INSTITUTIONAL RELIGIOUS FREEDOM ALLIANCE

Institutional Religious Freedom Alliance Policy Brief

Utilize the Pluralist CCDBG Funding System to Ensure Faith-Based Providers' Access to Expanded Federal Support for Child Care

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Introduction

Federal funding to subsidize child care, which is administered by states, tribes, and territories and then flows to private child care providers, is consolidated in the Child Care and Development Fund (CCDF). CCDF funds are governed by the Child Care and Development Block Grant Act (CCDBG). The CCDBG law created a child care certificate system of funding that is specifically designed to enable faith-based child care providers to receive government money without sacrificing their religious identity or religious teachings.

The U.S. Supreme Court's *Dobbs v. Jackson Women's Health Organization* abortion ruling (2022) makes even more urgent a significant expansion of federal support for child care, given that very often women's decisions to abort are due to uncertainty about having the financial resources necessary to care for a child. Expanded federal funding will make child care services more accessible to low- and moderate-income families. Expanded funding is needed, as well, to improve the viability and quality of the ecosystem of child care providers by making possible improvements in salaries, care-giver qualifications, and facilities. Such expanded funding should be channeled through the CCDBG child care certificate system that enables full participation by faith-based providers.

Faith-based providers must remain eligible for federal child care funding for the sake of the many families of one or another faith tradition who desire child care that reflects their respective beliefs, moral values, and religious rituals. The option of faith-based providers is important, too, for the families that regard highly the quality and pro-social values of faith-based child care, even if they are themselves of a different or no religious tradition. Further, the U.S. Constitution forbids excluding faith-based providers from a system of funding of private organizations, as the Supreme Court reaffirmed recently in its *Carson v. Makin* decision (2022). And, practically, it is not possible to adequately expand the number of subsidized child care slots without greater participation by faith-based providers.

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The Religion-Accommodating Federal Child Care Funding System

The federal child care subsidy program in operation today was created in 1990 with a series of specific features that made it possible for houses of worship and other religious child care providers to accept federal funds without sacrificing their religious identity, teachings, or activities.[1] The program was modified and reauthorized in 1996 and again in 2014–with the religion-accommodating features being retained. For more than three decades, then, through administrations of both parties, Congresses of varying partisan composition, and developments in the U.S. Supreme Court's interpretation of the Religion Clauses of the First Amendment, the federal government has remained committed to funding, via the states, child care in a way that is hospitable to faith-based child care.

CCDBG Act, 1990

The CCDBG program was enacted in 1990, years before any faith-based initiative or White House faith-based office, during a time when "no aid to religion" remained the dominant interpretation of the Religion Clauses. However, many of the parents whom congressional lawmakers intended to help utilized child care provided by houses of worship or other faith-based organizations. Accordingly, the program was carefully configured to enable faith-based child care providers to participate without sidelining their religious character or religious teaching.[2]

Congress made the federal funding hospitable to faith-based providers, most fundamentally, by requiring states to create a child care certificate ("indirect funding" or voucher) system, although the states could also award grants or contracts to private

[1] Precursors include the Lanham Act of 1940, which during World War II paid for child care facilities in places where many mothers were employed in defense-related companies, the Head Start program of early childhood education, which began in 1965, and the Social Security Block Grant program, created in 1981, which sometimes pays for child care.

