

A Conversation with California Congressman Xavier Becerra

by Rick Cohen

A FORMER LEGAL SERVICES attorney, California Congressman Xavier Becerra is the only Latino on the House of Representatives Ways and Means Committee. But it is his distinctive voice and perspective, not his ethnicity, that has vaulted him to a position of visibility on issues of charity and philanthropy.

The Ways and Means Committee is the House counterpart to the Senate Finance Committee and has oversight authority for the accountability and performance of the nonprofit sector. Since the 2006 elections made the Democratic Party the majority party in both the House and the Senate, the Ways and Means Committee has held two subcommittee hearings, chaired by Georgia Congressman John Lewis, ostensibly to explore the extent to which nonprofits and foundations address the needs of the poor.

The two hearings were brief and not noticeably geared toward devising specific steps for action. Still, Becerra made a mark with his polite but pointed questions, which zeroed in on a core issue in charity: who benefits from the activities of charities and foundations? Over the years, few of Becerra's colleagues have asked this question; they have generally been willing to accept the notion of charity as inherently and automatically a mechanism of broad social benefit.

Congressman Becerra asks hard

questions of the nonprofit sector, but he graciously accepted an invitation to answer some almost-as-hard hard questions from *NPQ's Cohen Report* recently.

The Cohen Report: How do you see nonprofits making a difference in society that is distinctive, important, and indispensable?

Becerra: I think they are the vanguard in getting society to move toward social change that is of benefit to the citizenry. It is a result of charitable contributions that we find ourselves moving in the directions that can be taken up by gov-

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ernment or the private sector. Charitable organizations have the ability to go where no one has gone before.¹

CR: Where do you see nonprofits as falling short of what the nonprofit sector can and should deliver for the nation?

Becerra: I start off with the proposition that if you're getting a tax subsidy, another taxpayer must make up for what you're not paying. That subsidy should serve a good purpose. What are

we getting for some \$32 billion in lost revenues,² lost to the federal treasury in paid taxes [in charitable expenditures]? Is it serving a good public purpose? Statistics I've seen suggest that only \$1 in every \$10 is serving poor people or disadvantaged people. I have to wonder where the other \$9 are going. It is absolutely essential to maintain our higher education and arts institutions. We have to know whether it's worth giving up \$32 billion [in tax revenues] when only \$1 in every \$10 reaches or serves [the poor and disadvantaged].

CR: The Ways and Means Committee seems to have made poverty and poverty alleviation major issues for the nonprofit sector's attention. What do you think nonprofits can and should do to address poverty or, perhaps, the root causes of poverty?

Becerra: That's a core question. I'm not asking a symphony or art museum to start giving away 10 percent of its budget to the poor, but if you're getting phenomenal dollars to have this museum, you should make sure you're reaching out to the greater public, that the circle you're reaching helps a lot of the taxpayers who are forgoing other opportunities that could have been had had that \$32 billion been available to the [federal] treasury [as tax revenues]. There's a lot that has to be done. The nonprofit world is our vanguard in getting us as a society in new directions

that benefit the government in better ways, but we must do the oversight [to ensure] that the money is well spent. We must do much better oversight [of charitable expenditures].³

CR: The Ways and Means Committee has made an issue of the racial and ethnic diversity—or shortcomings in diversity—of the nonprofit sector. What concerns do you have about nonprofit diversity, and what do you think nonprofits should do to increase the diversity of their staffing and governance?

Becerra: Intense concern. All of the studies indicate that people give to that which they know. The closer a project is to your circle, the more likely it is to receive a contribution from you. Who you know, what you know, determines who you give to and what you give. When you have a lack of diversity in the organizations doing the charitable work, maybe there are concerted efforts to reach out, but the facts speak for themselves. Too often disadvantaged communities are left behind. To some degree, it's not just that those communities aren't getting the support; they aren't getting the attention *and* the support. Look at how these entities that are receiving the tax deduction are utilizing their resources, and you will see a direct correlation between those that are diverse and those that are doing good a job of reaching those in need. I don't think that [making charities more diverse] is Congress's job, nor should it be. We can't be the human resources office of nonprofits. That takes government too far. The sector has to control itself and act responsibly. It is important to recognize that the taxpayers have agreed to cover the cost of that deduction. We [in Congress] have to report back to the taxpayers on the use of the charitable money: How did that \$32 billion get used? If someone comes from a poor neighborhood in town [and asks], "How did you use my [tax dollars]?" I want to be able to say, "Take a look at

the book." My message to the charitable community is, "You're going to speak for yourself, your book of facts will determine how Congress will react."

