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Faith and Action in the Faith-based Initiative

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David Kuo's critical commentary on the faith-based initiative, *Please, Keep Faith*, posted on Beliefnet.com in mid-February,¹ provoked an outburst of media attention on the Bush policy such as had not been seen since the publication of John DiIulio's memo to an Esquire reporter in October, 2002.² Apparently, for many reporters the important, but complex, matter of reframing government's interaction with religious social-service providers is newsworthy mainly to the degree that it is controversial. And what could be more titillating than the charge of broken promises due to lukewarm administration commitment that Kuo, former deputy director of the White House Office of Faith-Based and Community Initiatives, made, similar to the charge by DiIulio, first director of the same special office, that senior administration officials didn't take Bush's initiative seriously enough?

¹ http://www.beliefnet.com/story/160/story_16092_1.html

² DiIulio letter to Ron Suskind, October 24, 2002.

Sadly, it seems that attention inside the Beltway was drawn mainly by the spectacle of tales being told by former officials of a disliked administration. And outside the Beltway, where the media has given the faith-based initiative an even less-adequate airing, the critiques merely disheartened people praying for change, who wondered if it can be true that the faith-based initiative is only a political game that has changed nothing. But the media responses have little to do with the desire of Kuo and DiIulio to see a more vigorous fulfillment of President Bush's effort to rally the armies of compassion to gain a more effective American commitment to the needy by expanding the government's partnerships with faith-based and secular grassroots groups that serve their neighbors faithfully but with few resources.

The faith-based initiative which received a strong start during the previous administration when President Bill Clinton several times signed into law the Charitable Choice rules to ensure equal opportunity for faith-based groups in certain federal programs has always been dogged by the fear of many opponents (and the hope of some supporters) that it is a project to transfer federal dollars into the offering plates of churches to support their work of making converts and disciples. Of course it has never been that. The early Bush plans did include budget proposals for new programs and for reinstatement of the charitable deduction for nonitemizing federal taxpayers, but none of the programs would pay for religion instead of services and none of the money would be limited to faith-based groups. David Kuo rightly pointed out that the plans have been only partially achieved. Dug-in Democratic opposition is an obvious reason, but Kuo noted as well lukewarm Republican support, and he also tagged a less than heartfelt commitment to the initiative at the senior level in the White House.

Yet on the central goal of the Bush faith-based initiative reforming the federal system of support for social services so that faith-based providers are not excluded or discouraged very

important progress has been made. This re-engineering part of the initiative concerns the system of federal grants given to groups to support a wide range of services, and also the 85-90% of federal social-service money that is given to state and local governments and thereafter awarded to private organizations. These reforms that make faith-based groups eligible in all programs and that eliminate unnecessary restrictions on their religious character and activities are systemic; they have changed the rules for all federally funded social services, extending far beyond the handful of proposed new programs designed specifically to utilize community-serving secular and faith-based groups.

The 2001 White House report, *Unlevel Playing Field: Barriers to Participation by Faith-Based and Community Organizations in Federal Social Service Programs*, noted many impediments that used to stand in the way of explicitly faith-based groups that sought federal support. The chief problem was an overriding perception by Federal officials that close collaboration with religious organizations is legally suspect. Such worries had led to regulations, funding decisions, and grant conditions that placed faith-based applicants at a disadvantage. But the U.S. Supreme Court, at least in this area, has been handing down positive decisions. It has left behind the strict-separationist doctrine that required of the government no aid to religion and the related effort to identify which faith-based groups are so pervasively sectarian as to be disqualified from government support. The new concept, termed neutrality or equal treatment, obligates the government neither to favor nor disfavor an applicant merely because of its religious or secular character.

In a sense, all that the Bush faith-based initiative has done is to force the federal government's practices to catch up with this prior legal development. As Ira Lupu and Robert Tuttle of the Roundtable on Religion and Social Welfare Policy have recently said, The

architects of the Faith-Based and Community Initiative deserve a tremendous amount of credit for collapsing the normal time lag between legal change and bureaucratic change. . . . [T]he federal officers running the Initiative have essentially forced the kind of consciousness-raising on bureaucratic and social service culture about the exclusion of faith organizations.³ But those summary words conceal a great deal of detailed work accomplished in the face of much criticism from Capitol Hill and from powerful advocacy groups.

