

THE LIMITS OF FAITH: FUNDING FAITH-BASED
SOCIAL SERVICES

THESIS

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ABSTRACT

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Since Charitable Choice was expanded in 2001, its implementation has been plagued by questions. Members of Congress immediately expressed hesitation about whether or not to authorize funding for faith-based organizations (FBO's) amid questions of their constitutionality. The Supreme Court has similarly struggled, issuing conflicting rulings pertaining to the limits of free speech and the separation of church and state. More recently, social scientists have begun to question the claim that religious organizations are more efficacious at providing social services. This paper examines these issues and concludes that while religious organizations do provide valuable services primarily for their parishioners, the balance of the evidence does not support the continued expansion of the faith-based initiative as a government-funded method of social service delivery.

CHAPTER I

AN INTRODUCTION TO CHARITABLE CHOICE

“Bush’s plan is the single greatest assault on church-state separation in modern American history. The First Amendment was intended to create a separation between religion and government, not a massive new bureaucracy that unites the two.”

Reverend Barry Lynn, Americans United for the Separation of
Church and State

In terms of public policy issues that touch upon all three branches of government, few issues possess the far-reaching scope of effect as federal funding for faith-based social service initiatives. Since President Bush proposed expanded funding for faith-based organizations (FBO’s), or so-called “charitable choice,” in 2001, fall-out has been considerable. Questions have been raised within the Administration as to whether the President really supports FBO’s, or is just using them to garner votes from the religious right. Members of Congress have expressed hesitation about funding FBO’s amid questions over their constitutionality; and the Supreme Court has issued conflicting rulings pertaining to FBO’s, the limits of free speech, and the separation of church and state. The central question is whether government funding of charitable choice empowers social service providers better able to deal with society’s ills or represents, instead, an

“excessive entanglement” of government and religion which may prove damaging to both.¹

Charitable choice began as a little-noticed provision of the 1996 Welfare Reform Act signed into law by President Clinton. The provision allowed faith-based outreach programs to apply directly for federal funds as long as those funds were not used for worship, proselytizing, or religious conversion activities. Before the 1996 charitable choice provision, a faith-based provider had to establish a secular 501(c)(3) arm of its organization and pledge that the funds would not be used for overt or sectarian religious activities. The new law allowed religious organizations to directly compete for federal dollars without the secular component. Yet, despite the new provision, the law remained a “sleeper” and very few faith-based providers actually took advantage of the funding initiative until the newly-elected President George Bush made it a large part of his vision for welfare reform in 2001.² In the face of congressional opposition, President Bush would ultimately use executive orders to fully enact and broaden the scope of the existing law.

Only nine days after taking office in 2001, the new president pressed his Republican allies in Congress to pass laws strengthening charitable choice. His plan faced immediate opposition from both the left and the right. Opposition from the left raised concerns that expanded funding to religious groups directly violated the separation of church and state by making funds available to organizations that promoted an

¹ Language from *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the Supreme Court ruled that state funding in the form of salaries to teachers at parochial schools meant that government was “excessively entangled” with religion, thereby violating the Establishment Clause of the First Amendment

² Jo Renee Formicola, Mary Segers, and Paul Weber, *Faith-Based Initiatives and the Bush Administration* Lanham, MD: Rowman & Littlefield, 2003 6

expressly sectarian religious message. Opposition from the right included Marvin Olasky, whose books *Compassionate Conservatism* and *The Tragedy of American Compassion* influenced Bush's vision of social welfare, and evangelicals such as Pat Robertson. Olasky worried that funding Charitable Choice placed religious institutions and government on a "crash course" that invited heated debate over the proper role of religion in public life. Robertson warned that the initiative "could open a 'Pandora's Box' by making funds available to Scientologists, the Nation of Islam or religious cults that employ 'brainwashing techniques.'"³ Many conservative religious leaders opposed the initiative on the grounds that it invites, even necessitates, government infringement on religious organizations.

Despite this vocal opposition, congressional leaders in the House and Senate pressed efforts to pass new legislation aimed at strengthening the faith-based initiative. Representative J.C. Watts (R-OK) spearheaded an effort to pass the Community Solutions Act (H.R. 7) in 2001 which included important tax exemptions and incentives meant to invigorate charitable giving to organizations that provided aid to the poor and welfare-to-work programs. When the bill passed the House and went to the Senate, however, problems surfaced which would ultimately lead to the bill's demise. As Mary Segers explains, the first problem arose during Senate hearings when the Salvation Army asked the White House "...to support a hiring exemption with regard to homosexuals," which many feared would lead to rampant discrimination.⁴ Senator Joseph Lieberman (D-

³ Pat Robertson. "Mr. Bush's Faith-Based Initiative is Flawed," *The Wall Street Journal*, March 12, 2001, quoted in Sarah Glazer. "Faith-Based Initiatives." *Congressional Quarterly*, 11 17 (May, 2001) 26

⁴ Formicola, Segers, and Weber. 2003 10 Important opposition came from the Congressional Black Caucus, the Association of University Women, United Methodists, the Baptist Joint Committee, and Senate leadership including Majority Leader Tom Daschle (D-SD)

CT), the bill's champion in the Senate, refused to move the bill forward until the Senate and the White House could resolve important legal issues jointly, and shelved the issue. H.R. 7 would ultimately be pushed aside by the events of September 11, 2001, resulting in a budget expenditure of only \$30 million dollars in "compassionate capital funds" with "...no new big tax incentives for charitable giving and no expansion of charitable choice."⁵

The question of funding faith-based organizations arose again, however, in 2002. The new bill, known as CARE, The Charity, Aid and Recovery Empowerment Act, sponsored by Senators Joe Lieberman and Rick Santorum (R-PA) was introduced early in the year. But the new bill consciously excluded the charitable choice provision which would allow funding for organizations with a clear religious message and mission, and allow for discrimination in hiring practices. Without this provision, the bill amounted to little more than a bundle of tax incentives for donations to charitable organizations. This watered-down version had no particular appeal for staunch proponents yet still faced very powerful opposition on the Senate floor. As a result, the 2002 CARE Act died in the fall.