[2] On the struggle to make this new federal child care funding welcoming to faith-based providers, see Allen D. Hertzke, "An Assessment of the Mainline Churches Since 1945," in James E. Wood and Derek Davis, eds., *The Role of Religion in the Making of Public Policy* (Waco, Texas: J.M. Dawson Institute of Church-State Studies, Baylor University, 1991), pp. 43-79, at pp. 67-69, and Lew Daly, *God's Economy: Faith-Based Initiatives and the Caring State* (Chicago: University of Chicago Press, 2009), pp. 48-50. For a detailed look at the religion-friendly features of the original CCDBG law and of the changes made when it was reauthorized as part of federal welfare reform in 1996, see William J. Tobin, *Lessons About Vouchers from Federal Child Care Legislation*, Policy Papers from the Religious Social Sector Project (Washington, D.C.: Center for Public Justice, January 1998). For a brief discussion of the faith-based initiative, see Stanley Carlson-Thies, "The Biden Partnerships Plan Is Faith-Based Initiative 5.0," HistPhil blogpost, March 9, 2021. https://histphil.org/2021/03/09/the-biden-partnerships-plan-is-faith-based-initiative-5-0/

providers to pay for subsidized slots for eligible children ("direct funding"). The child care certificates are a form of payment authorization given to eligible parents who then choose the provider they wish. The providers exchange the certificates with the state for payment for the child care they have provided the families who chose the provider. Usually, government money is given directly to a provider via grants or contracts and, to avoid government payment for religious teachings and activities (to avoid the "establishment" of religion), religion has to be kept out of the government-funded services. With child care certificates, because the federal support is awarded to the parents and only ends up with a faith-based provider due to the choice of the parents, not the decision of government officials, the requirement of keeping religion out of the service is absent.[3]

The CCDBG law requires that parents eligible for subsidized care always be offered the option of a certificate, and it authorizes parents to use their federally funded certificates to obtain "sectarian child care services" (42 USC 9858n(c)2)). The CCDBG regulations say that a provider that accepts a certificate can use the funds "for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction" (45 CR 98.30(c)(5)). "Sectarian" here means religious or denominational.

CCDF Program, 1998

In 1996, during the Clinton administration, via the Personal Responsibility and Work Opportunity Reconciliation Act—the federal welfare reform law—Congress authorized additional child care spending, reauthorized the CCDBG Act, provided that the new funding be subject to the CCDBG rules, and dictated that all of these child care funds be administered as a single program. By means of a Final Rule published in July, 1998, HHS created the Child Care and Development Fund (CCDF) and issued revised CCDBG regulations to govern these collected federal child care funds (63 Fed Reg 39936 (July 24, 1998)).

CCDBG reauthorized, 2014

Congress reauthorized the CCDBG program in 2014, during the Obama administration. Around this time, the Department of Health and Human Services had proposed new regulations pressing states to expend some of their CCDF funding via grants and contracts. In the administration's view, such direct funding was important to enable states to steer providers, directing them to increase the quality of their services or the availability of specialized care, such as hours extending into evenings. However, expanded direct funding

[3] The classic U.S. Supreme Court decision validating the eligibility of organizations offering religion-inclusive programs when the government funding is awarded to the beneficiaries and not directly to the providers is *Zelman v. Simmons-Harris* (2002).

would mean decreased certificate funding, reducing faith-based providers' opportunity to participate.[4]

In response to that prospect, Congress wrote into the reauthorization bill the specific requirement that "[n]othing" in the reauthorized act "be construed in a manner—(1) to favor or promote the use of grants and contracts . . . over the use of child care certificates; or (2) to disfavor or discourage the use of such certificates for the purchase of child care services, including those services provided by private or non-profit entities, such as faith-based providers" (42 USC 9858*o*(b)). This language underscores the CCDBG goal to "promote parental choice" (42 USC 9857(b)(2)), in significant part by ensuring that eligible families will be offered the option of a child care certificate that can be used "for sectarian child care services" (42 USC 9858n(2)).

The principles expressed in the church-state provisions of the CCDBG statute and regulations are similar to those of the Equal Treatment regulations that govern federal social spending across federal agencies. However, the CCDBG regulations are specifically tailored to the CCDBG statute, and the Equal Treatment regulations for the Department of Health and Human Services, under which the CCDBG program resides, specifically state that they do not apply to the CCDBG program (45 CFR 87.2(b)).

