Urging Action on the Faith-Based Initiative

by

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Jim Towey, Director
Office of Faith-Based and Community Initiatives
The White House
Washington, D.C. 20502

Dear Jim:

The Coalition to Preserve Religious Freedom is a multi-faith alliance of faith-based organizations active in social services, higher education, and religious liberties. We have joined together to advocate for federal and state policies that respect the religious freedom of all faith-based organizations that serve the public and operate in the public square. This letter was approved at our most recent meeting.

We want to express our warm thanks to you, personally, and to the President for the many significant advances made during this administration to ensure a level playing field for faith-based social services and to promote government and private support for the “armies of compassion.” We note with gratitude a range of new programs that utilize the resource of faith-based as well as secular organizations to provide “up-close and personal” assistance to the needy.

In particular, we commend the administration for a long list of systemic initiatives: the Charitable Choice regulations; the Equal Opportunity executive order and Equal
Treatment regulations; Equal Treatment revisions to HUD [Housing and Urban Development] and DOL [Department of Labor] regulations; the White House statement on religious staffing; and the acknowledgment that faith-based organizations may appeal to the Religious Freedom Restoration Act [RFRA] against programmatic restrictions on religious staffing.

We write to request continued progress on systemic reforms. A year ago, on March 1, 2005, many of us were in the audience when the President announced a series of commitments for action over the next four years. One of his action items was to encourage Congress to adopt tax-law changes to encourage private giving. We are glad to see that the House and the Senate seem to be on the verge of finally acting on this. We have not seen similar progress in the other areas. We urge your office and the administration to continue to press aggressively for progress in the other initiatives named by the President:

1. **Converting programs to indirect funding.** Indirect funding obviates restrictions on religion in federally funded programs. However, despite the administration’s commitment to the idea, the authorization of vouchers in Charitable Choice (1996), and the successful use of vouchers in programs such as child care, there has been virtually no progress in expanding the range of services funded indirectly (except for the Access to Recovery Program). We urge your office [OFBCI] and the Centers [for faith-based and community initiatives in federal agencies] to initiate a project to identify a set of federally funded social services, both those administered by federal agencies and those administered by state or local agencies, that can be converted to indirect funding (personal choice systems, such as vouchers and indirect contracting). Such a project needs to show in specific detail how indirect funding can be implemented, including how to ensure that beneficiaries have adequate choices and how to assist organizations with their start-up costs.

2. **Ensuring state and local compliance.** Because the vast majority of federal funds pass through state and local hands before being awarded to private organizations, creating a level playing field is dependent on state and local knowledge of the new standards and compliance with them. We understand that OFBCI and the Centers have stepped up efforts to educate state and local officials about Equal Treatment and Charitable Choice. We urge much more vigorous efforts, including providing state and local officials with clear guidance concerning the broad applicability of the Equal Treatment and Charitable Choice regulations, restrictions on inherently religious activities under direct funding, the inapplicability of Blaine restrictions when the funds are federal, and preemption of state and local restrictions on religious staffing when Charitable Choice funds are involved.

3. **Embedding Equal Treatment in statutes.** Charitable Choice resides in federal statutes, but the Equal Treatment rules, which govern a much larger proportion of federal funds, are not statutory. Experience over the past decade suggests no likelihood that congress will enact the Equal Treatment principles as such. Instead, we urge that your office and the White House legislative liaisons make every effort, when Congress
acts on new programs or to reauthorize existing programs, to ensure, at a minimum, the absence of any provisions conflicting with Equal Treatment, and preferably, the inclusion of specific provisions incorporating Equal Treatment. We note that the House of Representatives has acted multiple times during this administration to embed Charitable Choice and Equal Treatment in legislation but that the Senate has taken almost no corresponding action (the recent reauthorization of TANF is gratifying). We ask that the White House use its good offices and great influence to win Senate support for Equal Treatment and Charitable Choice through the legislative process.

4. Religious staffing. The administration has taken many bold steps to secure the freedom of faith-based organizations to take account of religion in making their staffing decisions. However, more needs to be done. Now is the time to act. Last year’s New York City Salvation Army case (Lown) and yesterday’s Supreme Court RFRA decision are important victories, but it is likely that the environment for change will get worse, not better. We urge these steps:

a. Publish a procedure by which faith-based organizations can easily invoke their RFRA rights. Set out the procedure in OMB Circular A-102 or A-110. Publicize the procedure both to faith-based organizations and to federal program officials. Faith-based organizations that appeal to RFRA should not continue to encounter incomprehension from federal officials.

b. Clarify in regulations, guidance, etc., that when Charitable Choice funding is involved, state and local procurement rules forbidding religious staffing are preempted. Publicize this preemption to faith-based organizations and to state and local officials. (See the argument in Esbeck, Carlson-Thies, and Sider, Freedom of Faith-Based Organizations to Staff on a Religious Basis, Center for Public Justice, 2004, pp. 70-77.)

c. Revise the Title VII regulations of the 1964 Civil Rights Act to explicitly state that religious staffing exemption is not waived when a religious employer receives government funds or other support (29CFR1605). Work with the Equal Employment Opportunity Commission so that it will begin to provide accurate information about the religious staffing exemption for religious employers.

The Second White House Conference on Faith-Based and Community Initiatives, on March 9, will focus on private funding, not government procurement. We support expanded private funding of faith-based and other charitable efforts, and we are happy to see the White House emphasize this theme. Yet the President’s commitments from last year cannot be left behind. Aggressive action is needed across the administration.

We ask that you urge the President to provide at the conference a report on progress made since March 1, 2005, and his commitment to continued progress.
And we request a meeting before the end of March with your office and with the directors of the Centers for Faith-Based and Community Initiatives in federal agencies to discuss progress and obstacles and how our Coalition can support your office and the Centers in your vital work.

Thank you very much for your leadership and your commitment to this cause.

Stanley W. Carlson-Thies  
on behalf of  
The Coalition to Preserve Religious Freedom