Frustrated with Congress, President Bush, on December 12, 2002, issued two executive orders that effectively implemented the charitable choice provisions and expanded the funding of FBO's. Because President Clinton had done little to implement the 1996 charitable choice provisions, the laws lay largely fallow until Bush took office. As a result, "...the new Bush administration was faced with the unusual opportunity of being free to implement a virtually dormant current law that they supported and on which

⁵ Amy E. Black, Douglas L. Koopman, and David K. Ryden, *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives* (Washington, D.C.: Georgetown University Press, 2004) 4

the president had campaigned.”⁶ The new Bush plan prohibited federal agencies from discriminating against religious charities and established faith-based offices in six cabinet departments tasked with administering \$7.7 billion dollars in annual grants to social service providers. In addition, these cabinet faith-based offices would provide liaisons to assist religious providers in writing grant proposals in order to obtain federal funding.

From the start, critics have questioned the president’s motivation for expanding faith-based funding. Former Bush staffer David Kuo, who spearheaded his committee on the faith-based initiative, claims this move was aimed largely at political gain. Faith-based task force staffers, he claims, were sent to twenty key districts in 2002 in an effort to drum partisan support in swing districts.⁷ According to Kuo, the effort to increase faith-based funding has become a sort of “pious window dressing” for the Bush people in their attempt to pander to the evangelical community.

Further, he argues that the administration’s funding efforts have fallen far short of the eight billion dollars Bush promised to commit in the 2000 election campaign. Instead, the four-year total, through fiscal 2001-2005 added up to about \$5.3 billion in federal grants to FBO’s; yet additional money, according to Kuo, was there for the asking. Kuo says the president is disingenuous in his efforts to promote this initiative, and in private conversations refers to conservative religious leaders as “nuts,” and “out-of-control.” Critics of Kuo’s 2006 book, *Tempting Faith*, which chronicles these problems, have

⁶ Black, Koopman, and Ryden. 2004 9, 14-15

⁷ David Kuo, *Tempting Faith: An Inside Story of Political Seduction* New York: Free Press, 2006, 7-25, 11

faulted him for being naïve in his assumption that there could be “...no politics in the enactment of a major policy initiative.”⁸

A Pew Poll in 2001 found mixed public support for faith-based federal funding. While a level of “broad public support” exists for allowing religious charities to apply for federal funds, support “drops off sharply” when respondents are given the proposition that those organizations may use religious conversion as part of their program.⁹ A majority (59%) opposes using public funds for religious conversion activities. The line between church and state becomes blurred if government funds are used for sectarian activities, which, to many, is tantamount to government endorsement of a particular faith and, therefore, unconstitutional. Representative Robert Scott (D-VA), a vocal critic of the Bush plan, worries that charitable choice will ultimately turn into “a new form of religious pork barrel” in which religious groups pander for political favor and public dollars. Religious groups have long been barred from endorsing candidates and taking stands on partisan political issues, and it is worried that this politicizing trend will further endanger the separation of church and state.

Nevertheless, faith-based social programs have become a cornerstone of America’s social outreach, despite concerns over their legality and their efficacy. Proponents of federal grants to FBO’s claim that not only do they work, but they place care of the community back where it belongs: within the community and out of the hands of governmental agencies. And, further, it fosters a sense of community and a positive spirit of outreach—“social capital” in more scientific terms. For example, the “Salad

⁸ Joseph M. Knippenberg, “Crunchy Kuo,” *American Spectator*, October 19, 2006, 27.

⁹ Pew Forum on Religion & Public Life and The Pew Research Center for the People & the Press, “Faith-Based Funding Backed, But Church-State Doubts Abound,” April 10, 2001, p. 13, quoted in Glazer, 2001, 27-28.

Ladies” of Portland, Maine have succeeded in uniting the Catholic and Protestant communities to help feed and clothe the poor at St. Patrick’s Church in downtown Portland. St. Patrick’s pastor Mike Johnson contends that “Our forebears were less concerned with debating who Jesus was and more concerned with doing what he taught.”¹⁰ Opponents of funding FBO’s laud the proven value of churches in addressing the immediate needs of the poor, but doubt the value of placing larger more complex programs like job-training and welfare-to-work under the rubric of religious providers. The efficacy of these agencies has simply has not been established since they are not held to the same data reporting standards as governmental agencies.

Instead, what we see is large-scale funneling of billions of dollars in social service monies from regulated secular organizations to largely unregulated evangelical ministries with no efficacy rates to prove their effectiveness. Yet, despite claims that these types of social service providers must be working better, no conclusive evidence has yet been produced to show that they actually do. Political “roundtables” in 2005-2006, attempted to find solid evidence that FBO’s actually have higher success rates than secular providers, but have failed to produce definitive evidence either way.¹¹ Instead, “...the administration seems to have no central tally of how much money is going to religious groups, or what’s being done with it.”¹²

Many, including Robert Wuthnow and social scientist Mark Chaves have argued that the push to expand faith-based outreach is premised upon a misunderstanding of

¹⁰ Noel Gallagher, “Putting Social Justice to Work.” *The Portland Press Herald*, January 27, 2007
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¹¹ Claire Hughes, “Roundtable Conference to Explore the Effectiveness of Faith-Based Social Services,” *U S Newswire*, November 26, 2006

¹² Michelle Goldberg, *Kingdom Coming The Rise of Christian Nationalism* New York W W Norton, 2006 121

what religious congregations actually do. The average congregation that provides social services does so effectively but mostly for its own members and for a limited duration. Even large congregations only spend about five percent of their annual budgets on services.¹³ Given these limitations, is it reasonable to task them to administer a significant proportion of America's relief and social service needs?

Further, there is little or no effort to ensure that licensing standards are being met by FBO's, as opposed to secular providers who must meet stringent regulatory standards. Goldberg cites a well-publicized 1994 showdown between the Texas Commission on Alcohol and Drug Abuse and the San Antonio branch of Teen Challenge, an FBO which provides in-patient treatment for addicts and alcoholics. Teen Challenge was using unlicensed abuse counselors who, in most cases, had no formal training in drug and alcohol treatment. Amid allegations of abuse, the Commission threatened to lock Teen Challenge's doors if they did not hire licensed counselors. To avert closure, in 1995, then-Governor Bush allowed faith-based providers to have "alternative licensing standards," affecting an end-run around the licensing issue.¹⁴

The ultimate fate of the Bush faith-based initiative may lie in the hands of the courts, where past decisions on public use of religious language ride the fine line between allowable speech and viewpoint discrimination. The original language of the charitable choice statutes says that faith-based organizations receiving federal funds may not engage in proselytizing, evangelizing, or otherwise promoting a sectarian message. Supporters of these stipulations insist that it is the only way to operate within the framework of the

¹³ Robert Wuthnow, *Saving America? Faith-Based Services and the Future of Civil Society* (Princeton, NJ: Princeton University Press, 2004) 3, 49

