

Section 3. Procedures For Use And Acceptance Of Electronic Signatures By Executive Agencies. Subsection (1) would require the Office of Management and Budget, in consultation with the National Telecommunications Information Administration to develop procedures for the use and acceptance of electronic signatures by Executive agencies.

Subsection (2) establishes the requirements for these procedures. Paragraph (i) would ensure that these procedures would be compatible with those used in the commercial and State government sectors. Paragraph (ii) would require that these procedures would not inappropriately favor one industry or technology. The intent of the bill is for the government to remain "technology neutral." And, so as not to prescribe one electronic signature security level for all documents, paragraph (iii) would allow the security level to be commensurate with the document's sensitivity. Paragraph (iv) would require agencies to electronically acknowledge the submission of electronic forms. Paragraph (v) would require agencies to ensure multiple methods of electronic submission when it expects to receive 50,000 electronic submittals of a particular form, paragraph E would require the agency to make multiple electronic signature formats available for submitting the forms. To further ensure technology neutrality, "multiple methods" are required when a form is submitted in substantial enough volume so that the government does not favor a particular technology provider by accepting only one electronic signature technology.

The intent of the bill is not to mandate the use of a particular technology. Rather, the bill is intended to be technology neutral leaving open the possibility that a wide variety of existing technologies or technologies that will be developed in the future may be used by the Federal government in satisfying the requirements of this bill.

Section 4. Deadline For Implementation By Executive Agencies Of Procedures For Use And Acceptance Of Electronic Signatures. Requires that, when practicable, Federal forms must be available for electronic submission, with electronic signatures within 60 months after enactment.

Section 5. Electronic Storage And Filing Of Employment Forms. After 18 months from enactment, the Office of Management and Budget shall develop procedures to permit employers that are required by law to collect, file and store Federal forms concerning their employees, to collect, file and store the same forms electronically.

Section 6. Study On Use Of Electronic Signatures. This section would require the Director of the Office of Management and Budget, in cooperation with the National Telecommunications Information Administration to conduct an ongoing study on how this bill affects electronic commerce and individual privacy. A periodic report describing the results shall be submitted to the Congress.

Section 7. Enforceability and Legal Effect of Electronic Records.

This section stipulates that electronic records, or electronic signatures or other forms of electronic authentication, submitted in accordance with agency procedures, will not be denied legal effect, validity or enforceability because they are in electronic form. This provision is intended to preclude agencies or courts from systematically treating electronic documents and signatures less favorably than their paper counterparts.

Section 8. Disclosure Of Information. This section is intended to protect the privacy of individuals who submit information electronically to Federal agencies. Information

submitted by individuals may only be used to facilitate electronic communications between that individual and the agency and may not be disclosed by agency employees without the affirmative consent of that individual. This section is not intended to supersede current law in this area.

Section 9. Application With Other Laws. This section would exempt the Internal Revenue Service (IRS) and the Department of the Treasury from the provisions in this Act, when in conflict with the administration of internal revenue laws or conflicts the Internal Revenue Service Restructuring and Reform Act of 1998 or the Internal Revenue Code of 1986. The IRS collection process should also be exempted from this Act.

Section 10. Definitions. This section would provide the definitions of several key terms used throughout this bill.

CHARITABLE CHOICE

Mr. ASHCROFT. Mr. President, recently, both the House and Senate voted unanimously to pass the conference report on S. 2206, the "Coats Human Services Reauthorization Act of 1998." During House debate on the conference report, some members expressed concerns regarding bill language described as the "charitable choice" provision, which is similar to language I drafted for the welfare reform law passed in the 104th Congress and signed by the President in August of 1996.

As I have said in a previous floor statement, the charitable choice provision will expand the opportunities for private, charitable, and religious organizations to serve their communities with Community Services Block Grant (CSBG) funds. This provision expresses the judgment of Congress that these organizations can play a crucial role in helping people out of poverty through the CSBG program.

I am confident that the charitable choice language in the Community Services Block Grant reauthorization is constitutional and represents sound public policy. However, I want to respond to the comments made regarding this provision, as critics of the provision seem to overlook recent case law of the Supreme Court regarding this issue, and even mischaracterize certain sections of the charitable choice provision.

First, most of the concerns expressed by certain House members are based upon case law that does not represent the current jurisprudence of the Supreme Court. In recent years, the general trajectory of the Supreme Court's Establishment Clause cases has been in the direction of what constitutional scholars describe as "neutrality theory." Under this theory, private organizations are eligible to provide government-funded services to beneficiaries through contracts, grants, or vouchers without regard to religious character. Moreover, there are serious constitutional problems when the government screens potential service providers based upon religious beliefs and practices—which is what the critics of charitable choice want to do.

