

John L. Saxon Faith-Based Social Services:

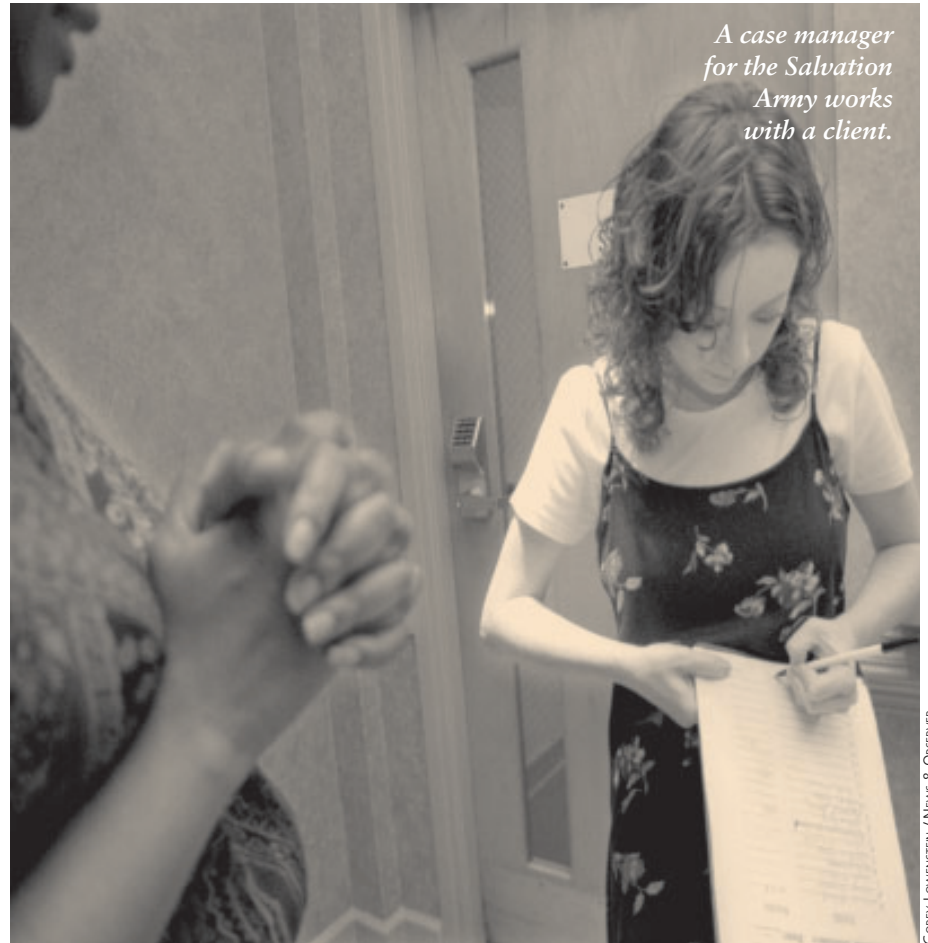
Government . . . cannot put hope in our hearts or a sense of purpose in our lives . . . America is richly blessed by the diversity and vigor of neighborhood healers: civic, social, charitable, and religious groups. These quiet heroes lift people's lives in ways that are beyond government's know-how, . . . and they heal our nation's ills one heart and one act of kindness at a time. The indispensable and transforming work of faith-based and other charitable service groups must be encouraged . . . As President, I will lead the federal government to take bold steps to rally America's armies of compassion.

—President George W. Bush¹

On January 29, 2001, less than two weeks after taking office, President Bush announced his administration's faith-based social services initiative. Since then, the Bush administration has followed through on the president's pledge by

- establishing offices of faith-based and community initiatives in the White House, the U.S. Department of Health and Human Services (DHHS), and other federal agencies;

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A case manager for the Salvation Army works with a client.

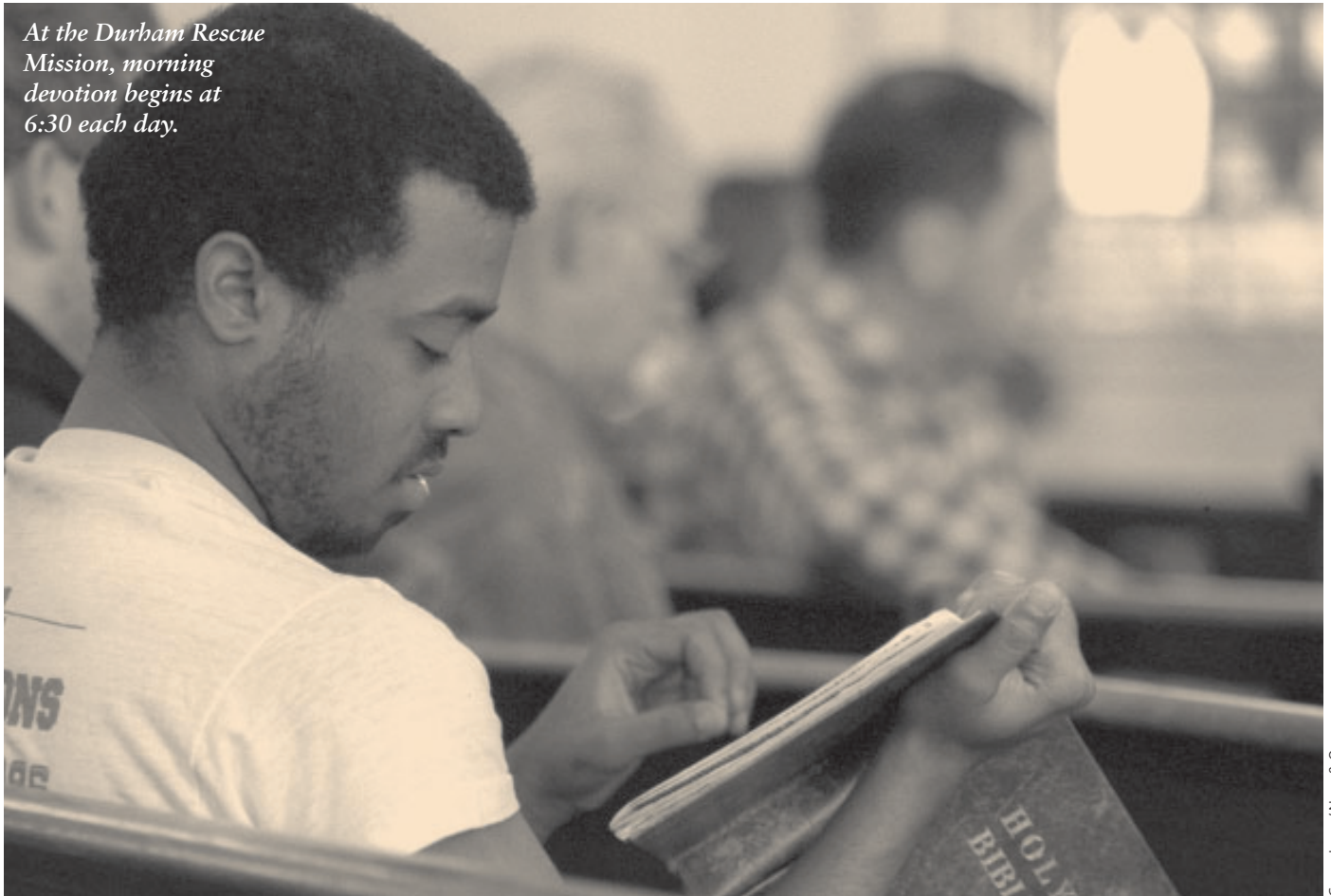
COREY LOWENSTEIN / NEWS & OBSERVER

- issuing executive orders and administrative rules allowing faith-based organizations (FBOs) to compete for federal social services funding on a “level playing field”;
- supporting the enactment of “charitable choice” legislation to stimulate private and public funding for FBOs providing social services;²
- initiating new federally funded faith-based programs to serve prisoners, drug addicts, the children of prisoners, and others; and
- creating a Compassion Capital Fund to provide technical assistance and funding for small community and faith-based social services programs.

