

NONPROFIT SECTOR STRATEGY GROUP

Non-Profit
Religion

Religious

Organizations and
Government

A STATEMENT
FOR PUBLIC
DISCUSSION



THE ASPEN INSTITUTE

Nonprofit Sector Strategy Group

The Aspen Institute's Nonprofit Sector Strategy Group (NSSG) is a leadership forum that is addressing the most pressing issues facing the nonprofit sector in America. Formed in 1997, the NSSG convenes meetings to explore innovative ways in which the business, government and nonprofit sectors might work together to address shared concerns and promote a healthy civil society and democracy.

The NSSG is an initiative of The Aspen Institute's Nonprofit Sector and Philanthropy Program, which seeks to improve the operation of the nonprofit sector and philanthropy through research and dialogue focused on public policy, management, and other important issues affecting the nonprofit sector.

Other NSSG publications include:

"The Nonprofit Contribution to Civic Participation and Advocacy";

"The Nonprofit Sector and the Market: Opportunities and Challenges";

"The Nonprofit Sector and Business: New Visions, New Opportunities, New Challenges"; and,

"The Nonprofit Sector and Government: Clarifying the Relationship."

This pamphlet provides an introduction to the work of the NSSG, followed by the group's statement, "Religious Organizations and Government."

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Introduction: The Mission of the Nonprofit Sector Strategy Group

By carefully examining the most important challenges and opportunities facing America's private nonprofit organizations, the Nonprofit Sector Strategy Group is working to stimulate a new consensus about the nonprofit sector's roles and responsibilities, and offer practical recommendations to enhance policy, practice, research, and public education on this crucial set of institutions.

America's private nonprofit sector has long played a critical role in American life.¹ Its 1.6 million organizations and associations provide services to meet an extraordinary range of human needs: ministering to the sick through visiting nurses associations, hospitals, clinics, and nursing homes; educating tens of millions in its schools and universities, as well as in community tutoring programs; providing human services such as day care, meals on wheels, adoption, job placement, domestic abuse prevention, and relief for the poor; strengthening spiritual life through churches and religious associations; and promoting arts and cultural activities of all kinds.

Nonprofit organizations also connect Americans to unique opportunities: to volunteer, to advocate for public policy, to promote democratic values, to participate in decision-making processes, and—in doing so—to shape a more just and prosperous democracy.

RESPONDING TO A CHANGING LANDSCAPE

In the past 15 years, the nonprofit sector, like business and government, has had to respond to a dramatically new social and political landscape.

The contours of this landscape include: a new and constantly evolving mix of peoples and cultures; instant and interactive technology in all arenas of life; downsized and devolved governments; a global marketplace; a commercial presence that reaches into almost every aspect of life; and a volatile economy.

These new realities pose a complex mix of opportunities and challenges for nonprofit organizations. On the one hand, they open up the possibility of productive new partnerships between nonprofit organizations and businesses and new

sources of revenue that nonprofit organizations can tap. On the other hand, however, they bring for-profit competitors into traditional nonprofit fields and create commercial pressures that can threaten the ability of nonprofit organizations to remain focused on their public-service missions.

THE WORK OF THE NONPROFIT SECTOR STRATEGY GROUP

This changed environment gives rise to fundamental questions: What are the unique contributions of nonprofit organizations? What traditional nonprofit roles should endure and what new roles need to be imagined? What are the sector's major strengths and weaknesses? How can needed changes best be encouraged?

In 1997, The Aspen Institute, an international nonprofit educational institution headquartered in Washington, D.C., organized the Nonprofit Sector Strategy Group (NSSG) to address these questions, to examine the sector's most important opportunities and challenges and bring constructive ideas and recommendations to public attention. Funded by grants from the W. K. Kellogg Foundation and The Ford Foundation, the NSSG focuses its attention primarily on the public-benefit portion of the nonprofit sector, which encompasses those organizations whose primary mission is to serve a broad public rather than their own members.

The NSSG convenes participants from a variety of backgrounds and institutions—including individuals from business, government, academia, nonprofit organizations, foundations, and the media. In addition to gathering participants for regular deliberations, the NSSG shares its findings with and seeks comments from a broad range of opinion leaders, policymakers, academic institutions, nonprofit and business groups, and journalists.