The previous administration had dragged its feet concerning Charitable Choice, doing little to inform state and local officials the officials who actually administer almost all of the federal funds to which the new rules apply about the provisions. But the Bush administration has issued Charitable Choice regulations, clarifying the requirements and the extent of their application. Even more important, to guide federal, state, and local officials who expend the bulk of federal funds which are not governed by Charitable Choice, in December, 2002, the President issued a path-breaking Equal Protection Executive Order (Executive Order 13279). The presidential directive mandates equal opportunity for faith-based applicants, protects their religious character, establishes guidelines to prevent the diversion of government money from social services to inherently religious activities like prayer and evangelism, and protects the religious liberty of beneficiaries. These equal treatment principles have now been encoded into the general administrative rules of various federal departments, to govern all the federal funds that support social services, whether those funds are awarded by federal, state, or local officials.

In addition, the White House Office of Faith-Based and Community Initiatives has developed a handbook of guidance for faith-based organizations interested in seeking federal support. And it has stepped deliberately into the middle of the most controversial issue, arguing

³ The Roundtable on Religion and Social Welfare Policy, transcript, Opening Remarks and Plenary Session,

vigorously that all government programs that award federal funds should honor, not abridge, the federal civil right of faith-based organizations to staff on a religious basis, just as secular organizations are able to select compatible employees.⁴ The White House has backed efforts in Congress to remove from various laws restrictions on that religious staffing freedom. The Equal Opportunity Executive Order reversed previous federal policy and made faith-based organizations that insist on religious staffing eligible to contract to provide services and products to the federal government (such contracting is distinct from federal funding of private social-service providers). While some religious organizations have advocated against religious staffing when government funds are involved and others have sought to keep from being dragged into the heated controversy, the urgency of defending the freedom has become apparent as opponents on the Hill casually accuse faith-based groups concerned about the religious commitments of potential staff of bigotry and of dragging irrelevant factors into personnel decisions.

The White House Office of Faith-Based and Community Initiatives and the counterpart Centers for Faith-based and Community Initiatives in 10 federal agencies are themselves among the most important achievements of the Bush initiative. These offices and their officials lead the process of identifying and removing legal and bureaucratic obstacles to expanded partnerships, organize training conferences and outreach efforts, and work with state and local officials to increase opportunities for faith-based and community-based programs. As one scholar of White House operations concluded early on, the creation of the Centers for Faith-based and Community Initiatives is one of the key achievements of the Bush initiative: in the long run, these cabinet

Thursday, December 9, 2004, State of the Law 2004, 2004 Annual Conference, Washington, DC, p. 5.

⁴ For a thorough discussion of the issue and the administration's actions, see Carl Esbeck, Stanley Carlson-Thies, and Ronald Sider, *The Freedom of Faith-Based Organizations to Staff on a Religious Basis* (Center for Public Justice, 2004).

centers will have a profound impact by facilitating and coordinating the rewriting of hundreds of regulations, leading to a changed distribution of federal money⁵

These institutional innovations and regulatory changes are the outcome of a significant and sustained expenditure of presidential, White House, and departmental attention, energy, and political capital. They have been achieved despite the inertia of the federal government; fierce opposition by powerful advocacy organizations; resistance from some of the government's traditional social-service partners; determined obstruction by many Democrats and incomplete support by Republicans, some of whom rank other issues as more important than serving the needy and others who worry that federal support may be more damaging than helpful to faith-based social-service providers. If there have been few legislative triumphs and if the reforms that have been made are only beginning to transform actual governmental practice, nonetheless the truth is that, in the words of a recent assessment of the Bush faith-based initiative, the President's vision of expanded opportunity for faith-based services has been pervasively and methodically implemented in the workings of the federal government.⁶

Yet fulfilling the promise of George W. Bush's campaign and presidential commitments to compassionate conservatism requires more than the many and vital institutional and policy changes that have been achieved. Without measuring progress by counting up new programs initiated or the number of millions of dollars allocated to support neighborhood healers, there are still reasons to join David Kuo and John DiIulio in hoping for a stronger administration commitment to the President's reform agenda. The apparently half-hearted, and now abandoned,

⁵ Kathryn Dunn Tenpas, *Can an Office Change a Country? The White House Office of Faith-Based and Community Initiatives, a Year in Review*, (Brookings Institution, July, 2002, updated October, 2002), p. 15.