The faith-based social services initiative has not been without controversy, however. Opponents claim that it

- breaches the constitutional wall separating church and state by subsidizing religious “proselytization” (attempted conversion) and discrimination;
- diminishes the religious freedom, the autonomy, and the effectiveness of faith-based social services providers;³
- is based on the unproven assumption that faith-based social services programs are more effective than social services provided by government agencies or secular nonprofits;
- is politically or ideologically motivated;⁴

What Are They? Do They Work? Are They Legal? What's Happening in North Carolina?



At the Durham Rescue Mission, morning devotion begins at 6:30 each day.

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- is based on mistaken assumptions regarding the causes of social problems;⁵ and
- undermines the government's responsibility for providing and funding social services programs.⁶

This article addresses four sets of questions regarding faith-based social services initiatives by federal, state, and local governments:

1. What are faith-based social services? What is the president's faith-based social services initiative?
2. Are faith-based social services programs effective? If so, how and why do they work? Are they more

effective than government or secular social services programs?

3. Are government faith-based social services initiatives legal? Do they violate the Constitution's required separation between church and state?
4. What's happening in North Carolina? To what extent have state and local human services agencies collaborated with or funded faith-based social services providers?

What Are Faith-Based Social Services?

Faith-based social services are social services provided by FBOs. They include child care services, job training,

health support services, soup kitchens and food banks, housing, literacy and mentoring services, substance abuse treatment, delinquency prevention, and other programs to help needy children, individuals, and families.

But what is an FBO? And what makes the social services that an FBO provides faith based rather than secular? Although the answers to these questions might seem obvious or intuitive, they are complex and elusive.

No single definition of FBO is generally accepted among the public, media, researchers, or policy makers.⁷ Under one fairly broad definition, an FBO is any organization that is founded on or motivated by religious conviction, prin-

ciples, or beliefs, including local churches, synagogues, temples, and mosques; religious denominations or associations; interchurch and interfaith organizations; and local, regional, or national non-profit or charitable associations that are religiously affiliated or religiously motivated.⁸ FBOs, however, vary greatly in size, mission, organization, administration, funding, and resources, and with respect to whether and how they provide social services.

A 1998 survey of a nationally representative sample of *local* religious congregations found that almost 60 percent provided or supported the provision of one or more social services.⁹ Of these congregations, most provided short-term and emergency services (food, shelter, and clothing). Fewer than 10 percent provided mentoring, substance abuse, employment, or health services. Services generally were provided by small groups of volunteers. Only 6 percent of the congregations employed at least one person more than quarter-time to coordinate or provide social services. Only 3 percent received public funding for social services.¹⁰

At the other extreme are large, *national*, faith-based social services agencies like Catholic Charities USA, Lutheran Family Services, and Jewish Family Services, which provide social services to millions of people and receive billions of dollars in public funding.¹¹ These FBOs generally are incorporated under Section 501(c)(3) of the federal Internal Revenue Code as charitable nonprofits separate from the religious organizations with which they are affiliated. Although they are “imbued with strong religious motivations,” they usually “follow the same norms and procedures . . . as ‘secular’ social service organizations.”¹²

Recognizing this heterogeneity, researchers have studied faith-based social services providers on the basis of the degree to which they explicitly or implicitly incorporate religious faith into their identity, mission, and programs.¹³ Considering factors such as whether religion influences employment decisions, whether religious symbols are displayed, and whether and how inherently religious activities, prayer, worship, or “spiritual technologies” are integrated into the provision of services, researchers have

I have seen firsthand what faith-based organizations are capable of doing . . . As President Bush has said, these organizations “inspire hope in a way that government never can. And they inspire life-changing faith in a way that government never should.”

—Jim Towey, director of the White House Office of Faith-Based and Community Initiatives, August 2004

characterized faith-based services according to four typologies as

1. strongly, moderately, or not faith influenced;¹⁴
2. reflective of a high, moderate, or low level of faith integration;¹⁵
3. fully expressive, vocally inclusive, quiescent, or nonexpressive with respect to their organizational distinctiveness and religious expression in their programs;¹⁶ and
4. faith permeated, faith centered, or faith affiliated.¹⁷

Why does the classification of faith-based social services providers matter? One reason is that the purpose of President Bush’s faith-based initiative is to “unfetter” local congregations and smaller and more faith-permeated FBOs, allowing them to retain and express their religious identities while receiving public funding to provide religiously based social services. The initiative’s success, therefore, depends not only on whether FBOs provide social services but on *which* types of FBOs receive public funding to provide *what* types of social services.

A second and more important reason is that the legality of public funding of faith-based social services initiatives may depend on whether, how, and to what extent they integrate inherently religious activities into the social services they provide.

Government Faith-Based Social Services Initiatives

The phrase “faith-based social services initiatives” refers to a range of government policies, programs, and proposals designed to encourage the provision of social services through FBOs. This article focuses primarily on initiatives designed

to facilitate or encourage the funding of faith-based social services programs by federal, state, and local governments.¹⁸

Public funding of religiously affiliated social services agencies is not new.¹⁹ State and local governments have a long history of funding the provision of social services through religiously affiliated organizations such as Catholic Charities, Lutheran Family Services, and Jewish Family Services.²⁰

The federal government’s recent involvement with faith-based social services initiatives, however, originated in a charitable choice amendment sponsored by then-Senator John Ashcroft of Missouri that was added to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the federal welfare reform legislation.²¹ PRWORA’s charitable choice provision

- requires states that contract with, or allow the redemption of vouchers by, private social services providers under the Temporary Assistance for Needy Families (TANF) program to contract with, or allow the redemption of vouchers by, FBOs without discrimination based on their religious character;²²
- prohibits federal and state agencies from requiring that federally funded TANF services providers remove religious art, icons, scripture, or symbols; alter their form of internal governance; or cede control of the definition, development, practice, or expression of their religious beliefs;²³
- preserves the exemption under Title VII of the Civil Rights Act allowing federally funded faith-based social services providers to discriminate on the basis of religion in their hiring and other employment practices (but does not exempt them from other

applicable federal, state, or local employment discrimination laws);

- requires that federally funded faith-based social services programs be implemented consistent with the U.S. Constitution's clause prohibiting the establishment of religion;
- prohibits the use of *direct* federal funding (but not *indirect* federal funding through voucher programs) for "sectarian worship, instruction, or proselytization";
- prohibits federally funded faith-based social services programs from discriminating against social services

charitable choice. North Carolina and three other states received C's.

The new administration, on the other hand, lost no time in putting charitable choice and new faith-based initiatives at the top of its domestic policy agenda. Shortly after the president's inauguration, the White House released a report, *Rallying the Armies of Compassion*, calling for

- full implementation and expansion of federal charitable choice legislation;
- elimination of barriers to government collaboration with and funding of faith-based social services providers;

On January 29, 2001, the president signed executive orders establishing a White House Office on Faith-Based and Community Initiatives and centers for faith-based and community initiatives in DHHS and the Departments of Housing and Urban Development (HUD), Education, Labor, and Justice.²⁶ In August 2001 the White House released a second report, *Unlevel Playing Field*, claiming that federal social services agencies showed a "widespread bias" against FBOs, that federal rules improperly and unnecessarily restricted the participation of FBOs in federal social services programs, and that federal administrators had largely ignored federal charitable choice legislation.²⁷

The Bush administration also supported legislation (the Community Solutions Act of 2001) that would have extended charitable choice to nine additional social services programs.²⁸ The legislation passed the House of Representatives on July 19, 2001. However, it died in the Senate because of concerns regarding its constitutionality and charges that it sanctioned religious discrimination in employment by publicly funded faith-based social services providers.²⁹ Congress did appropriate \$30 million to create a Compassion Capital Fund, though. Congress also appropriated \$5 million for five pilot faith-based pre-release programs for prisoners, and it authorized \$67 million for grants to state and local governments and faith-based and community organizations to provide mentoring services for the children of prisoners.³⁰

On December 12, 2002, in response to Congress's failure to enact the Community Solutions Act, President Bush issued an executive order expanding the federal charitable choice initiative to all social services programs administered by seven federal agencies and by state or local governments that receive federal social services funding from those agencies.³¹ The charitable choice requirements in the president's 2002 order are similar to those in PRWORA, with three exceptions: (1) The president's order is silent on employment discrimination by faith-based social services providers. (2) It does not expressly require that equivalent services be provided to a social services recipient who objects to



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A Christmas tradition initiated by the Salvation Army in 1891 continues today.

recipients "on the basis of religion, a religious belief, or refusal to actively participate in a religious practice;" and

- requires states to ensure that equivalent services are available to an eligible social services client who objects to the religious character of a faith-based social services provider.

