

January 19, 1996

WR - Religious Providers

Honorable William J. Clinton
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Clinton:

On behalf of the 300,000 members of the American Civil Liberties Union, we would like to thank you for demonstrating the courage to stand up for the civil liberties of the poor by vetoing the "welfare reform" bill. Among the many dangerous provisions in the bill was an unconstitutional section that would have violated the religious liberty of all Americans. These provisions, found in section 104 of the bill, would have authorized states to contract with houses of worship and other religious institutions to administer and distribute government-funded welfare services. This section of the welfare bill constituted a serious departure from the status quo, in which religiously affiliated nonprofit organizations perform government-funded social services.

We are concerned that these provisions will reappear in future versions of a welfare reform bill or in the budget reconciliation package. Although not the official title of the provisions, Section 104 of the welfare bill would have operated as a "Proselytization Opportunity Act" for some religious institutions. Aside from authorizing houses of worship to completely take over government-funded welfare services, section 104 would allow welfare beneficiaries to use government vouchers and certificates to pay for religious "worship, instruction or proselytization" activities.

This section, originally inserted into the Senate version of the welfare reform bill by Senator John Ashcroft, presents many constitutional and practical problems. This letter will outline those problems.

Senator Ashcroft's provisions violate the First Amendment's Establishment Clause

The primary constitutional problem with the Ashcroft provisions is that they permit and encourage direct grants to and government contracts with "pervasively sectarian" religious organizations for the provision of welfare services. Although the Supreme Court has ruled that "religiously affiliated" organizations are not per se prohibited from receiving government grants for social work, the Court has never permitted the funding of organizations that are pervasively

sectarian because it would violate the Establishment Clause.¹

The Ashcroft provisions not only authorize pervasively sectarian institutions, such as houses of worship, to take over welfare services from the government, but it would grant all religious organizations a statutory right to be eligible to contract with a state to administer welfare services. Furthermore, this legislation prevents states from requiring that religious welfare providers deliver services in an environment free of proselytizing symbols and expression.

Thus, it is not simply the case that the legislation lacks adequate safeguards against unconstitutional activity; rather, it contains many provisions that would ensure violations of the First Amendment religious rights of taxpayers and welfare beneficiaries.

Employment Discrimination

The Ashcroft language would allow a religious organization to engage in religious discrimination against employees who are being paid with taxpayer funds. Although religious organizations are currently granted an exemption from the prohibition on religious employment discrimination in Title VII of the federal civil rights law, this exemption should not extend to employees who work on, and are paid through, government grants or contracts.

The bill ignores the constitutional and policy problems associated with government-funded religious discrimination. Senator Ashcroft's employment discrimination provision would allow a religious organization to not only exclude people of different faiths from government-funded employment, but would allow the group to advance religious doctrines with taxpayer money. For example, a particular religion would have a right to contract with the state government for public housing services, even though people of different faiths would be excluded from working at the government housing project.

Beneficiaries' Religious Liberty Rights Not Protected

The Ashcroft language does not provide adequate protection for the religious liberty of welfare beneficiaries. Under the legislation, a state could completely shift government-funded welfare services for a certain geographic area or a specific social service to a religious institution. This, of course, would lead to innumerable violations of religious freedom and conscience of beneficiaries who are assigned to religious organizations to receive welfare benefits and services.

Despite these obvious problems, the legislation does not require states to provide notice to

¹ *Bowen v. Kendrick*, 487 U.S. 589, 612 (1988).

Honorable William J. Clinton
January 19, 1996
Page 3

beneficiaries informing them of their right to request an alternative provider. Thus, a beneficiary might assume that they have no option but to go to the assigned religious institution or forgo their benefits. Furthermore, there is no provision requiring the state to establish an alternative provider within a specific time framework.

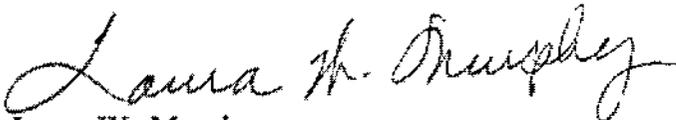
The Ashcroft Provisions Trumps State and Individual Rights

Senator Ashcroft's directives bind the hands of state governments under the guise of "nondiscrimination against religious organizations." The legislation prohibits states from "discriminating" against an institution because of its "religious character." This flies in the face of constitutional jurisprudence, which requires a careful examination of an institution's "religious character" before it is declared eligible for government funding. Furthermore, Senator Ashcroft's provisions violate the policy of many states to protect the religious liberty of its citizens. The majority of state constitutions contain language dedicated to such a purpose, and the Ashcroft language could preempt many of these constitutional protections.

Under the Ashcroft language, if a state government determines that the funding of certain pervasively religious entities would violate the Establishment Clause, then it will surely face a multitude of lawsuits from any number of religious organizations claiming the "right" to contract with the state. State governments would also be powerless to ensure that its citizens are not subject to proselytization by religious welfare offices replete with sectarian "art, icons, scripture" and "other symbols."

