

Nov. 15, 2021

Re Nov. 3, 2021, Hearing of the Subcommittee on Civil Rights and Human Services of the Committee on Education and Labor—A Call to Action: Modernizing the Community Services Block Grant Program

Dear Chair Bonamici, Ranking Member Fulcher, and Subcommittee Members:

Thank you for the opportunity to submit a comment to the Subcommittee about the proposed removal of the Charitable Choice provision from the Community Services Block Grant (CSBG) program via H.R. 5129, a bill to reauthorize the CSBG program.

The Charitable Choice provision was added to the CSBG program in 1998 via the Human Services Reauthorization Act. The chief sponsor was Republican Senator Dan Coats. He was joined by three co-sponsors, Republican Senator Jim Jeffords and two prominent Democratic Senators, Ted Kennedy and Christopher Dodd. S. 2206 was signed into law by President Bill Clinton. It is highly significant that it was by means of the action of a bipartisan group of prominent public leaders that emphatic and detailed language was added to the CSBG program to ensure an equal opportunity for faith-based organizations to become part of the Community Action effort. The current Congress should be no less demonstrably supportive of that inclusive intention and the Charitable Choice language.

Instead, H.R. 5129 proposes to substitute for the detailed Charitable Choice provision (42 U.S.C. 9920) a single sentence stating, “Neither the Federal Government nor a State or local government shall require a religious organization to alter its form of internal governance except (for purposes of administration of the community services block grant program) as provided in section 680(c).”

The single sentence is not an adequate substitute for the existing Charitable Choice provision. That provision comprises an extensive and balanced set of specific parameters under which religious organizations can receive CSBG funding. It includes but is not limited to the important protection of internal governance. Charitable Choice additionally specifies that government agencies must not be biased either against or for religious organizations when making financial assistance awards; stresses that religious grantees retain their religious character and their control over how they define, develop, practice, and express their religious beliefs; forbids government from requiring the removal of religious art, etc., from an organization’s premises as a condition of eligibility for funding; and specifically states that a religious organization does not lose its Title VII religious staffing exemption when it accepts CSBG funding. At the same time, the Charitable Choice language stipulates that a religious organization may not expend government grant or contract funds on explicitly religious activities and that if a religious organization acts as an intermediary, it must make its subgrant or subcontract decisions without religious bias.

The Charitable Choice stipulations that go beyond a provision about internal governance are each vital parameters for the participation of religious organizations in CSBG funding. The Charitable Choice language provides essential clarity to government officials, to courts, and—

not least important—to religious organizations considering whether or not to participate in CSBG funding. Indeed, the several Charitable Choice enactments include detailed sets of stipulations precisely to clarify the terms under which religious organizations are eligible to seek and accept federal funding—to bring clarity where the practice of government officials and of courts had been inconsistent and, typically, unconstitutionally restrictive to religious organizations.<sup>1</sup>

The current CSBG Charitable Choice provisions are implemented via a set of CSBG Charitable Choice regulations that are similar to the Equal Treatment regulations that govern HHS funding programs.<sup>2</sup> If the CSBG Charitable Choice language is eliminated, new regulations will need to be promulgated. Most likely the HHS Equal Treatment regulations would be modified to encompass also the CSBG program. Somewhat different conditions would then govern the treatment of religious organizations interested in the CSBG program. The most important change, and a negative one, however, would be the substitution of the very stable language of a statute for the much more changeable language of regulations.

It has been asserted that elimination of the full Charitable Choice language from the CSBG program “would have little, if any, legal or practical effect on the participation by faith-based organizations” in the program—little legal effect because of the similarity of the Charitable Choice provision to the HHS Equal Treatment rules; little practical effect because, notwithstanding the Charitable Choice provision, few religious organizations receive CSBG funding.<sup>3</sup> The legal effect is hardly trivial, as noted above. Nor is the possible practical effect insignificant. In his testimony to this subcommittee, Clarence H. Carter, Commissioner of the Tennessee Department of Human Services, rightly stressed the need to improve the effectiveness of the CSBG program by, among other reforms, better connecting Community Action Agencies with the many surrounding organizations, including faith-based organizations, that work on behalf of vulnerable people and neighborhoods.<sup>4</sup>

The aims of the CSBG program are best served by expanding the participation of faith-based organizations. For that to happen, a continued strong signal of their welcome in the program is essential. The existing Charitable Choice language is a much stronger signal than the proposed single-sentence replacement.

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<sup>1</sup> See Carl H. Esbeck, *The Regulation of Religious Organizations as Recipients of Governmental Assistance* (Washington, DC: Center for Public Justice, 1996); 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). <http://irfalliance.org/happy-birthday-charitable-choice-20-years-of-success/>

<sup>2</sup> CSBG Charitable Choice regulations: 45 CFR 1050; HHS Equal Treatment regulations: 45 CFR 87. The Equal Treatment regulations generally do not apply to programs that have Charitable Choice language, such as the CSBG program, and they do not apply to the Child Care and Development Block Grant program, which has its own provisions for the participation of religious organizations.

<sup>3</sup> 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>

<sup>4</sup> <https://edlabor.house.gov/imo/media/doc/CarterClarenceTestimony110321.pdf>

If there has not been significant involvement by religious organizations in CSBG services, what is needed is a careful examination of federal, state, and local government practices that discourage such involvement, notwithstanding good statutory language.

Thank you.

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