State and local governments were initially slow to implement the federal charitable choice initiative. In September 2000 the Center for Public Justice, a Christian public policy foundation, released a charitable choice report card asserting that thirty-six states had failed to comply with federal charitable choice laws.²⁴ Eight states received A's or B's with respect to their implementation of

- tax incentives to increase private giving to faith-based and community organizations;
- creation of a Compassion Capital Fund to provide start-up funding for faith-based and community social services programs, and technical and capacity-building assistance to faith-based and community social services providers; and
- new federal funding for faith-based programs to mentor the children of prisoners, to rehabilitate inmates in pre-release programs, to support "second chance" maternity homes, and to expand after-school programs for low-income children.²⁵

the religious character of a faith-based provider. (3) It expressly requires that inherently religious activities be physically or chronologically separated from programs or services supported with direct federal financial assistance.

In March 2004 the administration released data showing that in fiscal year 2003, FBOs received more than \$1.1 billion in competitive social services grants (about 8 percent of total grant funding) from five federal agencies (DHHS, HUD, Education, Labor, and Justice).³²

Are Faith-Based Social Services Programs Effective?

Many people assume that faith-based social services programs are generally effective and efficient.³³ Although conceding that FBOs cannot always perform miracles, President Bush has repeatedly stated that FBOs have “proven their power to save and change lives” and “conquer [the nation’s] toughest social problems,” including addiction, domestic violence, crime, and poverty.³⁴

Proponents of faith-based social services initiatives claim that FBOs are effective because they provide social services holistically,³⁵ are motivated by faith, and incorporate a “faith factor” into their programs. According to the president, faith-based programs “are only effective because they *do* practice faith.”³⁶ Further, believing that faith-based programs can transform people’s lives in ways that government cannot, proponents of the president’s faith-based initiative often contend that faith-based programs are *more* effective than government or secular social services agencies.³⁷

To date, though, social science research has failed to provide clear support for these claims. A 2002 report reviewing all the research on the efficacy of faith-based social services programs concluded that the quality of the studies involved was not particularly high.³⁸ The report also concluded that existing research studies do not unequivocally support the claim that faith-based programs are more effective than secular social services programs.

A more recent study of welfare-to-work programs in Chicago, Dallas, Los Angeles, and Philadelphia found that, on average, faith-based programs were

smaller, served fewer clients, and provided fewer job-oriented services than government programs. Also, it found that government programs, on average, provided as many life-oriented services to recipients as faith-based programs did.³⁹

Another recent study, looking at job training programs in Indiana, found that faith-based and secular providers had similar job placement rates for former welfare recipients. Further, people placed in jobs by faith-based and secular providers were paid comparable wages. However, those placed by faith-based providers worked substantially fewer hours and were less likely to receive health insurance coverage from their employers than those placed by secular providers.⁴⁰

A third recent study compared the effectiveness of five types of welfare-to-work programs in Los Angeles County, California: government, for-profit, secular nonprofit, “segmented” faith-based, and “integrated” faith-based.⁴¹ It found that

- for-profit programs had the highest percentage of clients moving from unemployment to employment, achieving full-time employment, and earning more than \$10 per hour;
- government programs outperformed faith-based programs with respect to increasing the wages of employed clients; and
- faith-based programs were better than government programs in helping employed clients maintain employment but were less or no more effective in helping unemployed clients become employed or obtain full-time employment.

Closer to home, a recent survey of county social services directors in North Carolina found that only a third of the respondents believed North Carolina’s Communities of Faith Initiative (discussed later) to be moderately or very successful.⁴²

What should one make of the existing research? Some claim it proves that faith-based programs are more effective than government programs.⁴³ Others assert that it provides little reason for believing that “congregations— or, for that matter, other types of re-

ligious organizations engaged in social services—deliver social services that are . . . generally more effective than those provided by secular organizations.”⁴⁴ The truth, though, seems to be that “we do not yet know either whether [FBOs] measurably outperform their secular counterparts or whether, where the preliminary evidence suggests that they might, it is the ‘faith’ in the ‘faith factor,’ independent of other organizational features and factors, that accounts for any observed differences in outcomes.”⁴⁵

Is Public Funding of Faith-Based Social Services Programs Legal?

The First Amendment to the U.S. Constitution prohibits Congress from making any law “respecting an establishment of religion.”⁴⁶ Until recently, the U.S. Supreme Court’s interpretation of the Establishment Clause made it “difficult, if not impossible, for . . . pervasively sectarian [FBOs] to receive aid directly from the government, *even for avowedly secular purposes*.”⁴⁷

However, the Supreme Court now appears to have abandoned its outright prohibition on public funding of “pervasively sectarian” organizations (such as churches and other houses of worship). Instead, it has held that government assistance for religious organizations is constitutionally permissible if it

- is used for a secular (not religious) purpose,
- does not constitute government endorsement of religious beliefs (or have the primary effect of advancing religion), and
- will not result in an excessive “entanglement” between government and religion.⁴⁸

Therefore the Supreme Court has recently upheld providing direct, in-kind government assistance to religious schools if they use it for secular rather than religious purposes.⁴⁹ It also has upheld giving publicly funded vouchers to parents to pay their children’s tuition and fees at private or religious elementary or secondary schools.⁵⁰

Thus the current state of federal constitutional law regarding public funding

of social services programs provided by FBOs seems to be that

- *direct* government assistance (financial or in-kind assistance provided directly to FBOs by federal, state, or local governments) is permissible if it (a) is not “given for, or diverted to, activities that promote religious indoctrination,” (b) does not constitute government endorsement of religion, and (c) does not entangle government with religion; and
- *indirect* assistance (for example, publicly funded vouchers that individuals can use to obtain social services from public or private agencies) for FBOs that provide social services (even those that thoroughly integrate religious activities into their services) is permissible if (a) the government is neutral between religious and secular social services providers and (b) the people who receive services have a “genuine and independent choice” among religious and secular social services providers.⁵¹

Two recent court decisions illustrate the current constitutional boundaries with respect to public funding of faith-based social services programs. The first case involved a contract between the Wisconsin Department of Workforce Development and Faith Works, Inc., under which Faith Works would provide faith-intensive, long-term residential substance abuse treatment services to welfare recipients.⁵² In January 2002 a federal court ruled that the direct grant of public funds to Faith Works violated the Constitution’s Establishment Clause.⁵³ The court found that Faith Works required participants to attend faith-enhanced Alcoholics Anonymous meetings, that program counselors sought to transform participants’ minds and souls, that Faith Works integrated spiritual or religious activities into the services it provided to participants, and that the program commingled its public and private funding, so its religious as well as its secular activities could be attributed to the state.⁵⁴

The court also held that if a state or local government provides public funding directly to a faith-based social services provider, it must have, and

follow, adequate safeguards to prevent public funding of religious activities. Unenforced, boilerplate language in a contract preventing the use of public funding for religious instruction, worship, proselytizing, or other religious activities is not constitutionally sufficient.⁵⁵

In the second case, a federal appellate court held that a voucher-like program under which the Wisconsin Department

“inherently religious.”⁵⁸ Social services (mentoring, job training, counseling, etc.) are, of course, not “inherently religious” activities, whether they are provided by a faith-based or a secular organization.⁵⁹ But social services may be provided in highly religious ways, especially in faith-saturated or faith-intensive social services programs.⁶⁰ The administration’s guidance, therefore, ignores the fact that



A resident of the faith-based organization Summit House explains how the program works. Summit House offers alternatives to prison for nonviolent female offenders.