¹⁴ Formicola, Segers, and Weber, 2001 26-7

establishment clause; only by limiting funding to non-sectarian activities can the government ensure that it is not endorsing one religion over others. But the courts have not provided a clear definition of what the term “proselytizing” really means in any clearly defined way. On the contrary, some scholars have insisted, “religious speech restrictions” on charitable organizations actually violates the civil rights of the organizations themselves. Prohibiting certain language, Vernadette Broyles argues, is a form of viewpoint discrimination as concrete as making religious proscriptions and violates the free speech clause of the First Amendment. Broyles insists that until a neutral standard can be arrived at that makes no judgment as to the validity of speech content, these issues will remain at the forefront of legal debates over the funding of FBO’s.¹⁵

The following chapters will take a look at these issues. Chapter two addresses the legal and constitutional issues surrounding charitable choice; chapter three examines the debate over the efficacy of FBO’s versus secular service providers; and chapters four and five question some of the fundamental assumptions incorporated into the decision to use faith as an avenue for social welfare reform. As we will see, charitable choice is testing the line between the Constitution and social service providers as well as the limits of government involvement in matters of faith. The faith-based issue may well redefine the relationship of government to religion and reset the borders of acceptable “entanglement” in matters of faith. It is also a vivid illustration of the balance between the three branches of federal government and the way they connect in matters of public policy. There is no strict demarcation in these issues, and the grey area is often where the limits and future of controversial policy initiatives is defined.

¹⁵ Vernadette Broyles, “The Faith-Based Initiative, Charitable Choice, and Protecting the Free Speech Rights of Faith-Based Organizations,” *Harvard Journal of Law and Public Policy*, 26 1 (Winter, 2003) 318

This paper will address many of these issues. In the final analysis, the costs of trying to expand faith-based service provision are simply too high in terms of the legal issues, political issues, and the prospect of providing for accountability for FBO's. As David Saperstein, one of the clearest voices of opposition to expanding the role of FBO's has written: "...the nation would be better off opposing the shift to privatization and instead focusing on increasing resources and expanding efforts to improve the current system of service delivery and developing public-religious partnerships that do not involve direct funding."¹⁶

¹⁶ David Saperstein, "Public Accountability and Faith-Based Organizations: A Problem Best Avoided," *Harvard Law Review*, 116 5 (2003) 1358

CHAPTER II

CHARITABLE CHOICE AND THE LAW: AN UNEASY PARTNERSHIP

“What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the Civil authority; in many instances they have been seen upholding the thrones of political tyranny: in no instances have they been seen the guardians of the liberties of the people.”

James Madison, Memorial and Remonstrance Against
Religious Assessments

Questions over the legality and constitutionality of government funding of charitable choice arose even before the ink was dry on President Bush’s 2001 plan to expand the program. Some have argued that direct aid to organizations with a self-described religious or sectarian mission is tantamount to government endorsement of a particular religion. Other scholars argue that a prohibition against funding these same organizations is a form of viewpoint discrimination and violates the right to free speech.¹ Additionally, allowing FBO’s like the Salvation Army to discriminate in their hiring practices has been described as a violation of Title VII of the Civil Rights Act and would amount to government-subsidized discrimination. Charitable choice is emerging as a test of the First Amendment’s establishment clause and a test of the limits of free speech.

¹ For endorsement issues, see David Saperstein, “Public Accountability and Faith-Based Organizations: A Problem Best Avoided,” *Harvard Law Review*, 116:5 (March, 2003): 1378, ff, and Trent Collier, “Revenue Bonds and Religious Education: The Constitutionality of Conduit Financing Involving Pervasively Sectarian Institutions,” *Michigan Law Review*, 110:8-1114 (2002): 1122-1129. For viewpoint discrimination, see especially Broyles, 2003: 318, ff.

Recent and ongoing court cases show that the question remains: is charitable choice permissible under the First Amendment or is this a problem best avoided?

FBO's and the Courts

Federal court decisions on religious language and the First Amendment have ridden the fine line between allowable speech and viewpoint discrimination. The most recent court cases, including the key *Hein v. Freedom from Religion Foundation*, decided in the last term, many say signals a shift to the right on the part of the Court. Others insist that it is a re-affirmation of the Court's stand of religious neutrality and signals a reticence on the part of the Court to become embroiled in religious issues. In any event, those leading the resistance to federal funding of FBO's, including the Texas Freedom Network and Americans United for the Separation of Church and State, are vowing to keep the fight going at the local and state levels. They are enlisting the help of the ACLU in finding viable test cases to challenge current rulings.² The results have been mixed and indicate that the court battles may have only just begun.

The *Hein v. Freedom from Religion Foundation* case was argued before the Supreme Court February 28, 2007 and decided on June 25. The plaintiffs, the Freedom from Religion Foundation, alleged that the faith-based initiative violated the Establishment Clause since it was funded by executive order and not through congressional appropriation. And, further, the Bush Administration violated separation of

² See Bill Berkowitz, "Lawsuits Could Sink Bush's Faith-Based Initiatives," *Inter Press Services*, April 26, 2007, and Doug Erickson, "Supreme Court Rules Against Local Group. The Freedom from Religion Foundation Can't Sue the White House Office of Faith-Based Initiatives." *Wisconsin State Journal*, June 26, 2007. A1

church and state by holding conferences aimed at “...promoting [funding of] religious community groups over secular ones.”³ The conferences, they claim, included choirs and public prayers. It was a five-four decision split along the usual ideological lines with Justices Roberts, Alito, Kennedy, Scalia, and Thomas in the majority and Ginsburg, Souter, Stevens, and Breyer dissenting.

The central issue, as the Court saw it, was whether the respondents had standing to sue under the taxing and spending clause of Article I, § 8 of the Constitution and the provisions of *Flast v Cohen*, 1968. In *Flast*, the Supreme Court granted standing for groups in Establishment Clause cases only in a narrow sense where the spending clause is violated as an extension of taxpayer rights. In order to sue on these grounds, a plaintiff must show injury in terms of taxpayer burden and that said injury resulted from an unconstitutional congressional use of tax funds.