The following pages contain the results of an NSSG dialogue on the relationship between religious organizations and government. We circulate this document in the hope that it will contribute to the current debate on this important subject.

Religious Organizations and Government

INTRODUCTION

Religion is an important strand in the fabric of American culture. Americans celebrate the role of faith and religion in society, and at the same time value an historical and constitutionally mandated arm's length relationship between church and state. The borders between church and state are not static, however. They evolve over time in response to new challenges and opportunities, though within the bounds set by basic constitutional principles, which also evolve over time.

Today, a new debate has emerged over issues of church and state. This debate has been sparked by new proposals to encourage the involvement of religious organizations in the provision of human services by broadening the access of religious and community-based organizations to government support. Whatever their substantive merits, such proposals raise significant moral, legal, and practical issues that must be approached with great sensitivity and care in view of the long-standing commitment to a meaningful separation between church and state in this country.

In an effort to shed light on these issues, The Aspen Institute's Nonprofit Sector Strategy Group, a group of nonprofit, government, business, and academic leaders, made the topic of "Religious Organizations and Government" the focus of a four-day meeting in July 2001 (see page 14 for list of Strategy Group members; members who participated in this discussion are indicated by an asterisk). To help inform the discussion, the Strategy Group invited a number of prominent experts on this subject to join the deliberations (see page 16 for list of additional meeting participants). This document summarizes the areas of agreement and disagreement that emerged during this conversation. It is a product of the Strategy Group itself, but reflects as well significant input from outside experts. In all cases, participants took part in the discussion in their individual capacities, not as representatives of the organizations with which they are affiliated or that support their work.

BACKGROUND: THE PROBLEM

Recent proposals to expand the range of religious organizations eligible to receive government support, and the range of programs under which they receive support, spring from a growing realization of the important role that religious groups and community-based organizations play in dealing with social needs in communities throughout our nation.

While the actual scope of religious-organization involvement in human service provision remains open to debate, it appears that religious congregations and other faith-based organizations are particularly involved in low-income communities, providing a variety of human services, from housing to drug counseling, emergency food and employment assistance. In many of these cases religious faith is a motivating factor, stimulating religiously inspired individuals to lend a helping hand. In others, however, religion is a central facet of programming, integrated into the core of the service activity.

Religious institutions and community-based organizations often enjoy important advantages as human service providers. For one thing, they often have a credibility and legitimacy born of an established presence in the community. What is more, they often engage community residents who share personal characteristics with those being helped. The result can be a sense of intimate understanding of the problems being addressed and a special spirit that can empower individuals to overcome personal challenges.

Reflecting these advantages, religious organizations and community-based organizations have been extensively involved in human service activities since Colonial times and have received significant governmental support. Indeed, this assistance is massive. Religiously affiliated colleges and universities, social service agencies, hospitals, and other institutions have been central actors in government-financed human service activities almost from the founding of the republic, and in some cases even earlier. What is more, this assistance does not appear to have required these institutions to surrender key elements of their religious character and identification.

Nevertheless, some religious organizations and community-based groups report difficulties in accessing the assistance they need to sustain their service activities, though how widespread and serious these difficulties are is a matter of some dispute. Of special concern is support for programs in which religion is an explicit and integral component of the service. To some extent this has been due to legal doctrines appearing to bar public assistance to "pervasively sectarian" organizations, which may discourage program administrators from supporting such organizations. Beyond this, some religious and community organizations lack the staff and experience to make their way through the often-complex application requirements of public

programs. Finally, a wide variety of health, safety, professional, and administrative regulations, though serving valid policy purposes, may pose additional hurdles to the involvement of religious organizations, as well as other community-based organizations, in government programs.

The Strategy Group convened in July 2001 to consider the appropriateness of proposals advanced by the Bush administration and others to ease or otherwise overcome these perceived barriers and to open or extend public financial support to additional religious and community-based organizations.