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of Corrections paid Faith Works for faith-based drug treatment services provided to criminal offenders was *not* unconstitutional because public funding was provided to the FBO as the result of the “genuine, independent choice” of the people who received services rather than the decision of the state, and public funding for other secular treatment programs was available.⁵⁶

The Bush administration, however, appears to hold a view different from that of the courts and Congress regarding what the law is, and what the law should be, with respect to publicly funded, faith-based social services programs.⁵⁷ The administration’s rules and guidance regarding charitable choice acknowledge that faith-based social services providers may not use direct public funding to pay for “inherently religious” activities such as religious instruction, worship, or proselytization. They go on to suggest, though, that FBOs may use government funding for any activity as long as the activity is not

the constitutionality of direct public funding of faith-based social services programs depends not on whether the publicly funded activities are or are not “inherently religious” but on the explicitly “*religious content* of a social service with otherwise *secular* goals.”⁶¹

The administration’s guidance also suggests that publicly funded faith-based social services providers may incorporate religious instruction, worship, proselytization, or other religious activities into the services they provide as long as they separate, in time or location, their inherently religious activities from the government-funded services.⁶² However, it is not entirely clear that direct public funding of a faith-saturated social services program is constitutional as long as the faith-saturated portions of the program are separated in time or space from the secular portions of the program and government funds are used to pay only the direct or proportionate program costs of the secular portion.⁶³

In addition to constitutional issues, the president's faith-based initiative has raised important and controversial legal and policy issues with respect to whether the law does or should allow FBOs to favor "coreligionists" (people of their own faith), or to discriminate against those with different or no religious beliefs, with respect to employment.⁶⁴ Title VII of the federal Civil Rights Act of 1964 exempts religious organizations from its provisions prohibiting employers from making employment decisions that

What's Happening in North Carolina?

North Carolina has not implemented faith-based social services initiatives in a comprehensive or coordinated way.⁶⁹ As noted earlier, a 2000 assessment of the states' implementation of the federal charitable choice initiative gave North Carolina a grade of C.⁷⁰ Also, researchers conducting a 2003 survey of state-level faith-based initiatives concluded that North Carolina was "very weak" with

employs two full-time staff to work with FBOs, Catawba County employs one person as a full-time faith community coordinator, and Henderson County provides funding for the salaries of two full-time faith community coordinators employed by a private contractor. In several counties, faith community coordinators are employed by the county department of social services and work with FBOs on a part-time basis. In Wake County, for example, twelve employees of the county human



Among the services offered by faith-based organizations are free meals. Holidays often attract more takers than other days.

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discriminate against people on the basis of religion.⁶⁵ Moreover, all the federal charitable choice legislation enacted during the Clinton administration provided that a religious organization's acceptance of federal funding under the charitable choice initiative would not affect its exemption from Title VII's general prohibition against religious discrimination in employment.⁶⁶

Building on this foundation, the Bush administration has argued that allowing faith-based social services providers to favor their coreligionists with respect to employment is necessary to protect the religious identity and character of FBOs.⁶⁷ Others counter that FBOs should not be allowed to discriminate on the basis of religion in hiring staff to work in government-funded social services programs. This controversy has proven to be a major obstacle to enactment of legislation implementing the president's faith-based initiative.⁶⁸

respect to facilitating the participation of FBOs in the delivery of social services, and that the nature and the extent of FBO involvement in North Carolina had not changed significantly since 1996.⁷¹

Clearly, though, state and county social services agencies have collaborated with faith-based social services providers. Further, state and local governments have provided public funding for faith-based social services programs.

County Faith Community Coordinators

About nineteen North Carolina counties provide public funding for faith community coordinators, who act as liaisons between the county and local clergy, congregations, and faith-based social services providers; recruit churches to provide mentoring or other services to clients of the county social services department; and encourage involvement of the faith community in social services. Mecklenburg County

services department are assigned to work with FBOs on a part-time basis (2.85 full-time equivalents).

Not surprisingly, counties with publicly funded faith community coordinators appear to have a higher level of county involvement with faith-based social services providers than counties without such coordinators.⁷² Also, counties with publicly funded faith community coordinators appear significantly more likely to provide public funding to faith-based social services providers than counties without such coordinators.⁷³

Public Funding for Faith-Based Social Services Programs

The first explicit faith-based social services initiative by state government in North Carolina was the funding of the Communities of Faith Initiative of the North Carolina Rural Economic Development Center (hereafter the Rural

The [president's] faith-based initiative [is] little more than a push to have government fund religion. Currently, in most government programs, religious social service providers are welcome to compete on equal terms with secular providers for federal contracts. They must agree, however, not to discriminate in their hiring or to allow federal tax dollars to pay for religious activities. This is exactly the way it should stay.

—Laura W. Murphy, director of the Washington office of the American Civil Liberties Union, June 2004

Center). In March 1999 the state's Division of Social Services contracted with the Rural Center to develop the capacity of FBOs to assist families in moving from welfare to work.⁷⁴ The Rural Center, in turn, made "faith demonstration awards" to FBOs to provide job retention and support services for families who received assistance under the state's TANF program. Ten FBOs received about \$2.66 million in federal TANF funds under the initiative between 1999 and 2002.⁷⁵ Although the ten FBOs "varied greatly in terms of composition, age, size, and program structure[,] . . . most of the major funding . . . went to large multi-service entities or to projects based on existing programs," and all ten appear to have been Christian or predominantly Christian in composition, origin, or mission.⁷⁶ Public funding of the initiative was phased out in fiscal year 2001–02 and discontinued in 2002–03.

The Communities of Faith Initiative, however, was neither the first nor the only instance of state funding of faith-based social services providers. A survey by the U.S. General Accounting Office found that during 2001, state agencies in North Carolina provided about \$588,000 in federal and state TANF funding for social services for needy families through six contracts with FBOs.⁷⁷

Lutheran Family Services in the Carolinas currently receives about \$850,000 in public funding under contracts with the state Division of Social Services to provide assistance to and services for refugees. It also receives \$113,000 under a contract with the state Department of Correction to provide family counseling services to inmates at Wake Correctional Center in Raleigh.

The Methodist Home for Children in Raleigh assists county departments of social services in finding adoptive homes for foster children under a fee-for-service contract with the state Division of Social Services.

The state Division of Mental Health, Developmental Disabilities, and Substance Abuse Services provides about \$660,000 per year in federal and state funding to two nonprofit agencies to provide training in prevention and education for staff in faith-based alcohol and substance abuse prevention programs.

Several FBOs, including Greensboro Urban Ministries and Inter-Faith Social Services in Chapel Hill, receive federal funding through the state Department of Health and Human Services' Office of Economic Opportunity to provide shelter and services for homeless individuals and families.

Scores of church-operated day-care centers for children receive federal and state funding on a fee-for-service basis under the state's child day-care subsidy program.

The Welfare Reform Liaison Project in Greensboro, an FBO that was founded in 1998 as a project of Mt. Zion Baptist Church, receives approximately \$600,000 per year in federal and state funding from the state's Office of Economic Opportunity as the county's community action agency. The project also has received Work First and welfare-to-work funding from the state Department of Commerce and the state Division of Social Services to provide job training for welfare recipients.

Further, local governments in North Carolina have been involved in funding faith-based social services providers.⁷⁸ For example, for almost twenty years,

Mecklenburg County and Charlotte have funded Crisis Assistance Ministry, a nonprofit corporation founded in 1975 by several churches in Charlotte. The ministry currently contracts with the county, the city, and the Office of Economic Opportunity to administer several federal, state, and local government programs (including the federal Crisis Intervention Program) that provide emergency financial assistance to help low-income families and individuals avoid eviction and pay their utility bills. In 2002–03, public funding constituted about 70 percent of the ministry's \$9.4 million budget, paying almost all the agency's administrative and operating expenses and \$4.6 million of the \$6.6 million it provided in emergency financial assistance. Local congregations contributed more than \$650,000 for the agency's programs, while individuals, the United Way, corporations, and foundations provided more than \$2 million.⁷⁹

Faith-based social services providers in North Carolina also receive grants, "subgrants" (grants made by intermediaries, such as state agencies, that receive grants from the federal government), or payments from the federal government. For example, Metropolitan Housing and Community Development Corporation, an FBO in Washington, North Carolina, receives payments from HUD to support its operation of several apartment complexes for low-income, elderly people. Also, several North Carolina FBOs have received capacity-building subgrants under President Bush's Compassion Capital Fund initiative.⁸⁰

Conclusion

At least four observations can be made. First, churches and other FBOs have a long history of providing social services for needy individuals and families and are essential components of the nation's social safety net.