In dismissing the suit, Chief Justice Roberts wrote that granting the plaintiffs complaint would “transform federal courts into forums for taxpayers’ generalized grievances.”⁴ The Court ruled that since the conferences were held pursuant to executive direction and not under the auspice of congressional appropriation, standing was not valid. Also, the Seventh Circuit Court’s ruling that the suit was justified under the *Flast v Cohen* precedent was based on an overly-broad reading of *Flast*.⁵ The Court did not, however, overturn the *Flast* precedent, so the Freedom from Religion Foundation has vowed to press on with lawsuits at the local and state levels.⁶

³ *Hem v Freedom from Religion Foundation*, 551 U S ____ (2007)

⁴ Quoted in David Savage. “High Court Holds a 60’s Revival,” *ABA Journal*, 93:2 (February, 2007): 15

⁵ Justice Alito writing for the majority, *Hem*, p 2 of the decision

Although the Supreme Court has not yet issued a direct ruling on the permissibility of direct funding, many argue that cases like *Rosenberger v Rector* and *Bowen v Kendrick*, both of which concern religious access to public funds, may provide a precedent.⁷ In *Rosenberger v. Rector of the University of Virginia*, the Court ruled that the university was engaging in viewpoint discrimination when it denied funding to a student newspaper that specifically espoused religious viewpoints, including the importance of a personal relationship with Jesus Christ. Even in cases where the message is explicitly religious, as long as the public entity does not endorse the recipient's speech content, that speech will remain private in nature. The university remains, in effect, viewpoint neutral. Importantly, the Court found that "...receipt of government funding alone does not convert a private entity's speech into government speech."⁸

In *Bowen*, the Court upheld funding for religious providers of pregnancy care and pregnancy prevention services. The standard they employed, as in *Rosenberger*, was that of neutrality. The *Bowen* decision affirmed the principle of not advancing religion but stated that funding is permissible in cases where there is no "pervasively sectarian" proselytizing being employed. In this way, all religious groups are recognized as eligible for federal assistance while ensuring that no one sect or religious orientation is favored over any other. The principle of neutrality demands that the government not act in a way that favors or disfavors religion as long as it does not take actions specifically endorsing a single viewpoint.

⁶ Doug Erickson. "High Court Rules Against Local Group. The Freedom from Religion Foundation Can't Sue the White House Office of Faith-Based Initiatives." *Wisconsin State Journal*, June 26, 2007. A1

⁷ Ronald J. Sider and Heidi Rolland Unruh. "No Aid to Religion? Charitable Choice and the First Amendment." *Brookings Review*, 17.2 (1999): 47.

⁸ Broyles, 2003: 322

Scholars like David Saperstein, however, argue that allowing this precedent is a slippery slope because it is often difficult to sort out the “spiritual and sectarian aspects” of the program in question.⁹ To what degree does a religious message pervade a program before it is determined that the program is inherently sectarian in nature? Further, he argues, there is little agreement among the Justices as to whether the “pervasively sectarian doctrine” employed is even valid. It was employed in both *Bowen* and *Rosenberger* but rejected by the plurality in *Mitchell v. Helms*. The majority felt that discriminating against sectarian organizations was a “shameful pedigree” while O’Connor and Breyer, on the minority side, felt that it represented a “special danger” to the Establishment Clause.¹⁰

Prior to 2000, there was little judicial support for providing funding to “pervasively sectarian” institutions. *Mitchell v. Helms* was the court case that many insist changed that trend, moving the courts to a more “accommodationist” stance.¹¹ The court upheld a federal act that provided funds to parochial schools for educational materials like books and computers. In rendering its decision, the Court decided that it was a violation of the neutrality standard to discriminate between public and private schools even if the private schools were sectarian in nature. The Court stated that such discrimination amounted to “bigotry” against religious viewpoints. This court case is seen by many as the first move by the Court toward making way for federal funding of religious language itself.

⁹ Saperstein, 2003. 1379

¹⁰ *Mitchell v. Helms*, 530 U.S. 793 (2000)

¹¹ Amy E. Black, Douglas L. Koopman, and David K. Ryden. *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives*. Washington DC: Georgetown University Press, 2004. 227

As mentioned in Chapter One, Vernadette Broyles argues that limiting funding only to secular providers actually violates the freedom of speech of religious organizations. Placing restrictions on speech content, she insists, leads to greater entanglement of government and religion because it gives public officials the power to decide what kind of religious language is acceptable. She argues that we should abandon labels like "pervasively sectarian" because what they actually turn into is a method for discriminating against religious organizations with the potential to do good for their communities *because* of their message of faith.¹² The pervasively sectarian label degenerates into "code" for "too religious" and acts to exclude certain groups altogether despite their effectiveness.

David Saperstein disagrees and argues that it is specifically because of this sectarian message that the standard of neutrality must be reasserted. Allowing direct funding to sectarian organizations "would inevitably impinge on the rights of social service beneficiaries." There is no way to ensure that non-sectarian or secular providers would be available, especially in rural areas where there is little alternative. He quotes the Supreme Court decision in *Zellman v. Simmons-Harris* in which the Court makes it clear that recipients must have a "genuine and independent choice" as to which provider best suits his or her needs. "For the sick, the hungry, the drug-addicted, and the sentenced prisoner, there may be little genuine informed choice," even assuming that an alternative service is available.¹³

Further, Saperstein points out that there is no assurance that funding for sectarian organizations will not ultimately lead to direct funding of the inherently congregational

¹² Broyles, 2003 332

¹³ Saperstein, 2003 1381

segment of the organization. The “fungibility” of the funds makes it difficult, if not impossible, to tell if the government money is going to the part of the organization that provides social services or being “diverted” instead to the purchase of church buildings or worship services. Such a diversion would amount to direct funding of a specifically religious activity and thereby violate the Establishment Clause.¹⁴

Moeller v. Bradford County

The picture is even more complicated at the state level where the circuit and district courts are still sorting out the boundaries of local faith-based initiatives. A case settled in 2005 found a Pennsylvania court heading in a much different direction than that of the Supreme Court in the decisions discussed above.

Early in 2005, Americans United for the Separation of Church and State and the Pennsylvania chapter of the ACLU sued Bradford County, Pennsylvania for breach of church-state separation. Specifically, a spiritually-based rehabilitation program called The Firm Foundation was sued for proselytizing inmates and forcing them to take part in prayer services. The prison outreach program, funded by the county since 2003, provoked concern on the part of Clark and Jane Moeller and three other principal plaintiffs that government funds were being awarded without oversight. In particular, they alleged, the

¹⁴ Saperstein, 2003 1383

program was “absolutely a mess...very disorganized.”¹⁵ Instead of risking an adverse court decision, Bradford County decided to settle.