The charitable choice provision in the 1996 welfare reform law and the Child Care Development Block Grant Program of 1990 conform to the principle of religious neutrality. Under the first legislation, charitable and faith-based organizations are eligible, on the same basis as all other non-governmental organizations, to receive federal funds to provide services to welfare recipients. Similarly, the child care law allows low-income parents to choose among an array of private providers—including religious ones—in obtaining federally funded day care services.

The test the Supreme Court has used over the years to analyze Establishment Clause cases has been the "Lemon test," which has the two-fold requirement that the government action in question must have a valid secular legislative purpose, and a primary effect that neither enhances nor inhibits religion. (In the recent case of *Agostini v. Felton*, the Court took the third prong, the "entanglement" analysis, and folded it into the second prong of the test). The first prong, requiring a valid secular purpose, is usually not subject to much controversy, as the Court has been highly deferential to the legislature's action. In its review of the Adolescent Family Life Act (AFLA), for example, the Court noted that the "provisions of the statute reflect at most Congress' considered judgment that religious organizations can help solve the problems to which the AFLA is addressed. Nothing in our previous cases prevents Congress from making such a judgment or from recognizing the important part that religion or religious organizations may play in resolving certain secular problems."

The serious debate generally concerns the second prong of the Lemon test, namely, whether the "primary effect" of these social welfare initiatives is to advance religion. In neutrality theory, Lemon's primary-effect inquiry is accomplished by examining how a service provider actually spends the program monies. Obviously, the test is whether funds are being spent in accordance with the valid secular purposes set out in the governing statute, and as expressed in the service contract or grant at issue. These purposes necessarily exclude use of the monies for inherently religious programming.

On the other hand, critics of charitable choice would argue that the primary-effect inquiry should focus on whether a service provider is religious in character, and if so, how religious. An organization found "too religious" is dubbed "pervasively sectarian," thereby disqualifying the organization as a provider of government-funded services.

In recent years, the Supreme Court has been moving away from this "too religious" versus "secular enough" inquiry, and toward the neutrality approach. Two of the Court's most recent pronouncements on this issue are

Agostini v. Felton and Rosenberger v. Rector and Visitors of the University of Virginia. Although the Court did not embrace the neutrality principle in these cases without certain qualifications, the law today is far closer to neutrality than to the “no-aid separationism” of the 1970s and mid-1980s espoused by critics of charitable choice.

In Agostini, decided in 1997, the Court held that remedial education for disadvantaged students could be provided on the premises of K through 12 religious schools—the only entities the Court has declared in the past to be “pervasively sectarian.” The Court was no longer willing to assume that direct assistance would be diverted to the inculcation of religion by authorities at Roman Catholic elementary and secondary schools.

In the 1995 Rosenberger case, the Court held that a state university could not deny student activity fund money, which was generally available to all students groups for student publications, to a certain student group based upon the religious content of its publication. The Court warned that the government’s attempt to draw distinctions regarding religious content would require the government—and ultimately the courts—“to inquire into the significance of words and practices to different religious faiths, and in varying circumstances by the same faith. Such inquiries would tend inevitably to entangle the State with religion in a manner forbidden by our cases.” The critics would ignore this warning in order to apply their “too religious” test.

Several prominent constitutional law scholars have recognized the Court’s movement toward neutrality, including Professor Douglas Laycock of the University of Texas, Professor John Garvey of Notre Dame, Professor Michael McConnell of the University of Utah, Professor Michael Paulsen of the University of Minnesota, and finally, Professor Carl H. Esbeck of the University of Missouri. Professor Esbeck worked closely with my staff to draft the charitable choice provision of the welfare law, as well as my Charitable Choice Expansion Act, which I introduced earlier this year.

The consequences of relying upon the view propounded by critics of the charitable choice concept go beyond ignoring recent constitutional jurisprudence. They also result in bad public policy. Demanding that religious ministries “secularize” in order to qualify to be a government-funded provider of services hurts intended beneficiaries of social services, as it eliminates a fuller range of provider choices for the poor and needy, frustrating those beneficiaries with spiritual interests.

In examining a neutral program that includes both religious and secular providers, what matters is how the government money is actually spent, not the ideological character of the provider. Strict adherence to the “too reli-

gious” distinction perpetuated by the critics could actually eliminate current successful providers from eligibility to receive government funds.

Congress should continue to find ways to encourage successful charitable and faith-based organizations to unleash their effective good works upon society. The charitable choice provision is one such way to accomplish this goal.

In their discussion of the charitable choice provisions in the CSBG reauthorization bill, critics fail to acknowledge a valid distinction made by the Supreme Court: the difference between direct and indirect funding of government programs. When a program is administered through the use of certificates or vouchers given to beneficiaries, the religious nature of the organization at which the beneficiary redeems the voucher is irrelevant.