Second, government funding of faith-based social services providers, though controversial and potentially problematic, is not new.

Third, President Bush's faith-based initiative has placed more emphasis on faith-based social services than they have received at any time in American history; has focused more explicitly on

the provision of social services by local churches, congregations, and other houses of worship; has placed greater faith in the ability of faith-intensive social services programs to transform people and cure many of the nation's social ills; and has pushed the envelope with respect to government funding of faith-based social services programs.

Fourth, questions remain regarding the capacity and the effectiveness of faith-based social services programs and the legality of public funding of them.

Although some evidence supports the effectiveness of faith-based social services programs, more research needs to be done to determine whether and why faith-based social services programs work. In the meantime, "policy makers should not assume that the 'faith factor' alone can make an FBO effective in carrying out its mission[, and g]overnment support of FBOs should be performance-based and contingent on the achievement of demonstrable results."⁸¹ Nor should policy makers assume that government responsibility for social services can be shifted entirely, or even significantly, to FBOs, through continued devolution and privatization.

Finally, policy makers need to be aware of the potential constitutional problems involved in funding faith-based social services programs—especially when direct financial assistance is provided to pervasively religious institutions and faith-saturated social services programs. State and local government officials must walk a fine line between allowing FBOs to participate along with other private social services providers, on the one hand, and preferring faith-based social services providers over secular providers simply because they are faith based, or unconstitutionally endorsing particular religious beliefs or practices, on the other hand.

Notes

1. George W. Bush, *Foreword* to WHITE HOUSE, RALLYING THE ARMIES OF COMPASSION (Jan. 2001), available at www.whitehouse.gov/news/reports/faithbased.html (last visited July 15, 2004).

2. "Charitable choice" refers to a wide range of initiatives, including tax incentives to support charitable organizations and public

funding for nonprofit and religious social services providers.

3. MICHAEL TANNER, CORRUPTING CHARITY: WHY GOVERNMENT SHOULD NOT FUND FAITH-BASED CHARITIES, Briefing Paper No. 62 (Washington, D.C.: Cato Inst., Mar. 22, 2001), available at www.cato.org/pubs/briefs/bp062es.html (last visited July 14, 2004); RENEE FORMICOLA ET AL., FAITH-BASED INITIATIVES AND THE BUSH ADMINISTRATION: THE GOOD, THE BAD, AND THE UGLY (Lanham, Md.: Rowman and Littlefield, 2003).

4. Thomas W. Ross, *The Faith-Based Initiative: Anti-Poverty or Anti-Poor?* 9 GEORGETOWN JOURNAL ON POVERTY LAW AND POLICY 167 (2002).

5. JIM CASTELLI, FAITH-BASED SOCIAL SERVICES: A BLESSING, NOT A MIRACLE (Washington, D.C.: Progressive Policy Inst., 1997), available at www.ppionline.org/documents/ACFEWodwh4Tc.pdf; Ross, *The Faith-Based Initiative*.

6. Ross, *The Faith-Based Initiative*; FORMICOLA ET AL., FAITH-BASED INITIATIVES; Dennis R. Hoover, *Yes to Charitable Choice*, THE NATION, Aug. 7, 2000, at 6.

7. WORKING GROUP ON HUMAN NEEDS AND FAITH-BASED AND COMMUNITY INITIATIVES, HARNESSING CIVIC AND FAITH-BASED POWER TO FIGHT POVERTY (n.p.: Apr. 2003), available at www.working-group.org/Documents/SFCGbook2003Final.pdf (last visited July 14, 2004) [hereinafter WORKING GROUP REPORT].

8. *Id.*

9. MARK CHAVES & WILLIAM TSITSOS, CONGREGATIONS AND SOCIAL SERVICES: WHAT THEY DO, HOW THEY DO IT, AND WITH WHOM (Washington, D.C.: Aspen Inst., 2001), available at www.nonprofitresearch.org/usr_doc/Tsitsos%20Report.pdf.

10. MARK CHAVES, RELIGIOUS CONGREGATIONS AND WELFARE REFORM: WHO WILL TAKE ADVANTAGE OF "CHARITABLE CHOICE"? (Washington, D.C.: Aspen Inst., 1999), available at www.nonprofitresearch.org/usr_doc/19966.pdf.

11. Lutheran Services in America, the U.S.'s largest faith-based social services provider, receives about 40 percent of its \$7 billion budget from government sources. Mark Silk, *Old Alliance, New Rules*, WASHINGTON POST, Feb. 18, 2001, at B3.

12. CAN CHARITABLE CHOICE WORK? 2 (Andrew Walsh ed., Hartford, Conn.: Trinity Coll., 2001). This does not mean that these FBOs are not "religious." The services they provide are an expression of their religious faith. Their practices and procedures, however, generally do not involve proselytization, prayer, or other *inherently* religious activities.

13. Wolfgang Bielefeld et al., *Organization Analysis: The Influence of Faith on IMPACT Service Providers*, in CHARITABLE CHOICE: FIRST RESULTS FROM THREE STATES 65 (Sheila Suess Kennedy & Wolfgang Bielefeld eds.,

Indianapolis: Center for Urban Policy and the Env't, 2003).

14. *Id.*

15. MALCOLM L. GOGGIN & DEBORAH A. ORTH, HOW FAITH-BASED AND SECULAR ORGANIZATIONS TACKLE HOUSING FOR THE HOMELESS (Albany, N.Y.: Rockefeller Inst. of Gov't, State Univ. of N.Y. at Albany, 2002), available at www.religionandsocialpolicy.org/docs/research/10-23-2002_grand_rapids_study.pdf.

16. JOHN C. GREEN & AMY L. SHERMAN, FRUITFUL COLLABORATIONS: A SURVEY OF GOVERNMENT-FUNDED FAITH-BASED PROGRAMS IN 15 STATES (Charlottesville, Va.: Hudson Inst., 2002), available at www.hudson.org/files/publications/fruitful_collab.pdf. In this study of government-funded FBOs, ecumenical nonprofit social services providers and Catholic Charities generally were classified as nonexpressive, whereas most evangelical and predominantly African-American congregations that provided social services were classified as fully expressive. About three-quarters of all first-time recipients of public funding under charitable choice were fully expressive FBOs.

17. WORKING GROUP REPORT.

18. FBOs always have played an important role in providing social services. According to one estimate, FBOs provide about \$36 billion in social services annually. RAM A. CNAAN ET AL., THE NEWER DEAL: SOCIAL WORK AND RELIGION IN PARTNERSHIP (New York: Columbia Univ. Press, 1999).

19. CAN CHARITABLE CHOICE WORK?

20. GREEN & SHERMAN, FRUITFUL COLLABORATIONS.

21. 42 U.S.C. § 604a, Pub. L. No. 104-193, § 104, 110 Stat. 2105 (1996). PRWORA's charitable choice requirements also apply to the federal Welfare-to-Work and Medicaid programs. DHHS adopted final rules implementing the Temporary Assistance for Needy Families charitable choice requirements on September 30, 2003. 45 C.F.R. § 260.34, 68 Fed. Reg. 56,449 (2003).

22. Congress enacted similar charitable choice requirements for federal community services and drug treatment funding in 1998 and 2000. 42 U.S.C. § 9920, Pub. L. No. 105-285, § 201, 112 Stat. 2749 (1998); 42 U.S.C. § 300x-65, Pub. L. No. 106-310, § 3305, 114 Stat. 1212 (2000); 42 U.S.C. §§ 290kk through 290kk-2, Pub. L. No. 106-554, § 1(a)(7), 114 Stat. 2763, 2763A-619 (2000). DHHS issued final rules implementing the 1998 and 2000 charitable choice legislation on September 30, 2003. 45 C.F.R. § 1050, 68 Fed. Reg. 56,466 (2003) (community services); 42 C.F.R. §§ 54, 54a, 96.123(a)(18), 68 Fed. Reg. 56,429 (2003) (drug treatment).