GUIDING PRINCIPLES

Based on their review of the evidence and general understanding of the nation's nonprofit sector and the special place of religious organizations within it, Strategy Group members reached a number of basic conclusions about the role of religious and community-based organizations in addressing public problems and about the appropriateness and conditions of government support to such organizations for these purposes:

1. Multiple Motivations to Help

Religion can be a crucial element in dealing with social needs, particularly as a motivator for dealing with issues of poverty and social justice. At the same time, religious faith is not the only wellspring of compassionate work. Also crucial are other humanitarian impulses, which manifest themselves in the work of secular organizations that are also dedicated to social justice and human advancement.

2. Addressing the Structural Causes of Human Distress

Ministering to those in need is but one of the contributions that nonprofit organizations, including religiously affiliated organizations and congregations, can make to community life. Also important is the contribution such organizations can make by speaking out on various issues, by serving as a conscience of the community, and by working with others to address the structural causes of human distress, which are often rooted in economic relationships, in inequalities of power and resources, and in racism and bigotry. Attention to the service role of religious organizations should not become a substitute for sustained attention to this broader "witness" role that many religious and secular organizations also perform.

3. Involvement of Religious Organizations and Community Based Organizations in Human Service Provision

Given the special commitment that religious organizations often bring to human service work and the legitimacy such institutions often have, particularly in low-income communities, it

seems desirable to encourage them as well as other community-based organizations to be involved in providing human services. However, this must be done in a way that is consistent with long-standing principles designed to protect individual religious freedom and to avoid government promotion or restraint of religious practice.

4. Conditions of Government Support

Public funding of religious organizations, including those that are principally organized around religious practice, like congregations, is appropriate only if the following conditions are met:

- a. *Non-support of religious practice.* Public funds should not be used to support religious activities, such as religious worship, sectarian instruction, and proselytizing.
- b. *Separation of religious activities from service activities.* If religious activities are carried out by a religious organization that is receiving public support for its service activities, the religious activities must be clearly separated from the publicly supported service activities, and any participation in the religious activities must be completely voluntary. Most participants felt this should be accomplished by establishing a blanket requirement that religious organizations receiving public support establish a separately constituted 501(c)(3) organization to handle the government-supported service activities. Others preferred to make this a recommended option rather than a requirement. All participants agreed that the separation of religious activities from service activities does not require the elimination of all religious symbols or identification.
- c. *Guarantee of a secular alternative.* When government provides support to religious organizations for human services, it must ensure that readily accessible, secular services of equal value are available and publicized.
- d. *Nondiscrimination in service provision.* Religious organizations receiving government support for services must not discriminate in accepting clients or in providing services on the basis of religion or religious belief. Services financed with public funds should be available to all those eligible on an equal basis.
- e. *Nondiscrimination in hiring.* Religious organizations receiving public support for their service activities should adhere to the same nondiscrimination requirements in their hiring practices as apply to non-religious providers. Most participants felt that religious considerations should not be a factor in hiring for publicly supported service activities. Others felt that it was appropriate for religious organizations engaged in publicly funded service activities to have hiring preferences for these activities based on religious affiliation, as is allowed under current law for their religious activities.

- f. *Adherence to basic accountability and regulatory standards.* Religious organizations receiving public funds to support their service activities must adhere to the same basic regulatory and accountability standards as other providers. This applies equally to financial accountability, health and safety standards, and professional standards. In view of the special obstacles that such standards sometimes pose to community-based organizations, however, every effort should be made to simplify or eliminate any unnecessarily cumbersome or outdated requirements that may exist, and to provide public and private funds to community-based organizations, including religious organizations, to allow them to comply with the necessary regulations that remain.

5. Facilitating Involvement

In view of the important contributions that community-based and religious organizations often bring to solving social problems, special efforts may be appropriate, consistent with the conditions noted above, to encourage their involvement in such activities. This could usefully involve:

- First, regular reviews and elimination of any administrative practices or attitudes on the part of government officials that have the effect of disqualifying or disadvantaging otherwise eligible community-based and religious organizations from access to public resources on grounds unrelated to constitutional requirements or their ability to provide services competently;
- Second, outreach to make sure all qualified service providers, including community-based and religious groups, are aware of their right to compete for government grants and contracts; and
- Third, the provision of resources from both government and private philanthropy, either directly or in the form of technical assistance, to assist community-based and religious organizations to develop the capacity to compete for public funds and successfully carry out public programs.

