government funding of faith-based social services passes constitutional standards, but under what terms and conditions faith-based organizations may receive government funds. Will they be able to maintain their distinctive religious character and practices or not?

The answer that the courts and policy makers give to that question will largely turn on the mindset with which they approach the question. Some begin with the mindset, as one scholar puts it, that regardless of "whether government delivers [social services] through a state agency or a faith-based organization, the program is state action." Others have put it more gently: "Public values must follow public dollars."

The idea is that whenever government helps fund the services of a faith-based organization, that organization becomes, for all intents and purposes, an extension of the government and those services become government services. This perspective puts the government in an all-dominating position in society. Anything it touches becomes by that fact governmental in nature. It naturally follows that agencies whose services have been transformed into government services will have to tone down or even abandon completely their distinctive religious practices.

A different mindset begins with the observation that government is not the only institution or the all-dominating institution in society. Families, religious congregations, voluntary associations, labor unions, and advocacy groups, all have as much of a right to exist independently as does the government. Government needs to acknowledge this fact and protect the autonomy and freedom of this wonderful plurality of groups. And when government decides to fund some of the services these groups offer because it judges them to be of public benefit, those groups have a right to maintain their distinctive character.

As the courts struggle with the effect government funds have on the autonomy of faith-based organizations, their starting point needs to be the mindset that recognizes the rights of independent, free-standing faith-based groups. Courts must reject the assumption that with government funding these groups become mere agents of government. If this distinction is not maintained, faith-based groups will be turned into clones of the government. And the very advantages that many are hoping to gain through providing public service through a diversity of faith-based and community groups will be lost.

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