23. Although PRWORA's charitable choice provision does not define the term "religious organization," it clearly was intended to encompass "pervasively sectarian" religious

organizations (such as local churches, synagogues, mosques, and other houses of worship) and independent, local, state, denominational, and national faith-based or religiously affiliated nonprofit organizations. Julie A. Segal, *A "Holy Mistaken Zeal": The Legislative History and Future of Charitable Choice*, in *WELFARE REFORM AND FAITH-BASED ORGANIZATIONS 9* (Derek Davis & Barry Hankins eds., Waco, Tex.: Baylor Univ., 1999). The DHHS rules implementing the TANF charitable choice requirements deleted a proposed definition of "religious organization" and declined to provide more specific examples of religious or faith-based organizations. 48 Fed. Reg. 56,451 (2003).

24. CENTER FOR PUBLIC JUSTICE, *CHARITABLE CHOICE COMPLIANCE: A NATIONAL REPORT CARD*, available at [www.cjustice.org/stories/storyReader\\$296](http://www.cjustice.org/stories/storyReader$296) (last visited July 15, 2004).

25. WHITE HOUSE, *RALLYING THE ARMIES*.

26. Executive Order 13,199, 66 Fed. Reg. 8,499 (2001); Exec. Order 13,198, 66 Fed. Reg. 8,495 (2003).

27. WHITE HOUSE, *UNLEVEL PLAYING FIELD: BARRIERS TO PARTICIPATION BY FAITH-BASED AND COMMUNITY ORGANIZATIONS IN FEDERAL SOCIAL SERVICES PROGRAMS*, available at www.whitehouse.gov/news/releases/2001/08/unlevelfield.html (last visited July 15, 2004). Neither the data contained in the report nor other studies, however, appear to support the contention that discrimination against faith-based social services providers is more than an isolated or minor problem. Mark Chaves, *Debunking Charitable Choice: The Evidence Doesn't Support the Political Left or Right*, 1 *STANFORD SOCIAL INNOVATION REVIEW* 28 (2003). A 2002 survey of 389 faith-based organizations that contracted with federal, state, or local governments under federal charitable choice legislation found that "government agencies are not generally erecting barriers that make it unreasonably difficult for FBOs to compete for funding and are not excessively intrusive in their monitoring of faith-based contractors." GREEN & SHERMAN, *FRUITFUL COLLABORATIONS*, at 7.

28. H.R. 7 (107th Congress, 1st Sess., 2001). The legislation is described in detail in BEN CANADA & DAVID ACKERMAN, *FAITH-BASED ORGANIZATIONS: CURRENT ISSUES* (New York: Novinka Books, 2003).

29. Shortly before the House passed H.R. 7, the White House repudiated a report that, in return for the Salvation Army's support of H.R. 7, it would adopt a regulation exempting faith-based social services providers from state and local laws barring employment discrimination on the basis of sexual orientation. Dana Milbank, *Charity Cites Bush Help in Fight against Hiring Gays*, *WASHINGTON POST*, July 10, 2001, at A1, available at www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A37723-2001Jul9¬Found=true. Most of H.R. 7's charitable

choice provisions were excluded from legislation introduced by Senators Rick Santorum and Joseph Lieberman in 2002 (S. 1924, 107th Congress, 2d Sess., 2002). All the charitable choice provisions were stripped from the version of H.R. 7 reported by the Senate Finance Committee in July 2002.

30. Pub. L. No. 107-116, 115 Stat. 2196 (2002) (Compassion Capital Fund); Pub. L. No. 107-77 [H.R. REP. NOS. 107-139, -278, 107th Congress, 1st Sess., 115 Stat. 748 (2001)] (pre-release program); 42 U.S.C. § 629i, Pub. L. No. 107-133, 115 Stat. 2413 (2002) (mentoring services). Congress appropriated \$35 million for the Compassion Capital Fund in 2003 and \$48 million in 2004. Pub. L. No. 108-7, 117 Stat. 320 (2003); Pub. L. No. 108-199, 118 Stat. 249 (2004). In fiscal year 2003, DHHS and the Corporation for National Community Service awarded \$9 million to fifty-two faith-based and community organizations to mentor the children of prisoners, and in fiscal year 2004, it will award \$50 million in grants for this purpose.

31. Executive Order 13,279, 67 Fed. Reg. 77,141 (2002). To date, DHHS, HUD, and the Departments of Labor, Education, and Justice have issued proposed or final rules implementing this executive order. *See, e.g.*, 68 Fed. Reg. 56,396 (2003) (final HUD rule); 69 Fed. Reg. 10,951 (2004) (proposed DHHS rule). Charitable choice legislation was proposed but not enacted during the 108th Congress. CARE Act of 2003, S. 272 (108th Congress, 1st Sess., 2003), S. 476 (108th Congress, 1st Sess., 2003) (passed the Senate on Apr. 9, 2003, but focused primarily on tax incentives to spur charitable giving and eliminated provisions regarding faith-based social services providers); Charitable Giving Act of 2003, H.R. 7 (108th Congress, 1st Sess., 2003) (passed the House of Representatives on Sept. 17, 2003).

32. WHITE HOUSE, *SELECT GRANTS TO FAITH-BASED ORGANIZATIONS AT FIVE AGENCIES* (Mar. 2, 2004), available at www.whitehouse.gov/government/fbci/3-2_final_pres.pdf (last visited July 15, 2004); WHITE HOUSE, *COMPASSION IN ACTION: HELPING AMERICA'S CHARITIES SERVE THOSE MOST IN NEED* (Mar. 3, 2004), available at www.whitehouse.gov/government/fbci/CompassionFS3-3-04.pdf (last visited July 15, 2004). The data did not include federal funding provided through state or local governments, voucher programs, or formula grant programs. From fiscal year 2002 to fiscal year 2003, DHHS increased the number of grants awarded to FBOs by 41 percent (to 680) and the amount of grant funding for them by \$91 million (19 percent). HUD awarded 765 grants (more than \$500 million) to FBOs in fiscal year 2003. More than 1,000 FBOs provided tutoring services (9 percent of the total) under the No Child Left Behind Act.

33. BYRON R. JOHNSON, *OBJECTIVE HOPE: ASSESSING THE EFFECTIVENESS OF FAITH-BASED ORGANIZATIONS (A REVIEW OF THE LITERATURE)* (Philadelphia: Center for Research on Religion and Urban Civil Society, 2002), available at www.manhattan-institute.org/crrucs_objective_hope.pdf. A *New York Times* poll found that 68 percent of Americans believe that "voluntary groups like charities and churches" are better able to fight poverty in the cities than government. LEWIS D. SOLOMON & MATTHEW J. VLISSIDES JR., *IN GOD WE TRUST? ASSESSING THE POTENTIAL OF FAITH-BASED SOCIAL SERVICES 3* (Washington, D.C.: Progressive Policy Inst., 2001), available at www.ppionline.org/documents/FBOs_v2.pdf.

34. George W. Bush, *Remarks by the President in Announcement of the Faith-Based Initiative* (Jan. 29, 2001), available at www.whitehouse.gov/news/releases/20010129-5.html (last visited July 15, 2004); WHITE HOUSE, *RALLYING THE ARMIES*.

35. CHAVES & TSITSOS, *CONGREGATIONS AND SOCIAL SERVICES*.

36. George W. Bush, *President Speaks with Faith-Based and Community Leaders* (Jan. 15, 2004), available at www.whitehouse.gov/news/releases/2004/01/20040115-7.html (last visited July 15, 2004).

37. Mark Chaves, *Religious Congregations and Welfare Reform*, in *CAN CHARITABLE CHOICE WORK?* at 132; CASTELLI, *FAITH-BASED SOCIAL SERVICES*; Partha Deb & Dana Jones, *Does Faith Work?* in *CHARITABLE CHOICE: FIRST RESULTS*, at 57.