6. No Privileges/No Prejudices

While it is in the public interest for government support of appropriate community-based and religious organizations to be more openly available, that does not mean giving these organizations an advantage over others in competing for public funds. While community-based and religious organizations may have certain advantages in dealing with social problems, these advantages are far from certain and are not universal. What is required, therefore, is a situation in which these organizations are allowed, and equipped, to compete fairly with other organizations, and in which administrators decide among competing proposals using

their best professional judgment, with neither prejudice against, nor special treatment for, religious or community-based organizations.

7. Monitoring and Evaluation

The public funding of religious groups should be carefully monitored and evaluated to make sure that publicly funded programs are implemented properly, that the safeguards for historic principles of church-state relations suggested here are being adequately adhered to, and that the case for the contribution of faith to programmatic success is reliably assessed. For this to be possible, all recipients of government funds, including faith-based and community recipients, should be subject to meaningful monitoring and evaluation, and funds must be made available to finance the needed monitoring and evaluation work.

8. Protecting the Advocacy Role

As is the case with secular organizations and consistent with an earlier Nonprofit Sector Strategy Group statement², special care needs to be taken to avoid having the receipt of government support compromise the ability of religious organizations to perform other roles in the pursuit of social justice, including their role of speaking "truth to power" and attempting to promote more humane public policies. While not all religious organizations put a priority on this social action role, many do, and the design of public funding should take care not to limit or constrain it.

9. The Need for Adequate Resources

Broadening the access of community-based and religious organizations to public support will not, in itself, resolve the many problems faced by individuals and communities throughout our country. Rather, additional resources are needed. Otherwise, the broadening of access will merely increase competition between religious and non-religious providers, reduce the chances for productive cooperation between these groups, and limit the possibility for real improvement in life-chances of those in need. Efforts to broaden the access of religious groups to public funds should therefore not proceed unless they are accompanied by some meaningful expansion of the available resources.

APPLICATION

Given the diversity of religious organizations, participants thought it useful to clarify how these principles might apply to several distinct types of religious organizations. Given the multiple meanings attached to the term "faith," moreover, there was general agreement that this is too nebulous and loaded a term to use. Instead, participants favored use of the term "religious" to depict the organizations to which this statement refers. The discussion below therefore details how the principles

articulated above would apply to three reasonably distinct classes of religious organizations: (1) religiously affiliated service organizations; (2) congregations; and (3) organizations unable to separate their service and religious activities.

(1) Religiously Affiliated Organizations

Government funding has been flowing for many years to religiously affiliated service organizations other than congregations that provide various human services, from family counseling and adoption assistance to education. Generally, such funding has proceeded on the assumption that while religion may be an important background factor in these organizations, the organizations themselves are not "pervasively sectarian" and that the religious component, while present, is not an integral part of the service provided.

While these patterns of funding have persisted for decades, and while few cases of government interference with the religious dimensions of the services these agencies provide has occurred, a great deal of ambiguity surrounds what is and what is not permissible.

Against this backdrop, with respect to religiously affiliated service organizations, these principles would:

- Encourage continued eligibility for government funding so long as the religious dimensions of their activities are separate from the publicly funded activities; and
- Significantly reduce the ambiguous nature of existing relationships by confirming the acceptability of some practices that are now open to doubt (such as the incidental display of religious symbolism and the wearing of religious apparel) and the unacceptability of other practices (such as discrimination in acceptance of clients or in hiring of staff in ways that are inconsistent with standard anti-discrimination provisions applicable to other providers, or the overt blending of religious practices with publicly funded social services).

(2) Religious Congregations

Until recently, religious congregations have tended to be viewed as inherently, or "pervasively," religious, and therefore not eligible for public funds, though this principle has not been consistently applied. The Welfare Reform Act of 1996, however, allows congregations to receive government funds to provide welfare-related services under certain statutory conditions. The principles articulated in this statement support this opening of public programs to religious congregations under certain circumstances. More specifically, they would:

- Require religious congregations receiving public support to segregate their publicly supported service activities from their religious activities. Most participants felt that

this should be done through a blanket requirement that the service functions be administered by a separately incorporated 501(c)(3) organization whereas others preferred to make this only a strongly recommended option;