The U.S. District Court for the Middle District of Pennsylvania presided over the settlement which included language specifically prohibiting any future use of federal or county funds to support religious activities. Also banned was use of public funds to purchase religious materials such as Bibles and the use of funds to purchase or maintain buildings used for worship. The list of prohibitions also included The Firm Foundation’s actions in “coercing” inmates to take part in prayer and religious services, finding this type of activity to be unconstitutional.¹⁶

Another part of the suit concerned The Firm Foundation’s commitment to hiring only Christian employees. The Firm and its parent New Life Church claimed that as a part of its expressly religious mission, it should be allowed to hire only employees that shared their religious outlook and were willing to share this with program recipients. The plaintiffs cited a help-wanted ad for a program supervisor that listed a prerequisite for employment being “belief in Christ.” Terms of the settlement forbade using religious affiliation as a precondition of employment in county funded jobs.

The Civil Rights Debate

Funding FBO’s has raised this important legal question: can providers of social services who receive federal money restrict their hiring to those who share their faith?

¹⁵ Rob Boston, “Batting Bias Americans United Challenges ‘Faith-Based’ Job Discrimination at Federally Funded Program in Pennsylvania ” Report from Americans United for the Separation of Church and State, http://www.au.org/site/News2?page=NewsArticle?id=73047abbr=cs_)

¹⁶ *Moeller v. Bradford County, PA* Settlement issued February 17, 2005

Those who support hiring exemptions for FBO's say that not being able to hire employees who hold sympathetic religious views threatens to dilute their mission. Opponents of selective hiring claim that such exemptions present a serious challenge to the Civil Rights Act. As Paul Weber so aptly put it, "It would be a bitter irony, indeed, if legislation touted as creating a level playing field provided a wedge to reintroduce discrimination. It would be doubly ironic if such an injustice swept in under the cloak of religion."¹⁷ Several lawsuits have already been filed against FBO's over their hiring practices, and it is evident that more court battles will loom in the future.

In a current New York lawsuit, Anne Lown, former associate director for the Social Services for Children division of the Salvation Army, is suing her former employer on grounds of employment discrimination. Ms. Lown is Jewish and is alleging that she was fired from her position for precisely this reason. She is now part of a class-action suit with seventeen other former employees being represented by the New York ACLU. They are suing the city, state, and federal government. As author Michelle Goldberg tells us, the New York Salvation Army, which receives over \$50 million annually in federal funds, hired a consultant to "Christianize" the social services departments. The consultant "...requested a list of gay employees, discouraged the hiring of non-Christians, and demanded that all staffers fill out forms detailing their church attendance."¹⁸

Worse, Goldberg tells us, the Bush Administration tacitly endorsed this effort. *The Washington Post* reported that "The White House has made a 'firm commitment' to

¹⁷ Formicola, Segers, and Weber 2003 77

¹⁸ Michelle Goldberg, *Kingdom Coming The Rise of Christian Nationalism* New York WW Norton, 2006 129

issue a regulation protecting such charities from state and city efforts to prevent discrimination against gays in hiring and domestic partner benefits...”¹⁹ The granting of federal funds to large service providers seems to have come with a blanket endorsement of hiring discrimination and the ability to fire those whose views do not accord with the religious views of upper management. And, for small-scale social service providers, Title VII equal employment criteria are not even valid since they are classified as not-for-profit organizations.

In another notable case, Lisa Padreira, a therapist for Kentucky Baptist Homes for Children was fired from her position when it became known that she is a lesbian. Her sexual orientation was revealed when a picture of her participating in an AIDS walk was displayed at an art fair. The ACLU sued. A judge, however, ruled that the firing did not violate her civil rights because she did not conform to the Baptist belief code of the institution and her religious freedoms were not infringed.²⁰ Less clear is how this lawsuit would have fared in a state other than Kentucky.

Coupled closely to this controversial lawsuit is the current congressional debate over whether or not to allow hiring preferences in Head Start programs. A bill passed by the House in March, 2007, did not allow for hiring discrimination for religious-oriented Head Start schools but was hotly debated on the House floor. Republicans in the House argued that not allowing faith-based programs to hire based on religious orientation was the same as asking them to surrender their “religious autonomy.”²¹ This sentiment was

¹⁹ Golberg, 2006 129-30, cf. Dana Milbank, “Charity Cites Bush Help in Fight Against Hiring Gays,” *The Washington Post*, July 10, 2001

²⁰ Quoted in Lewis D. Solomon, *In God We Trust? Faith-Based Organizations and the Quest to Solve America's Social Ills* Lanham, MD Rowman & Littlefield, 2003 240

echoed by the White House. Democrats insisted that allowing for these exemptions was openly discriminatory. Although the compromise bill passed, it may signal future debates as federally funded faith programs come up for renewal.

Title VII of the Civil Rights Act originally included a ministerial exemption that allowed churches to only hire their sect's clergy. This makes perfect sense. In 1972, Congress allowed this exemption to include all church employees. As Paul Weber has pointed out, however, "...both exemptions make sense within the context of internal church governance..." but outside of this, where does one draw the line? "They open the door for religious groups—and no one else—to discriminate against people on any basis they want with impunity and still be beyond the reach of the law."²² While exemptions are sensible for those directly involved in church business, they don't make as much sense for employees engaged in non-religious activities like working in a church-sponsored clothing store that receives federal funds. There are clearly more problems in the offing.

The Potential for Affinity Fraud

During 2007, several disturbing cases of fraud surfaced involving religious charities that receive federal or state funding. In an atmosphere where charities are monitored less closely than are official state agencies, these cases demonstrate the potential for abuse that exists when federal monies are distributed to private entities.

²¹ George Libby, "Head Start Bill Drops Provision on Religious Preferences in Hiring," *CQ Weekly*, 65:12 (March 19, 2007) 825

²² Formicola, Segers, and Weber, 2003 74-5

In March, 2007, it was discovered that an Ohio contractor who was receiving \$3500 per day in federal funds to help needy families was misusing funds. According to charges filed in Ohio and Virginia, the contractor used some of the money to buy 50-inch big-screen televisions for his offices to the tune of \$15,000. Other unauthorized expenditures included private parking fees and the commissioning of a \$6000 private report that said his program should be “an example for other states.”²³

In other cases, the abuse of funds may involve clients of the service provider. In April of 2007, Robert Gluhareff of Boston, who ran a faith-based school for troubled boys, pled guilty to four counts of fraud in connection with a check scheme. When his school ran short of federal funds, he “knowingly deposited” over \$600,000 in bad checks into school accounts to cover shortfalls. Although some of the checks were from his own accounts, Mr. Gluhareff also deposited “tuition” checks from some of his students’ parents which he obtained on the promise that they would have time to obtain loans before the checks were deposited. Federal prosecutors say Mr. Gluhareff was able to play upon the desperation of the parents whose sons needed help.²⁴

A 2007 report from Villanova University found that 85 percent of Catholic dioceses have been victims of embezzlement in the last five years. The report also finds that of these, 11 percent were embezzled out of more than \$500,000 each. The reason for the pervasiveness of these crimes is that the churches typically don’t monitor employees

²³ Staff Report, “New Governor Seeks Audit. Investigation of Faith-Based Office,” *Associated Press*, March 12, 2007.