Specific Religion-Accommodating Features of CCDBG

Child Care Certificates and Parental Choice

Whether or not a state decides to award grants or contracts to providers to subsidize the cost of child care slots, it is required to ensure that eligible parents can receive a child care certificate with which to obtain subsidized child care (42 USC 9858c(c)(2)(A). The substantial section 98.30 of the regulations that spells out "Parental choice" twice states that eligible parents must have the opportunity to use certificates (45 CFR 98.30(a)(2) and (d)).

Religious Teaching and Religious Activities Protected

Certificates can be used by parents to obtain "sectarian child care services" (42 USC 9858n(2)). These are "child care services provided by a sectarian organization or agency, including those that engage in religious activities" (45 CFR 98.30(c)(4)). Put another way, child care certificates "[m]ay be expended by providers for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction"

[4] Stanley Carlson-Thies, "Federally funded child care remains hospitable to faith-based providers," Institutional Religious Freedom Alliance blogpost, Dec. 8, 2014. https://irfalliance.org/federally-funded-child-care-remains-hospitable-to-faith-based-providers/

(45 CFR 98.30(c)(5)). The definitions section of the regulations state that a "sectarian organization" or "sectarian child care provider" is "any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization be managed by clergy or have any particular degree of religious management, control, or content." Further, the "sectarian purposes and activities" that certificates can be used to fund include "any religious purpose or activity, including but not limited to religious worship or instruction" (45 CFR 98.2 Definitions).[5]

Religious Staffing Protected

While grant- or contract-funded providers may not discriminate on the basis of religion when choosing employees who will be caring for the children, certificate-funded religious child care providers are free to use religiously based job qualifications, unless federal and state government funding comprises 80% or more of their operating budget (42 USC 9858*l*; 45 CFR 98.49).[6] Note that Title VII of the 1964 Civil Rights Act, while prohibiting religious employment discrimination, includes an exemption providing that religious employers may engage in religious staffing.[7]

Religion-Based Admissions Protected

Most religious child care providers are not religiously selective in admissions, desiring that their services be available to any family that chooses them. Selective admissions may be important, however, if a provider's religion includes purity standards derived from its religious doctrines. CCDBG prohibits directly funded providers (except family child care providers) from discriminating against any child on the basis of religion but allows certificate-funded providers to be religiously selective in deciding which children to serve

[5] See also 45 CFR 98.56(d): "Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services." The CCDBG law prohibits using grant or contract funding for "any sectarian purpose or activity" at 42 USC 9858k(a).

[6] The law and regulations state that a grant- or contract-funded faith-based provider "may require that employees adhere to the religious tenets and teachings" of the organization and comply with rules prohibiting the use of drugs or alcohol. Further, a directly funded provider, secular or religious, can give preference to applicants already involved in some other way with the provider (42 USC 9858*l*; 45 CFR 98.49).

[7] Carl H. Esbeck, Stanley W. Carlson-Thies, and Ronald J. Sider, *The Freedom of Faith-Based Organizations to Staff on a Religious Basis*(Washington, DC: Center for Public Justice, 2004). http://www.irfalliance.org/resources/religiousstaffing.pdf

(unless their budget is 80% or more funded by government) (42 USC 9858*l*; 45 CFR 98.48).[8]

FBOs Accommodated because Certificate Funding is not Federal Financial Assistance

As noted above, when a faith-based organization receives government funding directly, as via a grant or a contract, then religious activities and teaching have to be kept separate from–outside of–the government-supported services. If the funding is indirect–it is money or an authorization to choose a service provider that is awarded to the beneficiary–then religion can be incorporated into the government-supported services. The rules for the CCDF program go to great lengths to emphasize that the certificate funding is "indirect," not "direct," funding, such that child care funded by certificates can include religious teaching and religious activities, as many parents desire.