38. JOHNSON, *OBJECTIVE HOPE*. The report concluded that research studies provide some evidence that participation in faith-based social services programs "tends to be associated with improved outcomes." For example, one multivariate, controlled study of Teen Challenge, a Christian drug treatment program, found that participants in this faith-based program were more likely than participants in a short-term medical inpatient program to remain sober and maintain employment. Some academics and social scientists, however, have criticized the methodology and validity of these studies. E-mail Correspondence with Prof. Robert J. Wineburg, Univ. of N.C. at Greensboro (June 2004).

39. STEVEN V. MONSMA, *WORKING FAITH: HOW RELIGIOUS ORGANIZATIONS PROVIDE WELFARE-TO-WORK SERVICES* (Philadelphia: Center for Research on Religion and Urban Civil Society, 2002), available at www.manhattan-institute.org/working_faith.pdf.

40. Deb & Jones, *Does Faith Work?*

41. STEPHEN V. MONSMA & J. CHRISTOPHER SOPER, *WHAT WORKS: COMPARING THE EFFECTIVENESS OF WELFARE-TO-WORK PROGRAMS IN LOS ANGELES* (Philadelphia: Center for Research on Religion and Urban Civil Society, 2003), available at www.manhattan-institute.org/crrucs_what_works.pdf (last visited July 15, 2004).

42. INSTITUTE OF GOV'T, UNIV. OF N.C. AT CHAPEL HILL, SURVEY OF COUNTY SOCIAL SERVICES DIRECTORS: SOCIAL SERVICES PARTNERSHIPS BETWEEN NORTH CAROLINA COUNTIES AND FAITH-BASED ORGANIZATIONS (Chapel Hill: the Institute, May 2004) [hereinafter 2004 COUNTY DSS SURVEY]. A little more than half of the respondents believed that faith-based programs generally are as effective or more effective than secular or government programs. However, one-sixth of the respondents believed that faith-based programs are less effective than secular or government programs, and one-third of the respondents were unsure regarding the effectiveness of faith-based programs versus that of others.

43. STEVEN V. MONSMA, ARE FAITH-BASED PROGRAMS MORE EFFECTIVE? (Annapolis, Md.: Center for Public Justice, 2001), available at [www.cpjustice.org/stories/storyReader\\$545](http://www.cpjustice.org/stories/storyReader$545) (last visited July 15, 2004).

44. Mark Chaves, *Congregations' Social Services: Testing the Assumptions behind the Policies*, in SACRED PLACES, CIVIC PURPOSES 276 (E. J. Dionne Jr. & Ming Hsu Chen eds., Washington, D.C.: Brookings Inst. Press, 2001).

45. John DiIulio, *Reasons for Objective Hope in the Two Faith Factors*, Foreword to JOHNSON, OBJECTIVE HOPE, at 5, 6.

46. In 1947 the Supreme Court held that the Constitution's Establishment Clause applied to state and local governments as well as to the federal government. *Everson v. Board of Educ.*, 330 U.S. 1 (1947).

47. CANADA & ACKERMAN, FAITH BASED ORGANIZATIONS, at 76 (emphasis added). The Supreme Court appears to have abandoned the "pervasively sectarian" test as an outright prohibition on public funding of religious organizations. *Mitchell v. Helms*, 530 U.S. 793 (2000).

48. *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Agostini v. Felton*, 521 U.S. 203 (1997); *Mitchell*, 530 U.S. at 793. In *Mitchell* a plurality of four justices would have held that public funding of religious organizations (even pervasively sectarian ones) is constitutional if it is provided on a religiously neutral basis (treating religious and secular organizations equally) and for a secular purpose (even if it directly subsidizes religious activities).

49. *Agostini*, 521 U.S. at 203; *Mitchell*, 530 U.S. at 793. Both *Agostini* and *Mitchell* involved direct, in-kind assistance provided to religious elementary and secondary schools for secular purposes. All of the justices in *Mitchell* expressed reservations concerning the constitutionality of the government's providing direct money payments to sectarian organizations for purportedly secular purposes when that public funding could be diverted or used for religious, rather than secular, purposes. Constitutional issues also may arise in implementing faith-based social services initiatives if government agencies provide funding for social services in a way that pre-

fers particular religious groups over others or prefers faith-based social services providers over secular social services providers.

50. *Zelman v. Simmons-Harris*, 526 U.S. 639 (2002).

51. IRA C. LUPU & ROBERT W. TUTTLE, GOVERNMENT PARTNERSHIPS WITH FAITH-BASED SERVICE PROVIDERS: THE STATE OF THE LAW 24 (Albany, N.Y.: Rockefeller Inst. of Gov't, State Univ. of N.Y. at Albany, Dec. 2002), available at www.religionandsocialpolicy.org/docs/legal/reports/12-4-2002_state_of_the_law.pdf. See also Frayda S. Bluestein & Anita R. Brown-Graham, *Local Government Contracts with Nonprofit Organizations: Some Questions and Answers*, POPULAR GOVERNMENT, Fall 2001, at 32; Anita R. Brown-Graham, *Contracts with Faith-Based Organizations*, POPULAR GOVERNMENT, Fall 2001, at 40; Anita R. Brown-Graham, *Accountability Challenges in Government Funding of Faith-Based Organizations*, LOCAL GOVERNMENT LAW BULLETIN no. 105 (Chapel Hill: Institute of Gov't, Univ. of N.C. at Chapel Hill, 2004). The constitutions of many states (but not that of North Carolina) impose more stringent limitations on public funding of religious organizations than those imposed through the federal Constitution's Establishment Clause and, in the absence of federal preemption, may prohibit the use of state or local government funding for some faith-based social services programs. See *Locke v. Davey*, 124 S. Ct. 1307 (2004).

52. The contract provided for the payment of a fixed amount of funding to Faith Works to provide services to people referred by the state agency to Faith Works. The people referred to Faith Works were not offered an alternative secular treatment program. The services provided by Faith Works were a faith-enhanced version of the twelve-step program used by Alcoholics (and Narcotics) Anonymous, coupled with individual counseling. About 20 percent of the Faith Works counselors' time was devoted to matters related to faith and spirituality.

53. *Freedom from Religion Found. v. McCallum*, 179 F. Supp. 2d 950 (W.D. Wisc. 2002).

54. Another federal court is considering the constitutionality of Iowa's funding of Prison Fellowship Ministries' InnerChange Freedom Initiative, an evangelical, fundamentalist Christian, biblically based program for state prisoners. IRA C. LUPU & ROBERT W. TUTTLE, THE STATE OF THE LAW 2003: DEVELOPMENTS IN THE LAW CONCERNING GOVERNMENT PARTNERSHIPS WITH RELIGIOUS ORGANIZATIONS (Albany, N.Y.: Rockefeller Inst. of Gov't, State Univ. of N.Y. at Albany, Dec. 2003), available at www.religionandsocialpolicy.org/docs/legal/reports/12-2-2003_state_of_the_law.pdf.

55. See *American Civil Liberties Union of La. v. Foster*, 2003 WL 1193673 (E.D. La. 2003) (prohibiting FBOs that receive direct

public funding under Louisiana's teen sexual abstinence program from promoting or advocating religion in any way in any activity that is financially supported, in whole or in part, with government funds).

56. *Freedom from Religion Found. v. McCallum*, 324 F.3d 880, 880 (7th Cir. 2003). The program was voucher-like in that the FBO was paid on a fee-for-service basis only if a person chose to receive services from the FBO and only to the extent that services were actually rendered, rather than receiving a fixed amount of funding to provide services without regard to client choice or actual use. The court did not require that the secular alternative be exactly comparable to the faith-based services or that state employees refrain from making objective recommendations with respect to the choice of faith-based versus secular services.

57. WHITE HOUSE, GUIDANCE TO FAITH-BASED AND COMMUNITY ORGANIZATIONS ON PARTNERING WITH THE FEDERAL GOVERNMENT, available at www.whitehouse.gov/government/fbci/guidance_document.pdf (last visited July 15, 2004).

58. One study found a general lack of understanding on the part of faith-based social services providers in Indiana with respect to constitutional principles governing public funding of faith-based organizations. Sheila Suess Kennedy, *Constitutional Issues*, in CHARITABLE CHOICE: FIRST RESULTS, at 89.