²⁴ Sue Lindsey, “Founder of Failed Academy Pleads Guilty to Four Fraud Counts,” *Associated Press State and Local Wire*, April 2, 2007

who handle finances in the parish or diocese.²⁵ Church officials tend to “trust the volunteer or employee” and do not implement financial controls.

Helen Rose Ebaugh details how a now-rescinded “Alternative Accreditation” program established in 1997 by then-Governor George Bush allowed state-funded FBO’s to operate under separate guidelines. According to Ebaugh, Governor Bush accepted the recommendation of Lester Roloff, director of Roloff Homes for troubled teens, and the director of Teen Challenge of South Texas, to provide an alternative method of accrediting these and other service providers. The state legislature approved the change in 1997, allowing religious entities to be licensed and regulated by the Texas Association of Christian Child-Care Agencies (TACCCA), a non-governmental agency. Both Teen Challenge and Roloff Homes had had numerous problems with state licensing agencies over “noncompliance with the state’s health and safety codes,” and allegations of abuse.²⁶

According to the new guidelines, established by then-Governor George Bush in his 1998 Charitable Choice Contract Language document to the Department of Human Services, many of the restrictions on FBO’s were relaxed. According to the 1998 standards, FBO’s were: “...not required to have 501 (c) (3) tax status...are not mandated to alter their executive or board makeup to minimize religious influences...” and “...are able to select employees on the basis of religion...”²⁷ The 1998 solution to problems with state licensing agencies was to let service providers like Teen Challenge and Roloff Homes wiggle out of them.

²⁵ O’Reilly, 2001. 59

²⁶ Ebaugh, Helen Rose “The Faith-Based Initiative in Texas A Case Study,” Report The Roundtable on Religion and Social Welfare Policy Washington, D C, October, 2003, p. 10.

²⁷ Ebaugh, 2003, p. 4

As a result of the new licensing standards, allegations of abuse and poor health standards poured in. In 1998, a suit was filed against Dallas Teen Challenge Boys Ranch, “alleging sexual molestation by a drug counselor.” By 2001, allegations of abuse against Roloff Homes had become too numerous to ignore. Several of the Roloff facilities had been implicated. State authorities investigated, and in 2001 several Roloff administrators were convicted of juvenile abuse. The state legislature again acted, this time rescinding the alternative accreditation plan it had implemented four years earlier.²⁸

The true dimensions of affinity fraud may be hard to track, according to Paul Weber, because of the various ways it can be concealed by perpetrators. Some church organizations tie up moneys in investments and subsidiary organizations making them harder to track. He notes three extreme cases—Greater Ministries International Church, the Baptist Foundation of Arizona, and IRM Corporation—in which shady investment deals resulted in losses of approximately \$1.5 billion to church members.²⁹ Entrusting large amounts of federal money to unregulated church groups could cost the federal government billions of dollars.

While these cases are atypical and certainly represent only a small fraction of faith-based providers, they do highlight a potential problem. Senator Ellen Karcher of New Jersey has voiced concern that as public funding for private providers has increased; the monitoring of these agencies has not. She points out that even as criminal penalties for official corruption have become stiffer, there are no similar controls in place for

²⁸ Ebaugh, 2003 10-11

²⁹ Fomnicola, Segers, and Weber, 2003 94

private providers. There is no way to ensure that the money paid to FBO's is being spent in the manner intended.³⁰

Other Problems

While the aforementioned are serious challenges to implementing faith-based programs, there may be other challenges that have not yet surfaced. The expanded program is still new, and many of the problems lie undiscovered. Community resistance such as that found in Bradford County, Pennsylvania, will unavoidably be in the offing as programs expand into new areas. Concerns over program administration and even religious favoritism are beginning to arise.

Teen Challenge has been the subject of concern among citizens in cities in which it operates. When it sought to expand operations by building a new facility in Brandenburg, California, a suburb of San Jose, neighbors joined together to express misgivings. In particular, they were concerned that bringing in residents from outside of the area could increase the area's "drug, crime, and parking problems."³¹ Others were troubled by the fact that Teen Challenge is not certified by the state, county, or any other regulatory body. FBO's like Teen Challenge may face a "not-in-my-backyard" community resistance as they seek to expand into new areas.

There is also some concern that funding choices may favor the larger programs to the exclusion of minority religious groups or individuals of minority faiths seeking help. Marc Stern of the American Jewish Congress worries that in areas that are predominantly

³⁰ O'Reilly, '1.

³¹ Thaddeus Greenson, 'Challenges to Teen Challenge' *Eureka Times Standard*, June 4, 2007

one type of faith like Baptists in the Oklahoma panhandle, there would be little chance of a Jewish program being funded. This program, he says, is "...designed for everybody but small religious groups."³² The Interfaith Alliance of fifty faiths opposes charitable choice for the same reason. The lingering fear is that this initiative will turn into a religious pork barrel with those awarding grants giving greater weight to the groups they favor or who accord with their own religious views.

Conclusion

As we have seen, the legal challenges against expanding federal funding of faith-based outreach are complex. They involve not only potential abuses and fraud on the part of providers but the limits of free speech and the First Amendment's Establishment Clause in general. Charitable Choice may ultimately become *the* test of the limits of government entanglement with religion. The Supreme Court has yet to rule directly on the constitutionality of the initiative, but that day may ultimately come.

