

Preserve Charitable Choice in TANF Reauthorization

Charitable Choice has been an operating rule of the federal-state welfare program since TANF was created by the federal welfare reform law (PRWORA) in 1996.

Charitable Choice is an equal opportunity rule to guide state and local authorities when they spend their federal welfare block grants. It enables them to choose effective faith-based providers on the same basis as any other nongovernmental provider without impairing the religious character of those providers nor diminishing the religious freedom of people seeking the social services.

Charitable Choice:

- ensures that all effective providers can compete for funding by banning discrimination against providers that are religious;
- protects beneficiaries by requiring providers to serve them without religious discrimination, ensuring that religious practices are voluntary, and obligating states to ensure an acceptable alternative for all beneficiaries;
- respects constitutional guidelines by ensuring that grants and contracts cannot be used to pay for inherently religious activities such as worship, religious instruction, and proselytization;
- protects the religious character of faith-based providers by ensuring that they can retain a religious environment and maintain their right under the 1964 Civil Rights Act, Title VII, to take faith into account in selecting staff.

Congress incorporated Charitable Choice into four federal programs during the Clinton administration: TANF (1996), Welfare-to-Work (1997), CSBG (1998), and SAMHSA drug treatment (2000). Both Al Gore (at the Salvation Army in Atlanta, May 24, 1999) and George W. Bush advocated expanding it to additional programs.

Charitable Choice has made a measurable difference in the ability of previously marginalized faith-based organizations to become partners with government to serve the needy. A study of contracting with faith-based organizations in nine states shows a significant change in just two years:

<u>year</u>	<u># of contracts</u>	<u>\$ value of contracts</u>
2000	54	\$7.6 million
2002	485	\$88.5 million

(Sherman, Collaborations Catalogue, Hudson Faith in Communities, 2002)

A survey of faith-based contractors in 15 states in 2002 showed that more than half (56%) started contracting with government only after Charitable Choice was adopted. A wide range of faiths were involved: Jewish, evangelical Protestant, mainline Protestant, Catholic, and ecumenical. More than a third of the groups were African-American, with another 18% mixed race and ethnicity, and 46% white. (Green and Sherman, Fruitful Collaborations, Hudson Faith in Families, 2002)

Several governors have issued executive orders to implement Charitable Choice. Some states have crafted explicit religious liberty protections for beneficiaries of services; some have clarified in their procurement rules new protections for the religious character of faith-based contractors.

States have been somewhat slow to ensure that they comply with Charitable Choice when they contract using TANF funds (General Accounting Office, *Charitable Choice: Federal Guidance on Statutory Provisions Could Improve Consistency of Implementation*, Sept. 2002; GAO-02-887).

Charitable Choice regulations have now been issued for TANF funds, effective Oct. 20, 2003.

Twenty states, half with Democratic governors, half with Republican governors, have opened state offices of faith-based and community initiatives; 180 mayors have new partnership initiatives.

Charitable Choice in TANF has been challenged in court several times (TX, WI, CA); each time the challenge was that the state had misapplied a requirement.

Charitable Choice fully honors the Constitution's First Amendment. It was developed due to, not in opposition to, constitutional analysis. It follows the Supreme Court's decisive shift away from no-aid separationism to a doctrine of equal treatment of all private organizations, secular and religious.

Charitable Choice facilitates expanded partnerships between government and front-line faith-based service organizations to ensure the best possible welfare services. By law, Charitable Choice prohibits the diversion of welfare funds to evangelism, church expansion, or devotional practices.

Charitable Choice does not promote government-funded job discrimination. It affirms the long-standing right of religious organization, under the 1964 Civil Rights Act, to select staff who are committed to their religious mission and vision.

The Constitution requires evenhandedness and religious liberty. Opponents of Charitable Choice insist on rigid secularism. The First Amendment obligates the government to honor America's diversity, religious and nonreligious. Charitable Choice ensures there is no bias for or against secular or religious providers.

Under Charitable Choice, government does not dole out funds according to denomination. Instead, Charitable Choice requires the government to focus on the effectiveness and efficiency of providers, not on whether they are religious or secular. Charitable Choice honors the religious liberty of both providers and clients while ensuring that taxpayers support the most effective services.

Resources

A Guide to Charitable Choice: The Rules of Section 104 of the 1996 Federal Welfare Law Governing State Cooperation with Faith-based Social-Service Providers (Center for Public Justice and the Christian Legal Society, 1997) <http://downloads.weblogger.com/gems/cpj/CCGuide.pdf>

S. Carlson-Thies, *Charitable Choice for Welfare and Community Services: An Implementation Guide for State, Local, and Federal Officials* (Center for Public Justice, 2000) <http://downloads.weblogger.com/gems/cpj/CCImplementationGuide.pdf>

Mark Ragan, et al., *Scanning the Policy Environment for Faith-Based Social Services in the United States: Results of a 50-State Study* (Roundtable on Religion and Social Welfare Policy, Oct. 2003) http://www.religionandsocialpolicy.org/docs/events/2003_annual_conference/11-17-2003_state_scan.pdf