The Supreme Court has consistently held that government may confer a benefit on individuals, who exercise personal choice in the use of their benefit at similarly situated institutions, whether public, private nonsectarian, or religious, even if the benefit indirectly advances religion. The Court has made these rulings in *Zobrest v. Catalina Foothills School District* (1993), a case holding that the provision of special education services to a Catholic high student was not prohibited by Establishment Clause; in *Mueller v. Allen* (1983), where it upheld a state income tax deduction for parents paying religious school tuition; and in *Witters v. Washington Department of Services for the Blind* (1986), where the Court upheld a state vocational rehabilitation grant to disabled student choosing to use his grant for training as a cleric.

Moreover, the Child Care and Development Block Grant program, which has been in existence since 1990, allows parents to send their children to day care centers that are unquestionably “pervasively sectarian” in nature. This program has never been challenged as being violative of the Establishment Clause.

Should a community wish to set up a Community Services Block Grant program that gives individual beneficiaries vouchers or certificates to redeem at the location of their choice, there is no constitutional concern as to the religious nature of the organization providing services to that beneficiary.

There were also concerns expressed on the House floor that individuals would be directed by the government to religious organizations to receive Community Services Block Grant Services and forced to participate in religious activities. These concerns indicate that some members may not fully understand how the Community Services Block Grant program operates. Under this program, beneficiaries choose where they want to receive CSBG services—the government does not force certain individuals into certain programs.

CSBG services are not federal entitlements. This program was designed

in the 1960s to provide flexible federal funding to communities to identify problems and needs in the community, and to then fashion and design a local solution. This is not a federally-directed solution. Rather, the CSBG program allows the community to find the most appropriate organizations in the community to offer different types of services to individuals.

Community Services Block Grant services are offered voluntarily to individuals in the community. People are not directed into these programs by the government. In fact, there are most likely existing government programs in the community, offering similar types of services, such as job training, basic education courses, and housing services. The Community Services Block Grant program maximizes individual choice at the local level by providing services to those who are fighting their way out of poverty.

Therefore, those who say that the charitable choice provision in the CSBG program is going to force individuals into religious programs and provide no alternatives misunderstand how the CSBG program operates.

The critics are also wrong when they say that a faith-based provider can compel a beneficiary to go to worship services or to submit to an attempt of proselytization. The argument fails to acknowledge that the charitable choice provision contains language stating that “[n]o funds provided directly to organizations shall be expended for sectarian worship, instruction, or proselytization.” Thus, CSBG funds must not be used to carry out inherently religious purposes. Rather, the funds are for the secular public purposes of the legislation, which include reducing poverty, revitalizing low-income communities, and empowering low-income families and individuals in rural and urban areas to become fully self-sufficient, especially those families who are attempting to transition off of welfare.

Therefore, the structure of the Community Services Block Grant program, along with the clearly spelled-out uses of and prohibitions on CSBG funding, ensure that beneficiaries will have maximized choices of where to receive services to help them escape poverty and reach self-sufficiency.

One argument was made that the charitable choice provision could result in the government having to provide financial audits of churches and other religious organizations who might be eligible for funds under a charitable choice program.

This statement appears to express a concern that a religious organization would subject itself to government intrusion by its receipt of CSBG funds. I share this concern, and for that reason, I included in the charitable choice provision language protecting a religious organization from such intrusion. This language requires a religious organization to segregate government funds

from funds received from non-government sources. Additionally, the provision states explicitly that only government funds are subject to government audit.

Therefore, the charitable choice provision protects participating religious organizations from unwarranted governmental oversight, while also holding such organizations financially accountable in the same way as all other non-governmental providers receiving government funding.

There was also a statement made on the House floor that the charitable choice provision "would seek to enact exemptions from the religious discrimination clauses of the Civil Rights Act of 1964." This is a misstatement of what the provision says. Charitable choice does not create an exemption from the Civil Rights Act of 1964. Rather, it states that it preserves the exemption in the law allowing religious organizations to make employment decisions based on religion. The Supreme Court affirmed the constitutionality of this provision in *Corporation of the Presiding Bishop v. Amos* (1987). Receiving government funds for a secular purpose does not, of course, result in a waiver of this exemption. See, e.g., *Siegel v. Truett-McConnell College*, 1994 WL 932771 (N.D. Ga. 1994).

If a religious nonprofit organization must hire persons in open disagreement with the religious background and mission of the organization, its religious autonomy would be severely infringed. In fact, many successful faith-based organizations have stated that they would not take government funding if it would require them to hire employees who did not hold the same religious beliefs of the organization. For example, the International Union of Gospel Missions conducted a survey of their missions and found that some of these missions refused government funding if it required them to hire non-Christians.

The Charitable Choice makes clear that a religious organization maintains its Title VII exemption when it receives government funds to provide social services.

