Family Planning Programs And 'Charitable Choice': Are They Compatible?

By Susan A. Cohen

On January 29, President Bush issued an executive memorandum establishing a White House Office of Faith-Based and Community Initiatives. The new office is mandated to find ways to end what is deemed to be the government's long-standing history of discrimination against religious entities in competing for federal grants, thereby enlisting more churches and other pervasively sectarian institutions in the delivery of federally funded health and social welfare programs.

At first thought to be politically unassailable, the president's "faith-based" initiative has generated considerable controversy over the implications of greater entanglement between government and religion. In terms of its practical effect, though, and apart from the larger questions over the proper relationship between church and state, shifting funds toward religious groups to deliver family planning services could mean radical changes both for the Title X family planning program and for the U.S. international family planning effort. During last year's election campaign, Bush pledged to "ensure that faith-based organizations be allowed to compete for federal abstinence education grants and other family planning programs, *without compromising their religious nature or mission"* [emphasis added]. That promise, if fully kept, could fundamentally alter the bedrock principle of government-subsidized family planning programs: individual decision-making based on the provision of complete and accurate information and access to a broad range of contraceptive options.

Government and Religion

When the president states that government should "welcome them [religious charities] as partners instead of resenting them as rivals," he is ignoring the decades-long history of partnership between government at all levels and religiously affiliated charities. Given that historical association and its expansion as a matter of law through "charitable choice" initiatives over the last five years, it seems clear that the Bush administration, along with like-minded members of Congress, are of a mind to go much further (see box, page 2).

How much further and in exactly what direction are unknown, however, since so far the president's initiative consists mostly of rhetoric. Indeed, uncertainty over the details has spurred expressions of concern and suspicion from across the political spectrum—over the prospect of too much religion in government and, conversely, too much government in religion. In addition, questions are being raised about the potential of government favoring religious groups over secular ones, the propriety of government deciding what constitutes a legitimate religious group in the first place and the prospect of government favoring "mainstream" denominations over "fringe groups" or funding such denominations exclusively.

The proposal is also running into criticism over how to reconcile potential conflicts between the public interest in enforcing antidiscrimination laws and the desire on the part of religious entities to carry out their religious missions by hiring only individuals of their own faith. Finally, all of these concerns are exacerbated by the fact that in the absence of an increase in overall funding for the relevant programs, which is presumed not to be in the cards, this initiative would mean redistributing existing funds away from established providers in order to make room for new religious charities.

Faith and Family Planning

To many observers, the administration's faith-based initiative seems to be motivated more by an interest in the "rights" of sectarian service providers than by a concern over the needs and rights of the people they serve. Perhaps in most cases provider mission and client need coincide or, at least, are compatible. Reproductive health services, however, certainly have become a flashpoint for conflict between the rights of clients and the putative rights of entities delivering (or insuring) medical care—a conflict that currently is playing out in debates over the appropriateness and implications of religious exemptions or "conscience clauses" for health care providers and insurance plans ("Refusing to Participate in Health Care: A Continuing Debate," *TGR*, February 2000, page 8).

One possible extension of "charitable choice" would be an overarching institutional "conscience clause" covering all federal health and social services. Such a provision could allow any institution to cite religious beliefs or moral convictions as a reason for refusing, for example, to meet the basic requirements of Title X service provision to offer information about and access to a broad range of contraceptive choices and to provide pregnant women with information and nondirective counseling on all of their pregnancy options ("Title X: Three Decades of Accomplishment," *TGR,* February 2001, page 5).

Beyond the issue of what services or information a religious entity may be

free *not* to provide, the push for greater involvement of religiously oriented agencies in government-funded health and social services raises serious questions about the nature of the information these groups *may* provide. The experience and history of the Adolescent Family Life Act (AFLA) provides a case in point.

AFLA, which marked the federal government's first foray into funding the development of abstinence-only education curricula, was enacted in 1981 with the purpose of reducing teenage pregnancy rates by encouraging "chastity and self-discipline." Significantly, the law also requires grant applicants to describe how they intended to involve religious organizations in providing abstinence education services. The law was challenged on the grounds that the explicit inclusion of sectarian organizations in AFLA programs constituted an impermissible promotion of religion.

In 1983, the U.S. Supreme Court rejected the assertion that the law was unconstitutional on its face, but its decision in *Kendrick v. Bowen* did acknowledge that the manner in which the law was being applied was problematic. (Activities supported with AFLA funds included materials encouraging teenagers to "take Jesus on every date"; numerous programs, in their zeal to promote premarital "chastity," conveyed distorted and false medical information about contraceptive methods.) In 1993, just days before the case was to be tried again in federal district court, the parties signed a consent decree in which they agreed that AFLA monies would no longer go to pervasively sectarian institutions and that they must support the provision of "medically accurate" information.

Even though the consent decree expired in 1998, the principles expressed in that decree continue to guide AFLA programs today. But the president's stated objective to channel more funding through religious entities, especially with regard to family planning and abstinence-only efforts, would appear to be on a collision course with those principles.

