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;
- 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;
- 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;
- 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.

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. Bush

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

• is based on mistaken assumptions regarding the causes of social problems; and
• undermines the government’s responsibility for providing and funding social services programs.

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. Under one fairly broad definition, an FBO is any organization that is founded on or motivated by religious conviction, prin-

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

• 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 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. Eight states received A’s or B’s with respect to their implementation of 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; • 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.

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. 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.

The Bush administration also supported legislation (the Community Solutions Act of 2001) that would have extended charitable choice to nine additional social services programs. 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. 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.

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. 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
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 religious 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 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 guidance regarding charitable choice acknowledges 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 “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
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 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

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 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 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 social

Among the services offered by faith-based organizations are free meals. Holidays often attract more takers than other days.
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 dem-
stration 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 pre-
dominantly Christian in composition, or-
igin, 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 so-
cial 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 con-
tracts 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 Sub-
stance Abuse Services provides about
$660,000 per year in federal and state
funding to two nonprofit agencies to pro-
vide training in prevention and education
for staff in faith-based alcohol and sub-
stance 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 indi-
viduals 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 Eco-
nomic 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 oper-
ating 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 founda-
tions provided more than $2 million.79

Faith-based social services providers
in North Carolina also receive grants,
“subgrants” (grants made by inter-
mediaries, such as state agencies, that
receive grants from the federal govern-
ment), 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 Car-
olina FBOs have received capacity-
buiding 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 problem-
atic, 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 government support of FBOs should be performance-based and contingent on the achievement of demonstrable results.”

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


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.


8. Id.


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.


14. Id.


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.


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).


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 “religion” organization and declined to provide more specific examples of religious or faith-based organizations. 48 Fed. Reg. 56,451 (2003).


25. WHITE HOUSE, RALLYING THE ARMIES.


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.


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 Millbank, 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&notFound=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.


32. WHITE HOUSE, SELECT GRANTS TO FAITH-BASED ORGANIZATIONS AT FIVE AGENCIES (Mar. 2, 2004), available at www.whitehouse.gov/government/fbic/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/fbic/CompassionPS3-3-04.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.


35. CHAVES & TITSO, CONGREGATIONS AND SOCIAL SERVICES.


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).


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


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.


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.


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.


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.


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 comingles 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.


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.


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

75. CHARITABLE CHOICE: FIRST RESULTS, at 31.

76. 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/id02887.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 organizations). The survey did not include contracts or grants between local governments and FBOs.

77. 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.