The CCDBG Act specifies that "child care certificates shall not be considered to be grants or contracts" (42 USC 9858n(2)). The regulations, too, stress this "indirect" characteristic of certificate funding: Child care certificates "[s]hall not be considered a grant or contract to a provider but shall be considered assistance to the parent" (45 CFR 98.30(c)(6); "Assistance provided to parents through certificates is not a grant or contract" (45 CFR 98.56(d)); "[A] child care certificate is assistance to the parent, not assistance to the provider" (45 CFR 98.2, definition for "child care certificate").

The fact that certificate funding is not grant or contract ("direct") funding can be important to many faith-based providers for another reason. Most forms of federal support that is provided to private organizations, e.g., grants, contracts, and loans, are defined to be "federal financial assistance" or FFA. When a private organization receives federal support defined as FFA, then its programs and operations become subject to four federal civil rights laws.[9] One of these civil rights laws, Section 504 of the Rehabilitation Act of 1973, can impose a large burden on a small provider, so it is important that aid received via a child care certificate does not constitute federal financial assistance to the provider that receives this form of federal support.

Here are the four civil rights laws and their consequences for small providers:

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[8] In the case of slots not subsidized by CCDBG grants or contracts, providers may preference children who, or whose parents, already participate in activities of the child care provider or the organization that owns the provider. (42 USC 9858*l*(a)(2)(B); 45 CFR 98.48(b)).

[9] See, e.g., the Dec. 17, 2021, Congressional Research Service Memorandum to the House Ways and Means Committee on Worker and Family Support on the subject, "Faith-Based Provider Participation in the Build Back Better Act's Proposed Birth Through Five Program," CRS number 7-5700.

1. Title VI of the 1964 Civil Rights Act prohibits race, color, and national origin discrimination in admissions and services by entities receiving FFA–federal financial assistance. Being subject to this law would not be a problem for faith-based providers.

2. The Age Discrimination Act of 1975 prohibits discrimination on the basis of age by entities that receive FFA–federal financial assistance. This requirement would not present a significant problem for faith-based providers.

3. Title IX of the Education Amendments of 1972 prohibits sex discrimination in services and employment in federally funded educational activities. The Biden administration says that the *Bostock v. Clayton County* U.S. Supreme Court decision (2020) means that the ban on sex discrimination is at the same time a ban on discrimination on the bases of sexual orientation or gender identity.

   This now-broader Title IX nondiscrimination requirement might pose a problem for some faith-based providers, e.g., because, for religious reasons, some of their operations are sex-segregated or because they are unable to affirm gender-nonconforming children. However, Title IX includes an exemption such that a faith-based recipient is not bound by the nondiscrimination requirement to the extent that the requirement is inconsistent with the organization's religious tenets. If this religious exemption is applied fairly, the religious identity and practices of faith-based child care providers would be protected. However, a provider that accepts only child care certificates and not grants or contracts is not subject to Title IX.

4. Section 504 of the Rehabilitation Act of 1973 prohibits an organization that receives FFA (federal financial assistance) from discriminating against anyone "solely by reason of her or his disability." Federally supported child care, and employment to provide such care, ought to accommodate everyone eligible, and yet the cost of making needed changes can be prohibitive for small organizations, including small faith-based child care providers. Section 504 has no religious exemption, unlike the religious organization exemptions in the Americans with Disabilities Act (ADA). Among the providers that may struggle with this burden are small and minority-led providers in both urban and rural areas where the need for subsidized child care is great.

   However, because child care certificates are defined by the CCDBG Act specifically as assistance to the parents and not assistance to the organization–that is, not as

federal financial assistance or FFA to the provider–faith-based (and other) organizations that accept child care certificates are not subject to Sec. 504.[10]

State Blaine Amendments Preempted

US Supreme Court decisions have undermined state constitutional provisions forbidding state funds from supporting religious or sectarian organizations.[11] Yet, long before these decisions, the CCDBG Act already protected the eligibility of faith-based organizations to receive federal support even though the support passes through state governments. The law states that, while the provisions of the CCDBG program do not "supersede or modify" a state Blaine amendment, "no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided" by the program (42 USC 9858*l*(b)). The regulations add that if a state does have a Blaine amendment, it should segregate state funds from the federal funds, expending the latter as required by the CCDBG law (45 CFR 98.3).