We will turn to a more in-depth discussion of public accountability in Chapter Four. Martha Minow, whose argument we will examine in greater depth later, recommends a partnership between government and FBO's that provides for oversight and accountability to ameliorate the fraud problems discussed above. This proposal has raised concerns that the faith-based initiative will ultimately result in a new bureaucratic

³² Quoted in Sarah Glazer. "Faith-Based Initiatives," *Congressional Quarterly*, 11 17 (May, 2001) 31

apparatus tasked with the regulation of federally-funded religion. As David Saperstein wrote:

“Even if the Supreme Court were to conclude that direct funding of pervasively sectarian entities is constitutionally permissible, such funding would still be bad policy. Direct funding would compromise the religious rights of recipients, encourage intense competition among America’s religions, create a divisive political and legal battle over whether government funds should ever pay for programs that discriminate in whom they hire, and harm religious entities by restricting their autonomy.”³³

The legal challenges facing the faith-based initiative are many and varied. Any proposal that creates a partnership between politics and religion will immediately raise suspicion among civil libertarians. In short, the fight is far from over. Religious and secular groups like Americans United for the Separation of Church and State and the ACLU have vowed to keep up the fight and keep pressure on the courts and Congress to reign in the Faith-Based Initiative

³³ David Saperstein, “Public Accountability of Faith-Based Organizations: A Problem Best Avoided,” *Harvard Law Review*, 116:5 (2003): 1354

CHAPTER III

THE EFFICACY DEBATE

Fundamental questions still exist over whether faith-based organizations are well-equipped to provide the services they are being tasked to perform and if they are, in fact, better suited to perform these services than secular agencies. Despite widespread anecdotal evidence that faith-based charities must be working better than non-religious social service providers, there is very little real evidence that this is in fact the case. According to Byron Johnson, “Our extensive search of the literature yielded only 25 studies that assessed in some manner the efficacy of faith-based interventions.”¹

There is not agreement in the literature about what constitutes a study of the effectiveness of the faith-based initiative. A report compiled on behalf of the Central Texas United Way, for example, touted itself as a study of community “capacity building,” yet did not present any empirical evidence. The report was merely a list of the agencies that were awarded grants and the types of services they performed.² Capacity building, in this context, is defined in terms of the awarding of moneys and not in terms of the value or effectiveness of the programs being awarded.

¹ 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 Society, 2002), 20.

² Nonprofit and Volunteer Capacity Study, “An Analysis of the Nonprofit and Volunteer Capacity-Building Industries in Central Texas,” Report Compiled for the United Way Capital Area and the Nonprofit Management Assistance Network, presented April 26, 2006.

Before getting into the efficacy debate, it is worth noting the tremendous variability in types, functions, and messages between faith-based service providers. As Heidi Rolland Unruh points out in her very informative article on types and integrative strategies among FBO's, there has been a tendency in the literature to focus on their "social dimensions" rather than their substantive, descriptive elements.³ She gives a typology based on the amount of religiosity that is integrated into their programs and the types of religious expression being implemented. Of particular importance is the degree to which religious activities such as prayer and church attendance are considered to be voluntary or compulsory and therefore integral to the program. A similar typology was utilized in an influential study of welfare-to-work programs in Los Angeles, to which we now turn.

Efficacy of Welfare-to-Work Programs

A major 2003-2006 study of Los Angeles welfare-to-work programs, conducted by Stephen Monsma and Christopher Soper, attempted to assess the efficacy of these programs. Their findings showed mixed results. They began by dividing the programs into five categories: 1) government; 2) for profit; 3) non-profit secular; 4) faith-based/segmented; and 5) faith-based/ integrated. In the segmented category, the religious message was "implicit" based on the presence of religious symbols and messages in the

³ Heidi Rolland Unruh, "Religious Elements of Church-Based Social Service Programs: Types, Variables, and Integrative Strategies," *Review of Religious Research*, 45:4 (June, 2004): 552

facility. Integrated meant that the religious message was “explicitly” a part of the program with “religious elements clearly present in the programs...”⁴

The authors then distributed questionnaires to programs and service recipients to assess the effectiveness of the program in terms of “positive enabling outcomes,” and “evidence of positive intermediate and ultimate outcomes.” The results ranged from a generally positive feeling about the level of empathy displayed to recipients by service providers, to increases in confidence and optimism, to the ultimate outcome of actually finding work and completing the program. The authors felt that assessing the programs success or failure in this manner was much more effective than evaluating success as a “simple yes or no.” They were able to measure more positive outcomes.⁵

What they found is that faith-based providers were above average in terms of client evaluations based on “sense of empathy” and “enabling outcomes.” But in terms of client successes in completing their programs and gaining employment, the results are mixed. The governmental agencies were “average” in this regard, non-profit secular “worse than average” and for-profit “better than average.” Of the faith-based providers, segmented agencies were below average and integrated agencies above average.⁶

What these data suggest is that providers with an explicit religious message tend to fare better than providers with an implicit religious mission. The authors recommend an increased funding of faith-based/integrated providers. They also insist that all of these

⁴ Stephen Monsma and J. Christopher Soper, *Faith, Hope and Jobs: Welfare-to-Work in Los Angeles* (Washington, D.C.: Georgetown University Press, 2006) 39-42

⁵ Monsma and Soper, 2006 164-5

⁶ Monsma and Soper, 2006 165-7

programs would benefit by collaborative relationships between faith-based and community outreach programs to share ideas and methods.

The successes of the Los Angeles programs, however, are not representative of all programs nationwide. In particular, the welfare-to-work program in Minnesota was a complete failure. The Mississippi Faith and Families Program, a church-based program to get welfare mothers back into the workforce was a similar failure. It was cancelled after just six months.⁷ The reason cited for the failure was that the congregations simply did not know what to do.

Faith-based prison rehabilitation programs have success rates that are notoriously hard to track. One of the nation's largest Christian prison outreach programs, Inner Change Freedom Initiative, began in Texas in 1997 and now operates in four states: Minnesota, Kansas, Iowa, and Texas. A Texas Criminal Justice Policy Council report in February, 2003, found that only eight percent of the program's participants returned to prison as opposed to twenty-two percent of those eligible for the program but did not participate.⁸ The national Bureau of Justice Statistics reports a total nationwide recidivism rate around forty percent but, according to Allen Beck, "...recidivism is a complex matter, with rates among inmates varying depending on factors like their age and education and the nature of their crimes."⁹

It is unclear which portion of the Inner Change program makes it a success. After release, former inmates are matched with congregations to help them transition into life

⁷ Sarah Glazer, "Faith-Based Initiatives," *Congressional Quarterly*, 11 17 (2001) 29

⁸ CT Staff Report, "Suing Success Prison Fellowship Says its Inner Change Program is Clearly Constitutional," *Christianity Today*, April, 2003 12.

⁹ Gustav Niebuhr, "Promise and Pitfalls in Taking Religion to Prison," *New York Times*, April 12, 2001

after prison. The congregations may provide services such as job training and placement, and temporary shelter. It is unclear whether inmates without this sort of transitional assistance would fare nearly as well in the two years following their release.