CR: There has been discussion of narrowing the federal nonprofit tax exemption. What kinds of nonprofits do you think deserve tax exemptions? What kinds of nonprofit activities or nonprofit beneficiaries would you take into account in tightening or focusing federal nonprofit tax-exemption eligibility?

Becerra: I'd say it could be the opposite. What's over the horizon could be of value. I could see expanding it if we're getting a lot more for our dollar than we're giving up. If we're seeing [charitable] dollars directed to activities or populations that people could pay for on their own, why are we using tax-exempt funds to do that? If the working

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guy making \$50,000 can't take advantage, that taxpayer has a legitimate right to ask [why] you're letting someone take advantage of things that he wouldn't be able to take advantage of. That's why the oversight is important. The facts should speak for themselves if [charitable expenditures are] not serving a good purpose. If you don't police your own, you're going to be policed. We want to make sure we're doing good by using taxpayers' dollars to offer this \$32 billion subsidy. To me it's a matter of having the charitable community explain what's working, what's getting better, how we can help. I'm not going to pass judgment on what [are] good and not-good investments. Let's let the facts speak for themselves

and show what's working and not working, and [then] determine what needs to be done.

CR: Together, foundations and universities currently control well more than \$1 trillion in tax-exempt endowments.⁴ Foundations are required to spend (not grant) 5 percent of their assets annually, universities and other public charities have no minimum spending requirement. What would you change, if anything, regarding the government's oversight and mandatory spending standards on tax-exempt endowments?

Becerra: I'm completely open, I'm not going to pass judgment, I'm not going to take a particular position. When I heard the [tax-exempt endowment] numbers, it alarmed me, but I don't wish to direct the charitable sector to act. I just want to make sure that these tax dollars we're forgoing are used by these charitable entities in the best way possible. I couldn't tell you what percent should go out. I don't want to see [a situation] where they've depleted their assets. But the whole area of administrative overhead we should examine.

CR: Congress has faced a consistent litany of newspaper headlines about nonprofits misusing funds and behaving unethically, ranging in recent years from the United Way of the National Capitol area in Washington, D.C., to last week's headlines about veterans' charities.⁵ Do you see government—particularly Congress—as having a role to play in increasing nonprofit accountability?

Becerra: There are some fabulous things being done [by charitable organizations], and at the same time I've heard some that aren't. It goes back to what I've been saying. I don't think we've done enough oversight to dig deeply enough into some of these areas: administrative overhead, salaries, and particular types of nonprofits. We haven't done our job to be the overseer for the American taxpayer for those funds. I would love it if there were a news article that

would make people give more. The charitable sector and foundations are far more nimble than government. They become the pioneers and vanguard to how we as a society move forward. The last thing we want to do is to discourage Americans from charitable giving.

CR: In both the House and the Senate, questions have been raised about charities and foundations linked to members of Congress, such as Tom DeLay, Rick Santorum, and others. As part of congressional ethics and lobbying reforms, should there be new standards or rules for charities associated with members of Congress, and if so, what might they be?

Becerra: I think if you end up having a very transparent process, if the books are open, you wouldn't have to worry if some member of Congress is involved [with a charitable organization]. Sunshine is a big disinfectant. There shouldn't be more preference for charities because of the involvement of politicians. I'm on the board of the Smithsonian,⁶ and I'm a member of the Congressional Hispanic Caucus Institute,⁷ which is a 501(c)(3). We do great work, we do raise some pretty decent money. We should all be open to scrutiny. We should be prepared to open up our books. [People should be able to] ask whether this is a valuable tax expenditure, that we're doing things that people find of value. It is a legitimate question: by requiring that names [of donors to charities associated with members of Congress] be named, are we helping or hurting the cause of raising charitable dollars? If someone is involved in an activity [that] could influence policy making, that might be different. That really needs some strong scrutiny.

CR: What should government do to help and promote nonprofits?

Becerra: First, try to do whatever we can [to ensure] that sunshine is taking through all the windows so that society can see which [charitable organizations] are doing phenomenal work and

which aren't deserving. [Second, government should] try to partner if possible with the charitable world to harness the energies that this world can open up and get society to move in the right direction.⁸ To give a tax break to some organization that would do what government would have done, but do it in a more nimble way, in a new-world way, that's a great government investment. [Government should be] getting people to give to the cause, giving them a little break, incenting an activity to help be more efficient with the taxpayer dollars that we do direct [to charities].

I know some folks are afraid I'm doing this for wrongheaded reasons or may jeopardize the charitable world's ability to function, but I see this as a way of perfecting and expanding the charitable world and getting rid of the dead-wood.

