

Overview of the Charitable Choice Research Project

By Edward L. Queen II

January 19, 20001

One of the most discussed and much proclaimed developments in the debate over welfare reform, was the inclusion of the so-called “Charitable Choice” provision as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the welfare reform bill.

Section 104 of this law, the “Charitable Choice” provision, was directed explicitly at the use of religious and faith-based service organizations (FBSOs) for the delivery of services provided under federal block grants to states under Temporary Assistance to Needy Families (TANF). (What used to be known as AFDC.)

The provisions of this section of the law are as follows:

SEC. 104. SERVICES PROVIDED BY CHARITABLE, RELIGIOUS, OR PRIVATE ORGANIZATIONS.

(a) IN GENERAL-

(1) STATE OPTIONS- A State may-

(A) administer and provide services under the programs described in subparagraphs (A) and (B)(i) of paragraph (2) through contracts with charitable, religious, or private organizations; and

(B) provide beneficiaries of assistance under the programs described in subparagraphs (A) and (B)(ii) of paragraph (2) with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations.

(2) PROGRAMS DESCRIBED- The programs described in this paragraph are the following programs:

(A) A State program funded under part A of title IV of the Social Security Act (as amended by section 103(a) of this Act).

(B) Any other program established or modified under title I, II, or VI of this Act, that-

(i) permits contracts with organizations; or

(ii) permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries, as a means of providing assistance.

(b) RELIGIOUS ORGANIZATIONS- The purpose of this section is to allow States to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers, or other forms of disbursement under any program described in subsection (a)(2), on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without

diminishing the religious freedom of beneficiaries of assistance funded under such program.

(c) **NONDISCRIMINATION AGAINST RELIGIOUS ORGANIZATIONS-** In the event a State exercises its authority under subsection (a), religious organizations are eligible, on the same basis as any other private organization, as contractors to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, under any program described in subsection (a)(2) so long as the programs are implemented consistent with the Establishment Clause of the United States Constitution. Except as provided in subsection (k), neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character.

(d) **RELIGIOUS CHARACTER AND FREEDOM-**

(1) **RELIGIOUS ORGANIZATIONS-** A religious organization with a contract described in subsection (a)(1)(A), or which accepts certificates, vouchers, or other forms of disbursement under subsection (a)(1)(B), shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) **ADDITIONAL SAFEGUARDS-** Neither the Federal Government nor a State shall require a religious organization to—

(A) alter its form of internal governance; or

(B) remove religious art, icons, scripture, or other symbols; in order to be eligible to contract to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, funded under a program described in subsection (a)(2).

(e) **RIGHTS OF BENEFICIARIES OF ASSISTANCE-**

(1) **IN GENERAL-** If an individual described in paragraph (2) has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program described in subsection (a)(2), the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider that is accessible to the individual and the value of which is not less than the value of the assistance which the individual would have received from such organization.

(2) **INDIVIDUAL DESCRIBED-** An individual described in this paragraph is an individual who receives, applies for, or requests to apply for, assistance under a program described in subsection (a)(2).

(f) **EMPLOYMENT PRACTICES-** A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1a) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a)(2).

(g) **NONDISCRIMINATION AGAINST BENEFICIARIES**- Except as otherwise provided in law, a religious organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in subsection (a)(2) on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.

(h) **FISCAL ACCOUNTABILITY**-

(1) **IN GENERAL**- Except as provided in paragraph (2), any religious organization contracting to provide assistance funded under any program described in subsection (a)(2) shall be subject to the same regulations as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.

(2) **LIMITED AUDIT**- If such organization segregates Federal funds provided under such programs into separate accounts, then only the financial assistance provided with such funds shall be subject to audit.

(i) **COMPLIANCE**- Any party which seeks to enforce its rights under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.

(j) **LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES**- No funds provided directly to institutions or organizations to provide services and administer programs under subsection (a)(1)(A) shall be expended for sectarian worship, instruction, or proselytization.

(k) **PREEMPTION**- Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

Governmental use of religious organizations to provide services is not new. Historically it has a long tradition and currently it is rampant in the international development field and quite prominent domestically. Organizations such as Lutheran Social Services, Jewish Welfare and Family Services, and Catholic Charities receive 50% or more of their operating budgets from public funds. The “Charitable Choice” provision, however, for the first time, explicitly addressed the ability of religious organizations to receive a particular type of federal funds on an equal basis with other nonprofits and to do so without having to alter substantially their religious character. To a great extent, one could argue these provisions did little to alter the prevailing landscape, at least on its face, although they did ensure a level of uniformity under existing law. What Charitable Choice actually does, however, is the question the

research project hopes to answer.

Most immediately, one of the things the Charitable Choice Provision did accomplish was to elevate to the level of public policy a series of unexamined assumptions. These assumptions were:

- FBSOs are more effective;
- they are more efficient;
- and they can provide a significant source of services and funding to fill decreases in government spending.
- Such assumptions had almost no significant research data behind them. Indeed, research into the magnitude, scope, and potential of religiously motivated service providers is woefully lacking, a lack which only recently has begun to be addressed.