⁶ Anne Farris, Richard Nathan, and David Wright, *The Expanding Administrative Presidency: George W. Bush and the Faith-Based Initiative* (Roundtable on Religion and Social Welfare Policy, August, 2004), Executive Summary. Note that, from early on, the administration ensured that the Office of Management of Budget, a key part of the

commitment to reinstating the charitable deduction is particularly troubling, given the very large increase in private giving that would have been encouraged by a relatively small reduction in tax revenue. The increased private is of great importance to charities, and the money would come without the strings that accompany government funds. The tax change would have been a valuable symbol, too, that the faith-based initiative is not exclusively about increasing access to federal funds.

The proposed fiscal year 2006 budget, with its drastic cuts to a number of social-services programs, is likewise troubling. Not that federal spending is a panacea nor that social programs have an inalienable right to life. Yet while ineffective programs should not be maintained, the President rightly often proclaims that a compassionate people and their government will not rest satisfied when so many Americans do not enjoy our society's prosperity, but the proposed cuts apparently were justified neither by proof that the targeted social needs no longer exist nor by a commitment to fund more-effective responses.

And much more remains to be accomplished to achieve an actual level playing field in government-funded social services. Despite the administration's Charitable Choice and equal treatment regulations, state and local officials who administer the great majority of federal funds often know little about the new federal standards and have done less to ensure that their practices conform to the new guidelines. The Center for Public Justice in 2000 documented poor state compliance with the 1996 Charitable Choice rules for welfare services, and a forthcoming study by Mathematica Policy Research demonstrates that many states continue to ignore some or all of the Charitable Choice standards. Federal departments, despite all their resources and myriad contacts, have given little detailed guidance to their state and local counterparts about the new

White House apparatus, was specifically committed to the faith-based initiative. The initiative's objectives are

requirements and how to meet them. The HHS Center for Faith-Based and Community Initiatives is following up the Mathematica survey of poor compliance with user-friendly training materials for state officials but its initiative so far stands virtually alone.⁷

The lack of sufficient guidance is particularly troubling in the new Access to Recovery substance-abuse treatment program. The promise of this initiative, according to Charles Curie, head of the federal administering agency, the Substance Abuse and Mental Health Services Administration, is that it ensures the availability of a full range of treatment options, including the transforming power of faith.⁸ To win an Access to Recovery grant, states had to promise to offer recovery-support services as well as their usual clinical-treatment programs, to recruit new providers, including faith-based programs, and to institute a voucher system to give addicts a choice of provider and to enable the providers they select to offer services incorporating religion, without violating the Constitution. But federal officials have not issued detailed guidelines for states about what constitutes equal opportunity for previously excluded faith-based treatment providers nor about the freedom they must give those providers to express religion in their programs. In the absence of well-publicized and clear standards, the anti-faith bias of most states' drug-treatment agencies and their traditional treatment partners has barely changed, so that in many states outreach efforts have been constricted, eligibility standards have been only minimally modified, and the terms of collaboration have shifted little. Robustly faith-based service providers, if recruited at all, confront restrictions on religious expression that they suspect must no longer be legal, but there are no detailed rules to which they can appeal nor,

incorporated into OMB's performance management system, which evaluates both departments and senior officials.

⁷ The Center for Public Justice has drafted one of the HHS guides and will be developing similar materials for the AmeriCorps State and National program operated by the Corporation for National and Community Service.

⁸ HHS press release, August 3, 2004, President Announces \$100 Million in Grants to Support Substance Abuse Treatment.

apparently, anyone in the federal government ready to hear complaints and demand change from recalcitrant state officials.

The lack of adequately detailed guidance from the federal government has caused other problems. Federal, state, and local officials enthusiastic about welcoming new social-service partners have awarded grants and contracts to inexperienced faith-based organizations without clarifying for them all of the accompanying requirements, such as the restrictions on religious expression when the government funds come directly rather than via vouchers. The consequence has been a series of lawsuits resulting in decisions declaring that officials have permitted illegal practices by their faith-based service partners and requiring an end to those partnerships. The faith-based organizations acted in good faith; they did not realize, never having been informed, that some elements of their programs, though proper when the funding was private, could not be maintained without change once government money was accepted.