Channel Additional Child Care Funding Through CCDBG Certificates

The CCDBG certificate program has for more than three decades accommodated parental choice and facilitated the participation of faith-based providers. The inclusion of faith-based child care providers—providers with a religious identity whose services include religious activities and teachings—has added greatly to the range of that parental choice.

The federal child care subsidy program no doubt can be improved; some suggestions are noted below. But any improvements ought to be made to the CCDBG child care certificate program and not by creating an alternative subsidy program. As noted, the CCDBG program was specifically designed to welcome the participation of faith-based providers, including those with a pronounced religious character. Those features, and the substantial history of the certificate program, are invaluable for assuring faith-based providers that they are welcome in the program. And they are invaluable for instructing federal and state officials that they must accommodate faith-based providers.

As Congress contemplates the expansion of federal support for child care, the additional federal funds simply should be added to the existing CCDBG program.[12] Moreover,

[10] Congress should consider how subsidized child care programs can be made accessible to all without placing overwhelming costs on small organizations.

[11] *Trinity Lutheran Church v. Comer* (2017), *Espinoza v. Montana Department of Revenue* (2020), *Carson v. Makin* (2022).

[12] In sharp contrast, the Build Back Better Act considered by Congress in the Fall of 2021 proposed distinctly different child care certificates, whose requirements would have discouraged participation by many faith-based providers. Changes proposed by the Senate HELP Committee to

because child care services and pre-kindergarten programs exist on a continuum, with a significant number of providers offering both, any federal spending to create a UPK program ought to be channeled through an appropriately modified CCDBG certificate program.[13]

Improvements and additions

The CCDF program should be improved. An urgent need is that accurate, clear, and easily understandable information demonstrating the hospitality for faith-based providers of CCDBG certificates be made widely known. HHS's Office of Child Care does not make such information available on its webpages (https://www.acf.hhs.gov/occ).[14] Given the still-common presumption in the public and among civil servants that government is constitutionally prohibited from providing funding to distinctively religious organizations ("the wall of separation," "no aid to religion"), an energetic and deliberate initiative to spread clear and accurate information about the CCDBG certificate program is essential if faith-based child care providers—often small organizations not connected with legal information and legal defense resources—are to be persuaded to participate more extensively in federally subsidized child care. The clear and precise information should be readily available on the websites of federal and state child care agencies as well as through CCDF-funded child care resource and referral (CCR&R) organizations and other child care information and accreditation networks.

The CCDBG Act can be improved.

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the House-passed text eased the barriers but did not eliminate them. See Stanley Carlson-Thies, "The 'Build Back Better' bill still needs to be rewritten for the sake of families seeking faith-based child care and preK programs," Institutional Religious Freedom Alliance article, Dec. 7, 2021. https://irfalliance.org/the-build-back-better-bill-still-needs-to-be-rewritten-for-the-sake-of-families-seeking-faith-based-child-care-and-prek-programs/; and the Dec. 17, 2021, Congressional Research Service Memorandum to the House Ways and Means Committee on Worker and Family Support on the subject, "Faith-Based Provider Participation in the Build Back Better Act's Proposed Birth Through Five Program," CRS number 7-5700.

[13] *Recommendations for Universal Pre-K To Accommodate Religious Communities and Faith-Based Organizations* (Center for Public Justice and Institutional Religious Freedom Alliance, August 2021). https://irfalliance.org/wp-content/uploads/2022/07/Center-for-Public-Justice-Pre-K-Recommendations-1.pdf

[14] However, still accessible on the HHS website is a leaflet from the Child Care Bureau (the former name of the Office), *What Congregations Should Know About Federal Funding for Child Care* (2012). Potentially helpful, it, alas, includes incorrect information and does not ground its information in the CCDBG law or regulations.