Interestingly, this lack of research makes the adoption of the Charitable Choice Provision a particularly exciting time for nonprofits scholars. This paper discusses the beginning of a multi-state study of the implementation of the charitable choice provision. The research project, which has received funding from the Ford Foundation, focuses on five major elements.

- The capacities of FBSOs successfully to bid for and manage these monies. The researchers will examine how States define and measure the capacity of individual FBSOs; i.e., minimal requirements for staff; legal, accounting and informational resources; and ability to absorb the transaction costs associated with government contracting. They also will report on efforts by the States to develop and enhance the institutional capacity of small FBSOs. Finally, the project will report whether the states themselves have the capacity to initiate and sustain appropriate management of these contracts.
- The effectiveness of these organizations compared to secular agencies. The research will

compare the relative successes and costs of services provided by FBSOs and traditional social service providers, and will analyze variables that might account for discrepancies in performance--if such discrepancies are found--by looking at differences in state implementation strategies, client population, and other factors which might be expected to affect performance.

- The manner in which states choose to work with FBSOs. In this component the research is simply designed to determine whether a state makes an intentional effort to increase the potential number of faith-based service providers or does it simply incorporate the elements of the Charitable Choice Provision into current procedures.
- The accountability levels of both the FBSOs and state agencies in dealing with them, and the legal questions emerge in the course of implementation. In this module the research will document, analyze, and compare requirements imposed by each State to ensure accountability. The researchers will examine procedures established for awarding contracts and monitoring performance, paying particular attention to the characteristics of successful and unsuccessful bidders, methods used to ensure compliance with the requirements of the law, numbers of clients served by FBSOs before and after receipt of government funding, and reporting methods.
- Constitutionality. Leaving aside the question of whether the law as written is facially constitutional (and even the lawyers on the research team disagree on that issue), it is obvious that the implementation of the law presents numerous occasions for legal questions to be raised. The project will investigate and report on State and FBSO compliance with Constitutional law. Among the concerns to be addressed in this module are:

- proselytization of vulnerable populations;

- State discrimination against nontraditional religions;
- unduly intrusive State monitoring of FBSO performance;
- employment or client discrimination by FBSOs;
- application of tax dollars to support sectarian activities;
 - conflicts arising under state constitutions.

Additionally, the research will be looking for information regarding the following questions.

- To what extent do new FBSOs enter the process as contractors?
- How do they fare in terms of effectiveness and accountability?
 - To what extent does this change depends upon the location and the political culture of the state?

For this study the comparisons are of Indiana, Massachusetts, and North Carolina. These choices while defensible are weakened by the absence of a strongly rural state with strong pockets of entrenched poverty and a western state.

- Are there differences between states which work on developing the capacity of potential, new contractors?
- Is there something distinctive about FBSOs that substantially alters the generic issues of accountability, reporting, and transparency? In which direction? Why?

This analysis involves both qualitative and quantitative components. Qualitatively the research focuses on the political entity's formal procedures for expanding its work with Faith-Based Service Organizations (FBSOs), its process of distributing RFPs and notifications of contracts to be awarded, its mode of letting contracts, and its perception of its relationship to those organizations. Additionally, it

will try to understand the more informal nature of the establishment of the process and to determine the extent to which there are differences in purposes and understandings between elected officials, those responsible for implementing policy, and the FBSOs and, if so, the effects of these differences. In undertaking this work, the researchers will attempt to identify the types of negotiations and adjustments the various stakeholders make in this process.

Qualitatively, the research also focuses upon the extent to which more formalized and already existing programs are more successful in negotiating the requirements of the contracting process. Do those organizations that already have the capacity and knowledge to accept governmental contracts “beat out” those smaller and more informal organizations which many hoped the policy would favor and which had been lifted-up as examples of what could be accomplished? Or, do the more traditional agencies speak the language of secular social work with which state social service bureaucrats are familiar and therefore find themselves at an advantage? Anecdotal evidence based on conversations with several highly-placed individuals from various states suggests otherwise. The feeling of many of these individuals is that they are so frustrated with the current system and its failings that they are willing and anxious to try anything that looks the least bit promising.

While unwilling to extrapolate any conclusions from such conversations, the comments do suggest the types of problems and concerns likely to emerge from the implementation of Charitable Choice. Many of these problems are linked to the way in which it was touted—the claim, as yet unproven, that faith-based organizations would prove to be more successful as well as more efficient seems to be shared by many.

These presumptions raise the possibility that FBSOs actually may not receive careful scrutiny. Such a large number of individuals may be operating with the view that religion not only is, but ought to

be the answer to many of the individuals' problems that they may overlook actions which would cross the line and violate the law or be less attentive. If this proves to be the case, there may be less oversight of the implementation structures and there might be (which may be the more disturbing) a coercive element in pushing service recipients in the direction of FBSOs.

Method

The researchers currently are implementing the initial phase of this project. While the methodology of the quantitative component especially the longitudinal analysis of the long-term effectiveness of the interventions, is dependent somewhat upon the information we can get from the states. One of the biggest problems involving any longitudinal study of this population is the fact that the members are difficult to follow over time. They tend to be transient, often do not have telephones, and occasionally lack the skills and time necessary to respond to questions and interviews.

