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White House Takes Opposing Views on Charities

By **Laura K. Abel**

President Bush's budget for fiscal 2004, submitted to Congress this month, contains millions in federal dollars to help religious groups. That follows his executive order in December in which he commanded sweeping changes he said would "remove barriers that prevent faith-based and grass-roots groups from doing more to help Americans in need."

The executive order put in place many of the ideas Mr. Bush has been pressing Congress to pass, but which have been stalled by debate over the propriety of mixing government and religion. The executive order, which allows federally financed charities to display religious icons and follow the tenets of their faith in selecting employees, is almost certain to be challenged in federal court by people seeking to protect firm separation of church and state.

But Mr. Bush has even more to worry about than court action by his political opponents. His own administration is causing plenty of potential trouble by arguing in a New York court to establish a legal precedent that could lead to the unraveling of Mr. Bush's efforts to help religious groups.

The court case at issue involves the Legal Services Corporation, which uses federal funds to provide lawyers in civil cases to people who cannot afford them. The corporation is being sued by nonprofit legal-aid groups that hope to prove that a law Congress passed in 1996, and a regulation issued to carry out that law, are unconstitutional. Under the law and regulation, legal aid programs that receive even a dollar from the Legal Services Corporation are required to separate their government-financed activities from certain privately supported activities in ways that are both impractical and very costly to administer. Among the privately supported activities that must be kept separate: helping asylum seekers who need court protection against abusive spouses, helping victims of predatory lenders testify before their legislatures, and representing children seeking improved public schools.

The regulation the administration is defending requires legal-aid programs to keep those activities physically separate from their government-financed activities. It also limits the ability of legal-aid employees to divide their time between federally supported activities and activities the government won't support.

The result is that the programs' scarce private charitable donations must either be used only for programs that the federal government wants to support or be diverted to establishing separate facilities and employing separate personnel. Though the idea of keeping federally financed and charitably financed activities separate may seem appropriate to some, what it has meant in practice is that for nonprofit legal-aid groups to receive federal funds, they must give up doing some of the things that their clients most need. And foundations and other private donors that want to support legal-aid groups often find that some of the projects they most want to support can't be carried out.

For instance, when South Brooklyn Legal Services received a grant from the New York Foundation to help small groups that provide child care, it wanted to use some of the money to take New York City to court to protect the rights of those providers. The city, which reimburses the child-care providers for their services, had been shortchanging them by calculating the reimbursement based on a four-week month rather than on the more accurate 4.3-week month. But because the South Brooklyn group receives some money from the Legal Services Corporation, it could not undertake such a lawsuit even with its money from the New York Foundation. To do so it would have had to set up two separate offices. It didn't have the money to do that, so it had to drop the idea of the lawsuit and instead use its foundation grant only in ways that the federal government allowed.

That is precisely the type of roadblock to charitable giving and nonprofit entrepreneurship that the Bush administration seeks to remove in its efforts to help religious groups. Last month, for instance, the administration said that churches, synagogues, and other houses of worship could obtain federal construction aid so long as at least part of the building was used to provide social services. To be sure, the administration said federal aid couldn't be used to construct sanctuaries or other parts of the building used for worship, but it did not require separate staff members or other administrative approaches to separating the government-subsidized activities from those supported entirely by private sources. And in his executive order, the president allowed organizations to conduct federally financed activities in rooms with religious symbols hanging on the wall, and to permit employees to split time between religious and federally financed activities.

The president's goal is obvious: to avoid requiring nonprofit groups, like the religious ones he wants to help, to operate two entirely separate facilities in which to conduct their federally financed activities and their privately supported ones. If he wants to protect religious groups from having to operate entirely separate sets of facilities, even at the risk of being sued for violating the separation of church and state, why is he willing to impose such a requirement on legal-aid groups that serve the same needy people?

It's not just for consistency's sake that Mr. Bush should change his administration's position in the Legal Services Corporation case. In that case, the legal-aid programs argue that, because the activities they are forced to keep separate constitute "speech" protected by the First Amendment to the U.S. Constitution, the government is constitutionally prohibited from imposing a requirement that the activities be kept separate. What's more, they say the government isn't allowed to make those activities more expensive and more complicated unless it has sufficient justification. In its court filings, the government responds that it will seem to be endorsing the work of legal-aid programs unless activities the government supports are clearly separated from the charitably financed legal-aid activities the government does not want to support.

If that argument is upheld by the court, then won't the government be endorsing the views of religious groups unless it requires completely separate operations? To comply with the constitutional mandate not to endorse religion, the government will have to require the same amount of separation between the religious activities of charities and the activities that the federal government supports as it requires for legal-aid programs. Religious groups that receive any federal funds will then need to conduct their religious activities in separate offices, and to maintain tight limits on the ability of employees to split their time between federally financed and religious activities.

If the president really wants his faith-based plan to pass constitutional muster, he should change his strategy on the Legal Services Corporation case now and give legal-aid groups the freedom they deserve.

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