1. Most important, language should be added to the certificate program, similar to that preempting Blaine amendment restrictions, that would prohibit states from enforcing sexual-orientation and gender-identity nondiscrimination in the policies and operations of faith-based providers in the absence of a federal statutory requirement to do so. Many religious communities have morally conservative sexual standards, and in the CCDBG child care certificates' pluralistic system, parents should be able to choose, and faith-based providers should be able to offer, child care services that reflect those standards.[15]

2. States are required by the CCDBG rules to make available consumer information that assists parents in locating the most suitable child care provider, including by using a portion of their CCDF funding to support a network of child care resource and referral (CCR&R) organizations. The statute specifies that the information should include "the full range of child care options (including faith-based and community-based child care providers), analyzed by provider" (42 USC 9858c(3)(B)(iii)(II)(aa); same at 45 CFR 98.52(b)(1)). New language should be added specifying that the state, for its own listing of providers, and the CCR&R organizations it funds, for their information systems, must ask providers if they wish to be identified as faith-based providers and then to so identify them, also allowing such providers to add additional details to help parents understand how their religious commitments are reflected in the services they respectively offer. It is one thing for a listing to *include* every kind of provider; it is a very different, and important thing, for the listing to *identify* which providers are faith-based. Parents should not have to guess whether a provider is religious or not, based, for example, on its location (such as using the facilities of a church) or its name (the "Sonshine" Center rather than "Sunshine" Center).[16]

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[15] Cf. Aaron Tang, "There's a way to outmaneuver the Supreme Court, and Maine has found it," *New York Times* (June 23, 2022), https://www.nytimes.com/2022/06/23/opinion/supreme-court-guns-religion.html?referringSource=articleShare, which states that, in anticipation of the Supreme Court's *Carson v. Makin* decision (2022) that outlawed Maine's exclusion of schools teaching religion from its program through which families could choose from a wide variety of educational institutions if their district did not operate a public high school, Maine legislators had amended the state non-discrimination law to apply a ban on discrimination on the bases of sexual orientation and gender identity to any private school that accepts government funds, without a religious exemption. The Court's decision should mean that parents can choose from a wide variety of religious schools; the legislature's decision means that many of the schools parents might want to choose are, instead, excluded from the tuition-payment program.

[16] Information that identifies which providers are faith-based (if they choose so to be identified) would also valuably help researchers seeking to understand the contours of the child care ecosystem and the extent of faith-based involvement in CCDF-funded services. And it would help lawmakers and agency officials understand whether, in fact, the CCDF program is as hospitable to the involvement of faith-based providers as the CCDBG Act intends.

3. The CCDF funds generally cannot be used to acquire, construct, expand, or improve facilities (42 USC 9858d(b)). If child care is in fact to be made much more accessible, however, funding for these purposes will need to be provided. Typically, federal grants, loans, or other aid for the acquisition or improvement of real property carries with it a ban on religious activities in spaces funded by the government. Facilities support that carries that limitation is of little help to faith-based providers whose programs include religious teaching and activities. The language of an amended CCDBG Act should specify that grants, loans, and other federal support for the acquisition or improvement of child care facilities are available without any accompanying restrictions on religious exercise in those facilities.[17]