There was also an argument made that the charitable choice provision would require the government to consider using fringe religious groups to provide CSBG services. Although I find this to be more of a scare tactic than a legitimate argument, I think it is obvious that the charitable choice provision will not require the government to blindly select any non-governmental organization that applies for CSBG funds. The government may require legitimate, neutral criteria to all who apply. No organization, religious or otherwise, can become a provider unless it can deliver on its grant or contract.

Finally, there was an argument that the charitable choice provision could override the constitutional language of states prohibiting public funds from going to religious organizations. I

would simply respond that the charitable choice provisions are in federal law dealing with federal dollars. We do not tell the states how to spend their own state tax funds.

In conclusion, the opponents of the charitable choice concept have not taken into account the latest Establishment Clause jurisprudence. If there is a comprehensive, religiously neutral program, the question is not whether an organization is of a religious character, but how it spends the government funds.

To reject charitable choice is to jeopardize Congress' ability to encourage proven, effective religious organizations to provide social services to our nation's needy with government funds. For years, these organizations have been transforming broken lives by addressing the deeper needs of individuals—by instilling hope and values that help change behavior and attitudes. By contrast, government-run programs have often failed in moving people from dependency and despair to independence. We must continue to find ways to allow private, charitable, and religious organizations to help administer the cultural remedy that our society so desperately needs. The charitable choice provision in the "Coats Human Services Reauthorization Act of 1998" is one way of accomplishing this goal.

THE LEGENDARY FRANK YANKOVIC

Mr. DEWINE. Mr. President, I rise today to pay tribute to one of the greatest musicmakers in the history of the Buckeye State, the legenday "Polka King," Frank Yankovic, who died yesterday at age 83.

Frank Yankovic was from Cleveland, OH, but he had fans not just in Ohio but all over America. He brought joy to millions with his lighthearted polka hits—songs whose very titles can occasion a smile—songs like and "Champagne Taste and a Beer Bankroll" and "In Heaven There Is No Beer."

Frank Yankovic won a Grammy Award, and was nominated for three more. With his passing, the world of music, and indeed all Americans who believe that music is supposed to be fun, have lost a true friend.

The voice of Frank Yankovic resounds through the decades, asking the question that most everyone in northeast Ohio grew up with: "Who stole the kishkes?"

Mr. President, it is my hope and strong belief that St. Peter is even now answering this question for Frank Yankovic—as he welcomes him to the polka band that used to be known as the heavenly choir.

On behalf of the people of Ohio, let me say thank you to this great Ohioan—for a lifetime of entertainment.

TRIBUTE TO MARIAN BERTRAM

Mr. DASCHLE. Mr. President, as the 105th Congress comes to a close, I take

this opportunity to express my appreciation, and I think the appreciation of all Members on our side of the aisle, and particularly the staff of the Democratic Policy Committee, to an individual who has dedicated 27 years to public service and the United States Senate. Marian Bertram, the personable and talented Chief Clerk of the Democratic Policy Committee, is leaving the Senate at the end of this year.

Marian, who began her work at the Democratic Policy Committee in 1971, has served four Democratic Leaders—Mike Mansfield, ROBERT BYRD, George Mitchell and myself. She has an unparalleled knowledge of the legislative process. Since its inception and for many years thereafter, she had the major responsibility of reaching and writing one of the Committee's most popular publications, the *Legislative Bulletin*. Equally important, she has the vital and demanding responsibility for the production of Voting Records and vote analyses provided to all Democratic members.

In addition to her legislative work, Marian assumed the job of Chief Clerk of the Policy Committee in 1989. Through her competence and dedication and command of every detail of the Committee's operation and budget, she makes a major contribution to the smooth running of the Policy Committee.

Marian handles this broad range of responsibilities with professional skill, equanimity, and unflinching good humor. She will be dearly missed by her friends and colleagues in the Senate.

All of us offer Marian our sincere thanks and every good wish for her continued success. Thank you, Marian Bertram.

NOMINATION OF DR. JANE HENNEY TO THE FDA

Mr. NICKLES. Mr. President, I wish to speak on the nomination of Dr. Jane Henney to be Commissioner of FDA.

Mr. President, the nomination of the FDA commissioner is one of the most important nominations the Senate has considered this year. The FDA regulates products comprising twenty-five cents of every dollar spent by consumers in this country. It deals with literally life and death issues on a daily basis. Given the significant impact the FDA has on the life of every American, it is important that the Senate exercise caution to ensure the next Commissioner is qualified and capable of leading the Agency.

I have let Dr. Henney know, and I let Secretary Shalala know, that I had some concern with FDA as it has been administered for the last few years. The FDA should be a non-partisan science based Agency which focuses solely on its mission to ensure the safety of food and to expeditiously review drugs and medical devices which are intended to save and extend lives. And for this reason I felt I needed personal assurance from Dr. Henney that under