A great deal of this problem will be eased through the close cooperation we have developed with the State's Division of Family and Social Services. Given their concern with determining the success of their work, they have agreed to provide the researchers with the information necessary to track the individuals over time.

This ability will provide the researchers with the opportunity to follow them over the planned 3-5 year period and to determine whether those served by faith-based providers have better long-term outcomes. Additionally, it provides them with the opportunity to compare outcomes between providers.

Given the opportunity to undertake interviews with the individuals as they enter the programs, the researchers also will have the knowledge necessary to compare the number and magnitude of needs

these individuals have and the extent to which the various providers—either individually or collectively—work at meeting these multiple needs.

Finally, the researchers shall be undertaking extensive studies and analyses of the organizations themselves. They will be examining costs, expenditures, the numbers of individuals served per dollar of cost, and then trying to compare the extent to which they actually tell anything that matters. If individuals are run through the system at a low-cost but to no positive long-term effect, then one will seriously have to challenge any claims of either efficiency or effectiveness.

For the capacity module the study will examine three different components. These are:

1. the perception by the state of the capacity needs of the service providers, the service providers perceptions of what they need, and what they actually require;
2. the willingness and ability of the state to deliver and the service providers to obtain the capacity training the service providers need;
3. the problems caused by inadequate capacity.

For Indiana, the researchers have been given unfettered access to all the decisions and workings of the Division of Family and Social Service Administration, (FSSA) although the difference between what one may do and what one actually can do possibly is great. For the past 14 months the lead researchers have been in discussions with FSSA about its planning and since the initial phase of implementation last spring the team actively has been tracking the consultants charged with delivering the capacity-building component of the State's program.

Although the project is still in its early stages, preliminary indications are that for those providers interested in entering the system for the first time the capacity needs are quite high.

The legal and constitutional elements are somewhat self-explanatory. In this module, the research will be tracking the lawsuits which emerge from the implementation of the Charitable Choice Provision. The researchers also are looking to determine the extent to which the various states implement administrative regulations designed to allow for non-judicial hearings for problems that emerge. Although it must be acknowledged that the statute itself, explicitly allows for injunctive relief to be sought in State court.

Currently, two lawsuits are known to have been filed regarding programs that have been linked to Charitable Choice. The two suits are in Wisconsin and Texas and while there is some confusion about whether they are directly related to TANF fund programs it appears that they are. In the Texas case, the recipient of the funds is accused of engaging in direct proselytization of clients and of using governmental monies to purchase bibles. In Wisconsin, the suit focuses on a program directed at non-custodial fathers who have drug problems. In this program operated by an organization called “Faith Works” (not to be confused with Indiana’s FaithWorks program), the clients numbering about 30 are questioned about their faith, required to participate in a faith-enhanced version of the Alcoholics Anonymous program, evaluated on their spiritual development, and attend Bible studies, prayer and chapel services.

Given the fact that the research so far has shown that few states have moved aggressively to implement rules or procedures related to Charitable Choice and that Indiana which is just starting is considered to be among the leaders, the dearth of large numbers of legal challenges is not surprising. Given the potential complexities in implementation, the potential for numerous legal fights is great. Fears of such suits may actually lead many states to forego any active attempts to broaden their use of FBSOs, this would be a strange unintended consequence of the legislation itself.

Although the project is multi-state, the project currently is in its initial stages and focusing primarily on the state of Indiana. The researchers have been given complete access to the work of the Department of Family and Social Services work and the director has issued a directive that we be supplied with all materials (not subject to confidentiality rules), invited to all relevant meetings, and informed of all developments. The principal investigators have been actively following the developments for two years and have insight into all of the political and practical developments.

Indiana provides a particularly important case. The state has decided to take a proactive stance in dealing with FBSOs which might wish to bid on TANF funds and has implemented a process of providing capacity building. The state also has attempted to integrate this policy with their overall decentralization of decision-making. It does not exist as an overlay on an existing system. Finally, the policy has strong support from the political officials and obstructionism (of which there already has been one significant case) is dealt with swiftly.

Excursus—a note on “Faith-based”

One of the major issues that will dog all the research into this area is the question of what makes an organization “Faith-based”? Additionally, there needs to be a clear ability to discriminate between different types of faith-based organizations. Catholic Charities of the Archdiocese of Indianapolis is a markedly different organization from a congregation-based tutoring program. Any research which fails to take such differences into account is destined for failure. Notably one of the purposes of this research project is to determine the extent to which more traditional and formalized service providers are more successful than organizations just entering into the system.

Faith-based describes the organization’s impetus for and perspective from which it delivers a

particular service. The determination of this will depend on the ways in which an organization describes itself and how it understands itself. For that reason the imposition of an external definition of faith-based is doomed to failure. Roughly, however, an organization will be considered faith-based to the extent that it is run or created by a religious organization as part of its religious understandings or the organization explicitly describes itself as undertaking to deliver a particular service as a means of expressing its working out of some divine mandate or out of its understanding of one's obligations to some transcendental reality.