4. The CCDBG Act and regulations in various places affirmatively direct states to include faith-based organizations and their representatives and interests in developing the state plan and in making decisions about licensing, accreditation, quality improvement, and the setting of subsidy rates. Often this language is suggestive rather than precisely directive, which allows states, intentionally or not, to develop rules and practices that chill full involvement of faith-based providers with their often distinctive ways of serving and operating. But state initiatives to improve the quality of child care services by promoting the accreditation of providers, for example, ought explicitly to accommodate multiple accreditation pathways so that faith-based providers need not conform to standards not accommodating of faith-based curricula, training, and practices. After the CCDBG Act was reauthorized in 2014 and a Notice of Proposed Rulemaking proposed changes to the CCDBG regulations, the Council for American Private Education (CAPE) specified in a Comment a wide range of places where the draft regulations should be improved to fully account for the distinctive qualities, practices, perspectives, and interests of faith-based (and Montessori and Waldorf) child care providers.[18] Only some of these proposed changes are reflected in the finalized regulations. Congress should amend the Act itself so that the subsequent regulations more fully adopt the CAPE recommendations.

5. The CCDBG Act's strong protection of religious staffing by certificate-funded faith-based providers should be strengthened further by eliminating the ban on the use of religious employment criteria if the provider receives 80% or more of its

[17] Note the string of Supreme Court cases prohibiting the exclusion of faith-based organizations from funds otherwise available to private organizations: *Trinity Lutheran Church v. Comer* (2017), *Espinoza v. Montana Department of Revenue* (2020), *Carson v. Makin* (2022).

[18] Council for American Public Education Comment on the NPRM for the Child Care and Development Fund, Docket ID AFC-2015-0011 [RIN 0970-AC67] (Feb. 19, 2016). Comment ID ACF-2015-0011-0035; https://www.regulations.gov/comment/ACF-2015-0011-0035.

funding from government sources. The limit has no logical basis nor is it required by the Constitution. The Supreme Court cases prohibiting states from excluding religious organizations from government funding available to other private organizations do not even hint that the Constitution requires the states, however, to ban religious staffing by the religious organizations should some percentage of their funding be governmental. See *Trinity Lutheran Church v. Comer* (2017), *Espinoza v. Montana Department of Revenue* (2020), and *Carson v. Makin* (2022).

6. The CCDBG Act's protection of religiously based admissions criteria by certificate-funded faith-based providers should be amended to remove the ban on such criteria if the provider receives 80% or more of its funding from government. In the pluralistic system created by CCDBG child care certificates, parents are supposed to have multiple choices of provider, including "sectarian" providers. There is no justification for forcing such a provider to adopt less "sectarian" admissions standards simply because it receives 80% or more of its funding from various government sources.

Two Directions

In government policy concerning the upbringing of infants and toddlers, the United States has adopted two distinct, even opposite, approaches. With child care, thanks to the CCDBG Act, government has decided to support family choice and the full inclusion of faith-based options. But for the formal education of those same children, via k-12 schools, Head Start, and in pre-kindergarten programs, as proposed by the Build Back Better Act, the bias is for government-operated, government-controlled schooling. But when government is dominant, parental choice is reduced and religion is marginalized.

The pluralist direction of the CCDBG child care certificates ought to be the model for child care and schooling, thereby better accommodating parental choice, honoring freedom of religion and conscience, and putting governmental resources squarely into supporting the religious and secular choices of the diverse families comprising our diverse nation.

Resources

William J. Tobin, *Lessons About Vouchers from Federal Child Care Legislation*, Policy Papers from the Religious Social Sector Project (Washington, D.C.: Center for Public Justice, January 1998).

"The Child Care and Development Block Grant: Background and Funding," Congressional Research Service, Updated Sept. 17, 2014. RL30785.

Congressional Research Service Memorandum to the House Ways and Means Committee on Worker and Family Support on the subject, "Faith-Based Provider Participation in the Build Back Better Act's Proposed Birth Through Five Program," Dec. 17, 2021. CRS number 7-5700.

Recommendations for Universal Pre-K To Accommodate Religious Communities and Faith-Based Organizations (Center for Public Justice and Institutional Religious Freedom Alliance, August 2021). https://irfalliance.org/wp-content/uploads/2022/07/Center-for-Public-Justice-Pre-K-Recommendations-1.pdf