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

60. A study of faith-based welfare-to-work programs in four American cities found that almost all the faith-integrated programs used religious values to change the attitudes and the behaviors of clients, almost four-fifths of them incorporated prayer into their services, almost two-thirds encouraged their clients to make a personal religious commitment, and one-quarter required their clients to participate in religious worship or Bible study. MONSMA, WORKING FAITH.

61. LUPU & TUTTLE, THE STATE OF THE LAW 2003, at 8 (emphasis added); *Freedom from Religion Found. v. McCallum*, 179 F. Supp. 2d 950 (W.D. Wis. 2002); *DeStefano v. Emergency Hous. Group*, 247 F.3d 397 (2d Cir. 2001) (holding that direct government funding of Alcoholics Anonymous programs violated Establishment Clause).

62. Executive Order No. 13,279, 67 Fed. Reg. 77,141 (2002). PRWORA's charitable choice requirements prohibit the expenditure of direct federal funding for "sectarian worship, instruction, or proselytization." 42 U.S.C. § 604a(j) (2003).

63. A study of publicly funded faith-based social services providers in fifteen states found that three-fifths of them chronologically separated religious and secular activities and two-fifths maintained an accounting of the time devoted to religious versus secular activities. GREEN & SHERMAN, FRUITFUL COL-

LABORATIONS. But physically or chronologically separating religious and secular activities and providing an accounting to show that public funding supported only secular activities or the proportionate share of program costs attributable to secular rather than religious activities, may not be constitutionally sufficient. All the justices in *Mitchell* expressed doubts regarding the constitutionality of direct public funding (as opposed to the provision of in-kind assistance or indirect funding through the use of vouchers) of religious organizations, even when the funding is intended and ostensibly used for secular rather than religious purposes. CANADA & ACKERMAN, FAITH BASED ORGANIZATIONS. One federal court has held that direct public funding of a faith-based social services provider is unconstitutional when the provider commingles its public and private funding, thoroughly integrates spiritual activities into the services provided by its counselors, and uses public funding to pay a portion of the salaries of its counselors. *Freedom from Religion Found.*, 179 F. Supp. 2d at 950.

64. See WORKING GROUP ON HUMAN NEEDS AND FAITH-BASED AND COMMUNITY INITIATIVES, AGREED STATEMENT OF CURRENT LAW ON EMPLOYMENT PRACTICES, FAITH-BASED ORGANIZATIONS, AND GOVERNMENT FUNDING, available at www.working-group.org/Documents/StatementOnCurrentLaw.pdf (last visited July 15, 2004).

65. The constitutionality of the Title VII exemption for religious organizations was upheld in *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987). Not all FBOs that provide social services qualify as religious organizations for purposes of the partial exemption from Title VII. See, e.g., *Fike v. United Methodist Children's Home of Va.*, 547 F. Supp. 286 (E.D. Va. 1982), *aff'd*, 709 F.2d 284 (4th Cir. 1983).

66. FBOs, however, may be subject to state and local laws prohibiting religiously based discrimination in employment.

67. WHITE HOUSE, PROTECTING THE CIVIL RIGHTS AND RELIGIOUS LIBERTY OF FAITH-BASED ORGANIZATIONS: WHY RELIGIOUS HIRING RIGHTS MUST BE PRESERVED, available at www.whitehouse.gov/government/fbci/booklet.pdf (last visited July 15, 2004).

68. One federal court, however, has held that a religious organization that provides federally funded social services may not discriminate on the basis of religious belief with respect to a job position that is supported by federal funding. *Dodge v. Salvation Army*, 1989 WL 53857 (S.D. Miss. 1989).

69. A 2003 survey of the policy environment for faith-based social services initiatives in the fifty states found that the response of state and local governments to charitable choice and the Bush administration's faith-based initiatives "has been muted." MARK

RAGAN ET AL., SCANNING THE POLICY ENVIRONMENT FOR FAITH-BASED SOCIAL SERVICES IN THE UNITED STATES: RESULTS OF A 50-STATE STUDY (Albany, N.Y.: Rockefeller Inst. of Gov't, State Univ. of N.Y. at Albany, 2003), available at www.religionandsocialpolicy.org/docs/events/2003_annual_conference/11-17-2003_state_scan.pdf. Eighteen of the forty-three responding states (about two-fifths) reported that they had undertaken significant legislative or administrative initiatives related to faith-based social services, but thirty-seven states (more than three-quarters of those responding) were rated by the researchers as inactive, very weak, or weak with respect to specific activities to increase the participation of faith-based organizations in delivering social services. Researchers also found that, in most states (including those that appeared to have embraced charitable choice), there had not been any significant change in the nature or the extent of FBO involvement with the state in the delivery of social services.

70. CENTER FOR PUBLIC JUSTICE, CHARITABLE CHOICE COMPLIANCE.

71. RAGAN ET AL., SCANNING THE POLICY ENVIRONMENT. This conclusion appears to be inconsistent with the results of the 2004 County DSS Survey, in which a little more than half of the North Carolina county social services directors and staff who responded reported increased county involvement with faith-based social services initiatives between 1999 and 2004.

72. Five of seven counties with publicly funded community faith coordinators reported significant involvement with faith-based social services providers, compared with two of seven responding counties without publicly funded faith community coordinators. 2004 COUNTY DSS SURVEY.

73. Six of eight responding counties with publicly funded faith community coordinators reported that they provided public funding to faith-based social services providers, compared with five of eighteen counties without publicly funded faith community coordinators. *Id.*

74. The Communities of Faith Initiative is described in more detail in CHARITABLE CHOICE: FIRST RESULTS.

75. The initiative also received private funding from the Duke Endowment and the Z. Smith Reynolds Foundation.

76. CHARITABLE CHOICE: FIRST RESULTS, at 31.

77. U.S. GENERAL ACCOUNTING OFFICE, CHARITABLE CHOICE: FEDERAL GUIDANCE ON STATUTORY PROVISIONS COULD IMPROVE CONSISTENCY OF IMPLEMENTATION, GAO-02-887 (Washington, D.C.: GAO, Sept. 2002), available at www.gao.gov/new.items/d02887.pdf. The survey found that in 2001, state-level TANF contracts with FBOs totaled \$81 million (about 8 percent of \$1.0 billion in TANF contracts with nongovernmental organiza-

tions). The survey did not include contracts or grants between local governments and FBOs.

78. The 2004 survey of county social services directors found that twelve of the thirty-one responding counties had provided government funding for faith-based social services programs during the past three years. These twelve counties currently provide more than \$4 million per year in government funding for faith-based social services programs (excluding funding for faith community coordinators and financial assistance that is passed through faith-based social services providers directly to needy individuals and families). Mecklenburg, New Hanover, and Wake counties each provide more than \$500,000 per year in government funding for faith-based social services providers. Government funding for faith-based social services providers in other North Carolina counties that responded to the survey generally was less than \$100,000 per year. 2004 COUNTY DSS SURVEY.

79. Crisis Assistance Ministry also distributes clothing, furniture, appliances, and household items to needy families and individuals and coordinates a mentoring program for families. In 2002-03 the ministry provided emergency financial assistance to more than 24,000 families. About 40 percent of the agency's workload was carried by volunteers, who provided more than 46,000 hours of labor. Telephone Conversations with Crisis Assistance Ministry Staff (April and May 2004).

80. In 2002, CJH Educational Grant Services, Inc. received a three-year \$3.3 million grant from DHHS to build the capacity of faith-based and community organizations to manage and deliver social services. The agency distributes more than \$500,000 per year in federal funding to more than two dozen faith-based and community organizations in North Carolina to hire staff, purchase office supplies, contract for professional services, obtain training, and upgrade their financial management systems. About one-third of the fifty-two organizations that have received funding are churches or faith-based organizations. Funding under the grant may be used only for capacity building and may not be used for the delivery of faith-based social services. The funded organizations provide educational enrichment programs for at-risk children, transitional and supportive services for homeless women with HIV, services for victims of domestic violence, after-school programs for children, parent education, and other social services. Interview with Cynthia J. Harris, President of CJH Educational Grant Services, Inc., in Raleigh, N.C. (May 2004).

81. SOLOMON & VLISSIDES, IN GOD WE TRUST? at 1-2.