

November 3, 2021

**Civil Rights and Human Services Subcommittee, Education & Labor Committee,
Hearing—A Call to Action: Modernizing the Community Services Block Grant
Wednesday, November 3, 2021**

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

My name is Roger Severino. I am a Senior Fellow at the Ethics & Public Policy Center where I direct EPPC’s HHS Accountability Project. I am also the former head of the Office for Civil Rights at HHS, when 45 C.F.R. 87 (“Equal Treatment for Faith-Based Organizations”) was adopted in its present form.

I write in response to the proposal in H.R. 5129 to reauthorize the Community Services Block Grant (CSBG) program without the existing charitable choice language. Because of the grave religious liberty and fairness interests at stake, any editing or removal of the existing statutory language must be thoroughly justified.

H.R. 5129 proposes to eliminate nearly all of the existing charitable choice language in place since 1998. H.R. 5129 would replace several subsections with one sentence that states: “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).”¹

This replacement language is insufficient to allow meaningful participation by religious organizations. Religious organizations are much more than just their “form of internal governance.” Vital to religious organizations’ religious mission and work are their religious beliefs, tenets, practices, and observances. Gone under the proposal would be specific protections for hiring of co-religionists, which has long ago been settled as vital to faith-based organizations’ ability to preserve their religious identities and mission.

While not perfect, the current statutory language provides necessary protections for religious organizations and has opened the door to equal participation by faith-based entities who have relied on these protections for decades. Moreover, there is simply no justification for the change as the Office of Legal Counsel in the U.S. Department of Justice (DOJ) long ago explained how the statute’s charitable choice language does not violate the Establishment Clause.²

¹ <https://www.congress.gov/117/bills/hr5129/BILLS-117hr5129ih.pdf>.

² Direct Aid to Faith-Based Organizations Under the Charitable Choice Provisions of the Community Solutions Act of 2001, 25 Op. O.L.C. 129 (June 25, 2001), <https://www.justice.gov/sites/default/files/olc/opinions/2001/06/31/op->

Some claim that the changes would have “little, if any, legal or practical effect on participation by faith-based organizations in the CSBG program” because of the existence of existing regulations at 45 C.F.R. 87.³ There are two problems with this assumption. First, the regulations at 45 C.F.R. 87 were directly modeled on the statute, and second, those regulations can be eliminated without Congressional action, thereby eliminating protections for such organizations. The federal government has many regulations prohibiting racial discrimination in federal grant programs, but no one would dare suggest elimination of Title VI of the Civil Rights Act of 1964 by arguing there would be “little, if any, legal or practical effect on participation” even if it were true.

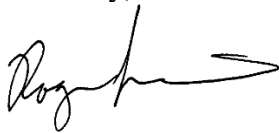
If deleting the charitable choice language is merely a matter of housekeeping as those in favor of it allege, the subcommittee should do housekeeping, not remove the foundations of the house. Because the language of 45 C.F.R. 87 is acknowledged as governing if the statutory language is largely eliminated, the obvious solution is to adopt the regulatory standards and protections as the *statutory* standards and protections.

This win-win can be accomplished by adopting the following language (instead of the current H.R. 5129 proposal):

All protections and rights for religious organizations to equal treatment, free exercise, and non-discrimination provided for and available under 45 C.F.R. 87 (as adopted on December 17, 2020, 85 Fed. Reg. 82145–82148), shall apply for all purposes of this Section.

Since all agree the regulations provide valuable protection for religious organizations that should remain, I recommend that this Subcommittee propose to amend the statute by directly incorporating language from the regulations as above to achieve greater consistency and simplicity, without eroding any substantive protections.

Sincerely,



Roger Severino
Senior Fellow
Ethics & Public Policy Center

[olc-v025-p0129_0.pdf](#); Indirect Aid to Faith-Based Organizations Under the Charitable Choice Provisions of the Community Solutions Act of 2001, 25 Op. O.L.C. 127 (June 22, 2001), https://www.justice.gov/sites/default/files/olc/opinions/2001/06/31/op-olc-v025-p0127_0.pdf.

³ Memorandum from Community Action Program Legal Servs., Inc. on the Community Services Block Grant (CSBG) Act and Charitable Choice (Jan. 24, 2019), <https://communityactionpartnership.com/wp-content/uploads/2019/09/Charitable-Choice-HR1695-HillBriefingPacket-NCAF-4.pdf>.