In summary, the Ashcroft provisions violate the Constitution and are antithetical to the American ideal of religious liberty. These provisions present both the problem of government funding of religion and religion acting in the place of government. Thus, we ask you to stand behind the Constitution and oppose the inclusion of these provisions in welfare reform.

Sincerely,



Laura W. Murphy
Director



Daniel E. Katz
Legal Fellow

BCC:

✓ Bruce Reed
Assistant to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Steve Neuwirth
Office of the White House Counsel
Old Executive Office Building Rm. 130
Washington, DC 20500

Andrew Fois
Faith Burton
Office of Legislative Affairs
U.S. Department of Justice
Washington, DC 20530

Honorable Richard A. Gephardt
House Minority Leader
1226 Longworth House Office Building
Washington, DC 20515-2503

Honorable Thomas A. Daschle
Senate Minority Leader
509 Hart Senate Office Building
Washington, DC 20510-4103

Ronald Weich
Sara Thom
Committee on Labor and Human Resources
644 Dirksen Senate Office Building
Washington, DC 20510

January 18, 1996

Honorable William J. Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

WR - Religious
Providers

Re: Welfare reform and religious liberty

Dear President Clinton:

As communities of faith and organizations devoted to religious and civil liberty, we write to urge you to oppose Congressional attempts to undermine the constitutional rights of both taxpayers and welfare recipients. We are firmly convinced that section 104 of the welfare bill, which you vetoed, would harm religion and violate the religious liberty rights of all Americans. We ask that you oppose the inclusion of this section in a freestanding welfare reform bill or welfare reform included in the budget reconciliation bill.

This section of welfare reform, inserted at the urging of Senator John Ashcroft (R-MO), would encourage states to funnel federal block grant dollars and turn over government welfare services to pervasively sectarian religious institutions, such as houses of worship, in clear violation of the Establishment Clause of the First Amendment. *See Bowen v. Kendrick*, 487 U.S. 589 (1988).

The Ashcroft language will damage religion, religious liberty, and states' rights in a number of ways:

- It would authorize religious institutions to engage in religious employment discrimination against workers who will be paid with taxpayer dollars. Thus, a religious group could exclude those of a different faith from government-funded employment in public housing, family assistance, and SSI services.
- It would allow government vouchers and certificates to be used for "sectarian worship, instruction, or proselytization."
- It would prevent states from ensuring that government funded social services are provided in an environment free of proselytizing symbols and expression.
- It would foster excessive government entanglement with religion by authorizing wide-ranging financial audits of religious institutions that receive, but do not segregate, federal funds under the welfare reform bill.
- It does not provide welfare recipients any notice of their right to object to an assigned religious welfare provider.

For all these reasons, Section 104 of the welfare reform bill would do serious damage to religious liberty and to the principles the Founders embodied in the Establishment Clause. However, the Ashcroft provisions are entirely unnecessary, because many religiously affiliated organizations currently provide social services using government funds in ways that do not involve religious discrimination and are not delivered in a proselytizing environment. Proceeding in this way seeks to safeguard the religious liberty of welfare recipients and taxpayers, while protecting religion from the entanglement of government supervision.

We therefore ask you to defend religious liberty by opposing the inclusion of the Ashcroft language in the budget reconciliation bill or any subsequent social service bill.

Sincerely,

American Baptist Churches USA
American Civil Liberties Union
The American Ethical Union
American Federation of State, County and Municipal Employees
American Jewish Committee
American Jewish Congress
Americans for Democratic Action
Americans for Religious Liberty
Americans United for Separation of Church and State
Anti-Defamation League
Baptist Joint Committee on Public Affairs
B'nai B'rith
Central Conference of American Rabbis
Children's Healthcare Is a Legal Duty (CHILD, Inc.)
Church of the Brethren, Washington Office
General Board of Church and Society, The United Methodist Church
Hadassah, W.Z.O.A.
National Black Women's Health Project
National Council of Jewish Women
National Education Association
NOW Legal Defense and Education Fund
People for the American Way Action Fund
Presbyterian Church USA, Washington Office
Union of American Hebrew Congregations
Unitarian Universalist Association, Washington Office
United Church of Christ, Office for Church in Society
Wider Opportunities for Women
The Women and Poverty Project of Wider Opportunities for Women
Women of Reform Judaism, The Federation of Temple Sisterhoods
Women's American ORT
Women's International League for Peace and Freedom
The Workmen's Circle / Arbeter Ring
Youth Law Center

BCC:

✓ Bruce Reed
Assistant to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Steve Neuwirth
Office of the White House Counsel
Old Executive Office Building Rm. 130
Washington, DC 20500

Andrew Fois
Faith Burton
Office of Legislative Affairs
U.S. Department of Justice
Washington, DC 20530

Honorable Richard A. Gephardt
House Minority Leader
1226 Longworth House Office Building
Washington, DC 20515-2503

Honorable Thomas A. Daschle
Senate Minority Leader
509 Hart Senate Office Building
Washington, DC 20510-4103

Ronald Weich
Sara Thom
Committee on Labor and Human Resources
644 Dirksen Senate Office Building
Washington, DC 20510