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Congressman Becerra's concerns may be characterized as a focus on the ability of the nonprofit sector to contribute to social and economic *fairness* in our society. He doggedly raises the issue in congressional hearings, eliciting odd responses from witnesses who don't quite seem to get it. At a House Budget Committee hearing on September 20, 2007, he asked the comptroller general of the United States whether "we're getting our dollars' worth. . . . I'm wondering how many of those charitable contributions end up helping people who are poor, helping people who have no health care." In response, the congressman got answers about commercial activities and Unrelated Business Income Tax (UBIT).

At the July 24, 2007, hearing of the Oversight Subcommittee of the Ways

and Means Committee, Congressman Becerra cited pictures of ostensibly non-profit-owned BMWs and questioned whether charitable funds meant for the poor are really going to the poor. "How do you decide what is charitable?" Becerra asked. "Helping the poor? Helping children? Housing for disadvantaged people? Opera? Is there any way that we track what is being given charitably to different types of entities?" The witnesses responded with discussions of board oversight, fiduciary responsibilities, and executive compensation. But for the most part, he missed Becerra's point about whether charitable giving results in greater resources for the poor and disadvantaged.⁹

Xavier Becerra's congressional district covers parts of Los Angeles that are urban, low income, and primarily Latino. In fact, as of the last census, the congressional district has the highest proportion of noncitizens. These aren't academic concerns. Congressman Becerra is channeling the real-life concerns of the people in his district regarding whether the charitable dollars they see flowing around them in Los Angeles are addressing their needs. No doubt Becerra speaks for more than poor Angelenos in asking that the nonprofit sector be measured against benchmarks of social justice.

ENDNOTES

1. Interestingly, as an example, Congressman Becerra didn't focus on charitable activity in his Los Angeles district, but rather on the work of the Ford Foundation overseas, which has demonstrated a commitment to social change and innovative initiatives that the congressman finds laudable.

2. In response to a request from the *Cohen Report*, Congressman Becerra's staff provided a link to the *Joint Committee on Taxation's Estimates of Federal Tax Expenditures for Fiscal Years 2006-2010* (Washington: U.S. Government Printing Office, 2006), which cites \$35.93 billion in charitable tax deductions (by itemizers) in 2005 (table 3, p. 45), though that number excludes the significant amount of charitable

contributions made by individuals and families who do not file itemized federal tax returns.

3. As an example, Congressman Becerra compared charitable deductions to the deduction for mortgage interest and property taxes. He said, for example, that Congress has to examine the mortgage tax deduction which “costs a pretty penny” to ensure that it is doing something worthwhile. As the Congressman put it, “Just as we would examine the mortgage interest tax deduction to see if it serves a charitable purpose, the same kind of oversight is needed on the charitable exemption.”

4. Becerra politely corrected us, noting that public and private charities harbor \$2.5 trillion in endowment assets.

5. Philip Rucker, “Study Faults Charities for Veterans: Some Nonprofits Shortchange Troops, Watchdog Group Says,” the *Washington Post* December 13, 2007 (www.washingtonpost.com/wp-dyn/content/article/2007/12/12/AR2007121202657.html).

6. Becerra is the lead sponsor of H.R.512, which would establish the Commission to

Study the Potential Creation of a National Museum of American Latino Heritage. The legislation passed the House and was introduced in the Senate by Ken Salazar of Colorado.

7. The Congressional Hispanic Caucus Institute (www.chci.org) is chaired by Congressman Joe Baca of California.

8. Becerra referenced the work of nonprofits in addressing the problem of AIDS early on, leading to opportunities for government to learn what should be done, resulting eventually in the passage of the Ryan White Act and other initiatives.

9. Of the witnesses, only Independent Sector’s Diana Aviv caught his point and addressed it: “The reports that we have are that the funding going to low-income organizations from individuals is much lower than the funding going to arts and culture institutions and higher-education institutions. So, when we see even the money being flat or slightly going up, that doesn’t tell the full story until we look beneath the surface to see. One of the reasons why organizations serving low-income people are so concerned is partly because of individual

donations not coming in their direction, and partly for concerns that other government priorities are not allowing public funds to flow to them so that the needs of their constituents or their members are rising, and there isn’t the funding to support them.”

RICK COHEN is the *Nonprofit Quarterly’s* national correspondent.

What is your take on Congressman Becerra’s point of view? Should the nonprofit tax exemption be reexamined? Do you have follow-up questions regarding this story? Let us know at feedback@npqmag.org. Reprints of this article may be ordered from <http://store.nonprofitquarterly.org>, using code 150112.