

Keep Charitable Choice in the Reauthorized Community Services Block Grant (CSBG)

H.R. 5129, the Community Services Block Grant Modernization Act of 2021, proposes to eliminate the Charitable Choice provision from the CSBG statute as part of the effort to improve the program.

What Congress should do, instead, is to investigate why, despite the provision, relatively few faith-based organizations have been designated as Community Action Agencies (CAAs) or receive CSBG-funded grants or contracts to provide services.

Charitable Choice was added to CSBG when it was last reauthorized, in 1998. That bill was co-sponsored by Republican Senators Dan Coats and Jim Jeffords and Democratic Senators Ted Kennedy and Christopher Dodd. They specifically added the Charitable Choice language to ensure that state and local governments and CAA agencies will not wrongly marginalize faith-based organizations in CSBG-funded activity. As the Senate report said, faith-based organizations have always played a key role in assisting poor families and communities. They know the local community and help to make services accountable to the community. Protecting participation by houses of worship and other faith-based organizations in CSBG funding ensures that the procurement process is fully competitive and that CAAs will utilize the most effective service providers.¹

Congress had added Charitable Choice to the TANF program two years before for the same reasons. Both programs are supposed to empower people and communities to develop out of poverty. Making sure that faith-based organizations of all faiths are welcome to the process is vital. Charitable Choice gives specific directives to government to make sure that there is no bias when faith-based organizations compete for funding, it protects these organizations' religious character, and it protects the rights of people seeking services. The presence of this detailed provision in the law is like a billboard announcing a welcome for faith-based organizations to compete. But taking the language out—HR 5129 substitutes a mere sentence—sends the message that Congress does not strongly value the social good of faith-based organizations nor wishes to strongly protect their religious character in a balanced way.²

¹ Senate Report 105-206, July 1, 1998. <https://www.congress.gov/105/crpt/srpt256/CRPT-105srpt256.pdf>

² A letter dated Nov. 3, 2021, from The Coalition Against Religious Discrimination to Rep. Robert Scott, Chair of the House Education and Labor Committee, alleges that Charitable Choice is "a highly controversial policy." The members of CARD would like to make it so. In truth, the Charitable Choice principles were translated into regulatory language during the George W. Bush administration to become Equal Treatment or Equal Opportunity regulations that govern federal social service spending broadly. These regulations have been maintained with few changes through the Obama, Trump, and now Biden administrations. See Stanley Carlson-Thies and Carl Esbeck, "Happy Birthday, Charitable Choice: Two Decades of Bipartisan Cooperation on Government Funding and Religion," Institutional Religious Freedom Alliance (August 22, 2016). <https://irfalliance.org/happy-birthday-charitable-choice-20-years-of-success/>

Some in the CAA movement claim that removing Charitable Choice from CSBG will change little because the Department of Health and Human Services' similar Equal Treatment regulations govern its social-services funding anyway and because, despite Charitable Choice, few faith-based organizations receive CSBG funding.³ But CSBG has its own Charitable Choice regulations; if the provision is deleted, HHS will have to promulgate new CSBG regulations or else amend its Equal Treatment regulations. The resulting rules may be less well-tailored to protecting participation by faith-based organizations in CSBG funding. For certain, even the best new regulations will be less permanent than a statutory Charitable Choice provision.

And, if the CAA observers are correct and there is little participation by faith-based organizations in CSBG funding, this is surely not a reason to eliminate the Charitable Choice provision. Rather, it gives a strong signal to Congress that it is time more deeply to investigate the CSBG program. What practices and policies on the part of the federal, state, or local governments, or by Community Action Agencies or the CAA movement's legal experts, advisors, and associations, result in marginalizing faith-based organizations from CSBG funding?

Senators Coats, Jeffords, Kennedy, and Dodd were right to add Charitable Choice to the CSBG program. Removing it will be detrimental to the involvement of faith-based organizations, when it is their greater involvement that will benefit the communities that CSBG funding is intended to serve.

³ Memorandum from Community Action Program Legal Services, "The Community Services Block Grant (CSBG) Act and Charitable Choice," January 24, 2019. <https://communityactionpartnership.com/wp-content/uploads/2019/09/Charitable-Choice-HR1695-HillBriefingPacket-NCAF-4.pdf>