'Charitable Choice': Past, Present and Future

For many decades, prominent religiously affiliated institutions such as Catholic Charities, Lutheran Social Services of America and United Jewish Communities have provided government-funded health and social services. Because, as the president of Lutheran Services in America recently stated, "we believe basically in the separation of church and state," these institutions are organized as not-for-profit corporations subject to all relevant laws relating to the public's interest in accountability, licensing and health and safety standards. Also, unlike the churches and synagogues with which they are affiliated, they adhere to antidiscrimination laws concerning employment and service delivery.

A desire among social conservatives to direct federal funds to faith-based groups not willing to make these accommodations gave rise to the notion of "charitable choice," which was first enacted into law in 1996 in the context of welfare reform. The Personal Responsibility and Work Opportunity Reconciliation Act, at least theoretically, allows religious organizations to participate in implementing social services programs authorized by the law without impairing their "religious character." At the same time, however, it bars the direct use of funds for sectarian purposes and requires that the programs be administered consistent with the constitutional ban on the establishment of religion. Similar provisions were enacted in 1998 relating to the community services block grant and in 2000 relating to the Substance Abuse and Mental Health Services Administration.

The Bush initiative establishes a White House office and offices in five federal agencies, including the Department of Health and Human Services, whose charge is to review existing law and propose new law so as to "expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet social needs in America's communities." The idea is to broaden the "charitable choice" concept throughout the entire network of federal health and social services programs. The purpose also is to "eliminate unnecessary…barriers" to eligibility for funding and to assist faith-based groups by means of direct grants, vouchers or tax credits. While the internal administration review is proceeding, the Bush administration is working with allies in Congress to draft the major legislation that would be needed to accomplish its goals.

Walls of Separation

A major premise of the president's faith-based initiative is that the existing barriers between government programs and religious entities are counterproductive and inherently too cumbersome. The wall can be lowered substantially, its proponents maintain, and still ensure government does not fund religion per se. Yet, exactly one week before announcing the establishment of his faith-based initiative, when the president reinstated the so-called global gag rule affecting U.S. family planning aid to overseas groups, he came to exactly the opposite conclusion about the viability and importance of that wall of separation.

At a retreat of Democratic House members on February 4, Rep. Nancy Pelosi (D-CA) asked the president if he recognized that his administration was applying a "double standard"—by defunding groups that use

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their private funds for abortion activities while encouraging government aid to faith-based charities that use their private funds for proselytizing or other religious activities. The president never explained the dichotomy. But the irony of his administration minimizing the importance of the presumed fungibility of government and private funds when it comes to religious organizations while citing it as an insurmountable obstacle when it comes to organizations that are involved in privately funded abortion-related activities has not been lost on family planning advocates.

Indeed, while many defenders of expanded "charitable choice" insist that they are interested in funding "bread not Bibles," they are acknowledging, at least tacitly, that fungibility—the notion that government funds for specific activities "free up" private funds for other activities and, thereby, indirectly support them—is the price of involving the private sector in any government-subsidized activity. That price may be too high for some proponents of strict church-state separation, for whom any government funding through religious entities under any circumstances is inappropriate. The president apparently considers that price to be too high, so far, only where federal family planning funds are concerned.

Means and Ends

Against the backdrop of the larger debate over the relationship between church and state, the bottom-line impact of greater "charitable choice" on family planning programs may have less to do with who gets funded than with what they do with those funds. The fact is that Roman Catholic and other religiously affiliated institutions have long participated in the federal family planning effort, both on the international front and under Title X, and a reasonable balance has been achieved between their theology and the rights of women in need of care. These groups might provide only natural family planning instruction themselves, for example, but in accordance with federal law, they agree to send women to other nearby providers on request for information and services on a broader range of methods. How giving more latitude to faith-based groups might shift that balance between provider and client rights and needs is an open, and very important, question.

On at least one occasion, John DiIulio, head of the White House faith-based initiative, has argued that eligibility for participation in federal programs should be based on outcomes rather than on the nature of the group itself: "Evenhanded performance standards, not illegal, a priori procurement black lists," he has said, "have been, and continue to be, government's best constitutional method for keeping horrible louts, religious or secular, on the outs." Of course, he was making the case for including religious groups, while inadvertently making a good argument for why Planned Parenthood clinics, for example, should not be excluded.

Indeed, if effectiveness really is the standard, and the one that is to be applied equally to all programs, then Title X family planning providers at home and U.S. sponsored programs abroad would fare very well—especially if they were to be judged by the goal of reducing abortion. The reason is simple: Even those providers that advocate for or provide legal abortion services with their own resources are doing more to reduce women's recourse to abortion—by providing contraceptive services— than are the religious antiabortion and "profamily" groups that seek to reduce abortion by making it illegal or persuading women already facing an unintended pregnancy not to have one.