

March 14, 2022

The Hon. Robert C. Scott
The Hon. Virginia Foxx
Committee on Education and Labor
U. S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Scott and Ranking Member Foxx:

As leaders of faith-based service organizations, religious freedom advocates, and people of faith, we strongly implore you and the Committee to retain the Charitable Choice provisions when reauthorizing the Community Services Block Grant [CSBG]. The current language of *H.R. 5129, the Community Services Block Grant Modernization Act of 2021*, would replace the detailed Charitable Choice provisions with a bare sentence. This would be a negative change that creates a harmful precedent. We ask the Committee instead to reaffirm Charitable Choice in the CSBG program.

The Charitable Choice provisions (42 U.S. Code 9920) give faith-based organizations an equal opportunity to compete for CSBG funding and safeguard their religious character while also protecting beneficiary rights by prohibiting the use of CSBG grant funds for explicitly religious activities. The presence of this detailed language in the statute is a billboard announcing a welcome for faith-based organizations to compete for funding.

The provisions were added to the CSBG program in 1998 in a reauthorization bill co-sponsored by Republican Senators Dan Coats (IN) and Jim Jeffords (VT) and Democratic Senators Ted Kennedy (MA) and Christopher Dodd (CT). They sought to improve the effectiveness of CSBG spending by prohibiting local governments and Community Action Agencies [CAAs] from marginalizing faith-based organizations. Protecting participation in CSBG funding by faith-based providers and houses of worship ensures that the procurement process is competitive and that CAAs utilize the most effective and accountable service providers.

The Charitable Choice provisions extend to faith-based organizations no novel or unconstitutional rights.¹ Its principles are codified in the Equal Treatment regulations that apply to Department of Health and Human Services funding programs (45 CFR 87), but only partially to CSBG. CSBG has its own regulations, similar but distinct. If Charitable Choice is taken out of the CSBG statute, CAAs would have no guarantee that they will be afforded the same rights and protections due to other faith-based organizations under the Equal Treatment regulations. It would be better to retain the CSBG statutory language and the accompanying regulations. Statutory language provides more certainty over time to

¹ Direct funding in federal programs, permitting participation of all providers without regard to religion but excluding religion from the funded services, was upheld in *Mitchell v. Helms*, 530 U.S. 793 (2000). Indirect funding, which permits inclusion of services that incorporate religious teaching and activities, was upheld in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

Community Action Agencies and to faith-based organizations interested in partnering with them in service.

Some in the CAA movement claim that the Charitable Choice language is dispensable because, despite its presence, few faith-based organizations receive CSBG funding.² If participation is truly low, then the remedy is action by Congress and the Office of Community Services in HHS to remove the non-statutory barriers that inhibit more extensive partnerships, not to remove the protections that enable the participation of those few.

The addition of Charitable Choice in 1998 to the CSBG program was the second time that Congress and the Clinton administration added such language to a federal program (Charitable Choice was first added to the TANF program in 1996). These actions launched the faith-based or partnership initiative. The four succeeding administrations of both parties (Bush, Obama, Trump, and Biden) have worked with energy to ensure that federal social programs are maximally effective because they partner with the best non-government organizations, including faith-based organizations, with full protection for the religious freedom of the ultimate beneficiaries.

Senators Coats, Jeffords, Kennedy, and Dodd were right to add Charitable Choice to the CSBG program. Removing it will be detrimental to the participation of faith-based organizations, when it is their greater involvement that will most benefit the communities that CSBG funding is intended to serve. Removing it will create a terrible precedent by signaling that Congress is no longer as boldly committed to equal opportunity for service organizations of every faith or none.

Thank you for your consideration of this important matter.

Stanley Carlson-Thies, Senior Director, Institutional Religious Freedom Alliance

[University professors sign in their personal capacities only. Their employing universities take no position on this bill, and are listed only to help identify the individual signers.]

This letter is joined by

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Chairman, U.S. Conference of Catholic Bishops Committee for Religious Liberty
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² Memorandum from Community Action Program Legal Services, “The Community Services Block Grant (CSBG) Act and Charitable Choice,” January 24, 2019.

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