- Broaden the range of public programs under which religious congregations could receive public funds to include a wide array of social service programs. Many participants specifically noted that the principles developed in this statement go beyond programs aimed only at the poor and embrace a broader set of human service activities (e.g. programs for the disabled regardless of economic circumstances);
- Require government to eliminate inappropriate or unnecessary administrative and attitudinal barriers that may have impeded the involvement of religious congregations in publicly funded service activities;
- Preserve the character of congregations while requiring that they open their publicly supported service activities to all potential clients, without regard to religious background. As part of this, congregations operating service programs with public support would be expected to honor the differing religious backgrounds of clients by making any religious observances purely voluntary and by keeping the display of religious materials to a reasonable minimum in the areas where services are delivered; and
- With regard to hiring decisions for service activities, most participants felt that these must also be made without regard to the religious backgrounds of the potential employees. Others, however, felt that it was appropriate for religious congregations to apply religious criteria to the hiring of their social service staff just as they are allowed to do for their congregational staff. Other prohibitions on hiring discrimination that apply to non-religious service providers in the same fields would apply to religious congregations as well.

(3) Organizations Unable to Separate their Service and Religious Functions

Some religious congregations and other organizations engaged in human service work view the religious element of their service activities as so integral to their work that it cannot easily be separated out. Organizations pursuing such "holistic" approaches pose special challenges to traditional principles of church-state relations. As a result, no complete consensus was reached on how they should be handled. In particular:

- Most participants felt that such services, while possibly valuable, should be privately funded and not be eligible for public grant and contract funding;

- Some participants felt that government funding that reached such organizations through vouchers would be permissible, though most of these agreed this would be acceptable only if some provision were made to ensure that non-religious alternatives of similar value were also available; and
- A few participants felt that public funding for such organizations was entirely appropriate so long as a variety of such "holistic" approaches receive support and are available.

CONCLUSION

Religious organizations have long made important contributions to American life, not only at the individual level, but at the community level as well. In many places, particularly low-income communities, those contributions have recently become more visible than ever, leading many to suggest the need to broaden the array of religious organizations eligible to receive public funding, and to broaden the array of public programs for which such organizations are eligible.

While we are not as certain as some about the potential for further involvement by religious organizations in solving social problems, we recognize the desirability of encouraging this development to the extent possible. In doing so, however, we believe that great care must be taken both to protect the essential character of religious congregations as independent, non-profit institutions, and to avoid infringing upon the principles of religious freedom and church-state separation that have long been central features of the American experiment.

We believe the principles and suggestions outlined in this document represent a reasonable compromise among these competing considerations. We offer them here in the hope that they may help others come to terms with the important issues at stake in this significant contemporary debate and provide pointers more broadly about how government-nonprofit relations in general might usefully evolve.

1. *The nonprofit sector consists of a broad range of organizations that qualify for exemption from federal income taxes under any of 26 different sections of the Internal Revenue Code. A common characteristic of these organizations is that they do not distribute any profits they might generate to those who control and/or support them. As noted below, the particular focus of the Nonprofit Sector Strategy Group, and hence of this statement, is on a subset of these tax-exempt organizations—namely, those that are eligible for exemption under either Section 501(c)(3) or 501(c)(4) of the tax code. For further detail on the definition of nonprofit organizations, see: Bruce Hopkins, *The Law of Tax-Exempt Organizations* (New York: John Wiley and Sons, Inc., 1992).*
2. *The Nonprofit Contribution to Civic Participation and Advocacy. A Draft Statement of the Nonprofit Sector Strategy Group.* (Washington: The Aspen Institute, 2000).

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This statement represents the considered judgment of The Aspen Institute Nonprofit Sector Strategy Group. Group members participated in their individual capacities and the views expressed in the discussions may or may not reflect the official positions of the organizations with which they are affiliated. This document reflects the general sentiments of Strategy Group members who were present at this meeting, but members may not agree fully with each individual point. Outside experts took part in the discussion leading to this statement, but do not necessarily concur with its final conclusions.

The Aspen Institute is a global forum for leveraging the power of leaders to improve the human condition. Through its seminar and policy programs, the Institute fosters enlightened, morally responsible leadership and convenes leaders and policymakers to address the foremost challenges of the new century.

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