Making fundamental changes to government practice is difficult; even so powerful a President as Franklin D. Roosevelt supposedly once complained that trying to change the Navy was like punching a feather pillow, which always bounces back to its original shape. Persuading government officials to enter into significant collaborations with faith-based organizations who in the past were clearly ineligible because they are too religious for government support may take more than new regulations and a memo of clarification from a department's Office of General Counsel. There is a persuasive power lacked by mere words in actual new collaborations that demonstrate that grassroots organizations can deliver effective help to underserved communities while complying with government requirements. That is an insight of the Department of Labor's Center for Faith-Based and Community Initiatives, which has designed and implemented several pilot projects that model for skeptics in both government and

society the practicality and value of new ways of working together. But not every federal department has been as supportive of such practical reforms as Labor.

An expanded or more refined reform effort is needed in one other area. As noted, despite fierce opposition, the President and the White House Office of Faith-Based and Community Initiatives have aggressively defended the freedom of faith-based organizations to take account of religion in hiring staff, emphasizing that groups that accept funds from most federal programs do not forfeit the freedom, pointing out that they can use the Religious Freedom Restoration Act to maintain their freedom when there are federal statutory restrictions, and working with Congress to eliminate such restrictions. But recall that almost all federal funds pass through state and local officials before being awarded to private groups. And a significant number of states and many large cities require all grantees and contractors, including faith-based ones, to disregard religion when selecting staff. If those grants or contracts are funded by federal dollars, must the faith-based organization obey the state or municipal restriction on religious staffing or does it retain its freedom under the federal law for the program? Here is the single most important practical issue in this vital area of government reform. And yet, so far, at every opportunity to make a clear statement of the priority of the federal freedom over state and local restrictions, federal officials have skirted the issue, leaving government agencies and faith-based organizations alike both uncertain and vulnerable to legal challenge.

A month ago, on March 1, President Bush addressed a White House Leadership Conference about his faith-based initiative. He gave a strong and stirring restatement of his deep commitment to the initiative in his second term in office. And he went beyond generalities to

promise that his administration will take not merely intends to take four major steps over the next four years.⁹

The first step is to expand individual choice when it comes to providing help for people who hurt by expanding the voucher concept from the new Access to Recovery program and the fifteen-year old federal child care program to the broad range of federally funded social services. The second step is to get state and local officials that use federal funds to implement the federal equal treatment principles, removing what the President termed one of the roadblocks to full implementation of the faith-based initiative. The third step is to get the Congress to establish firmly in federal law the equal treatment principles, including the religious staffing freedom. Bush challenged Congress to take quick action, and even threatened an aggressive executive bypass of Congress if it continues to stall on legislative action. The President's fourth step is to rid the federal tax code of provisions that can discourage charitable giving. He specifically mentioned changes to Individual Retirement Account withdrawal rules and to the rules about charitable food donations.

Why these steps and why now? The President told a story about a homeless shelter that was threatened with the loss of its federal funding by federal officials who said that its board of directors was not sufficiently secular. And he added, [T]oday, after four years of work, we continue to confront this culture, culture of process instead of results, head on. And the goal is, over the next four years, to change the culture permanently so faith- and community-based organizations will be welcomed into the grant-making process of government. That's the goal.

Indeed, that has been the major goal. And achieving it will take redoubled effort. As the President intimated, achieving it will take more than renewed enthusiasm. It will take an

⁹ <http://www.whitehouse.gov/news/releases/2005/03/20050301-4.html>

expanded investment of the federal government's legal resources, policy-design expertise, discretionary funds for underwriting innovative pilot projects, communications outreach to state and local officials, and legislative influence with Congress. These are resources beyond the President's bully pulpit and that are not within the direct control of the Office of Faith-Based and Community Initiatives or the Centers for Faith-Based and Community Initiatives. To mobilize them fully will require a greater commitment by the senior White House staff and the secretaries of federal departments. That is the administrative muscle needed to achieve the outcomes promised by the faith-based initiative.