Teen Challenge was held up as a model of faith-based efficiency by then-Governor Bush and a reason for expanding faith-based outreach in Texas. Yet, ten years later, the success rate of Teen Challenge is still in dispute. A 1975 study by the National Institute on Drug Abuse found a 67% success rate among graduates. A 1995 doctoral dissertation from Northwestern University found an 86% success rate. The studies do not, however, take into account the very high program dropout rate which ranges around 82% by most estimates. The 86% success rate, measured as the number of program recipients who remain drug-free after seven years, is only valid for the 18% who actually graduate from the program. Notably, Teen Challenge's success rate is about the same as the success rate for traditional treatment center recipients who attend programs like Alcoholics Anonymous after release.¹⁰ This raises the same question mentioned above with prison outreach programs: is it the program itself or support systems after release that make the largest difference?

A 2003 study by Deb and Jones pointed out the fact that Teen Challenge and other programs like it tend to be very selective about the kind of clients they choose. The clientele tend to be very closely matched in terms of characteristics and faith affinity.¹¹ On top of the 82% who never finish the program, early reports failed to factor in the fairly rigorous screening process for potential clients. Those clients selected will already

¹⁰ Glazer, 2001 27

¹¹ Partha Deb and Danna Jones, "Does Faith Work? A Preliminary Comparison of Labor Market Outcomes of Job Training Programs," in Kennedy and Blielefield, *Charitable Choice: First Results from Three States* Indianapolis: Center for Urban Policy and the Environment, 2003 46

have a proclivity for the level of religious observance that is required of program recipients. Among those who drop out, the most commonly cited complaint was “too much religion.”

It is easier to understand the dropout and relative success rates when one looks at the program description on the Teen Challenge website. Recipients are required to bring with them, when they sign into the program, some clothing, a Bible, a \$1000 non-refundable fee, and not much else. They are not allowed to bring reading material, music, or any unauthorized items. Once in the program, only carefully selected television shows, music, and activities are permitted and only immediate family are allowed to visit. Each week of the thirteen-month program consists of a rigorous, regimented routine. Given these requirements, it is not surprising that the eighteen percent who stick it out have a good chance of staying clean.

However, Teen Challenge is not required to have licensed substance abuse counselors on staff. A Texas state inspection in 1995 found that, in fact, there were no “credentialed counselors” and that none of the staff even had “current CPR or first-aid” training certification. Medication procedures were “badly out of compliance” and health and safety standards were found to be lacking. This report preceded the state’s deregulation of faith-based service providers under an alternative accreditation program discussed in Chapter Two. These problems have cast doubt on Teen Challenge as a safe alternative to secular hospital-based treatment centers. Yet this program was hailed by then-Governor Bush as a “pioneer” in faith-based programs.¹²

¹² Texas Freedom Network, “The Texas Faith-Based Initiative at Five Years: Warning Signs as President Bush Expands Texas-Style Program at National Level,” Report Texas Freedom Network, Austin, Texas, 2001: 3

Measuring Faith-Based Effectiveness

Do faith-based providers work better than secular service agencies? The answer, depending upon what you read, is: yes, no, and maybe. Perhaps the only thing that is clear is that efficacy measurement is very complicated. The tremendous variation in size among providers and types of service provided makes it very difficult to make blanket statements concerning their relative success rates. The literature reflects this, with many studies, with one notable exception, incorporating exogenous data or remaining ambiguous as to their conclusions.

In a purported review of the literature on FBO effectiveness, Byron Johnson of Baylor University examines the efficacy of faith in health outcomes, which he refers to as “organic religion,” and social or civil outcomes, which he refers to as “intentional religion.” He abruptly launches into a seventy-two page discussion mostly devoted to the effect of religious devotion on hypertension, mortality, suicide rate, and delinquency. He cites a number of surveys of Teen Challenge and prison ministry recipients who report positive behavioral outcomes.¹³ But he does not conclude that there is any unequivocal proof to “...certify the claim that faith-based programs are more effective than their secular counterparts.”¹⁴ Nor does he attempt any comparative analysis but chooses, instead, to include huge amounts of literature on health measures. It is not clear, though, that the success of faith-based programs is directly correlated to their recipient’s blood pressure readings.

¹³ Byron Johnson, “Objective Hope. Assessing the Effectiveness of Faith-Based Organizations: A Review of the Literature.” Report University of Pennsylvania. Center for Research on Religion and Civil Society, 2002 12

¹⁴ Johnson, 2002 21

Johnson's study does, however, raise an interesting topic for consideration. He does mention that faith is "...associated with less of a tendency to use or abuse drugs (87%) or alcohol (94%)."¹⁵ Many, including Mark Chaves of The University of Arizona, question the relevance of this type of claim on the research concerning FBO's. For instance, another University of Pennsylvania study found that regular church attendance among black youth in high-risk neighborhoods translates to a lesser likelihood for these kids to commit violent crime. "But it's not clear if that's because the kinds of teens who attend churches already come from more law-abiding and less troubled families."¹⁶ As Chaves points out, using this as evidence of faith-based efficiency is a claim that is tenuous at best.

The exception in faith-based efficacy testing is the groundbreaking study from Reingold, Pirog, and Brady published in 2007. The study consisted of logit regression analysis of two very large data sets compiled in 1999 and 2000. They carefully matched providers by type of service provided and compared them to non-religious organizations (NRO's) with the same service objectives. They included only those agencies that could be matched in the study; the others were left out. Also matched were the ages of the organizations such that most of the FBO's included in the study are actually *older* than their non-religious counterparts. Attempts were made to remove all possible confounding variables and exogenous factors. They ended up with seventy-four agencies, all in Indiana, with relevant measures.¹⁷

¹⁵ Johnson, 2002 13

¹⁶ Quoted in Glazer, 2001 27

¹⁷ David Reingold, Maureen Pirog, and David Brady, "Empirical Evidence on Faith-Based Organizations in an Era of Welfare Reform" *Social Service Review*, 81:2 (2007) 257

The results are consistent and illuminating. First, FBO's and NRO's "...do not differ to a statistically significant degree in self-rated reports of agency performance." This contrasts with media reports which indicate that FBO's report much higher performance ratings than comparable NRO's.¹⁸ Further, and most importantly, in data from client surveys, they found no evidence that FBO's outperform secular agencies. Rather, the most notable finding concerns the types of people who receive help from FBO's. The average clients tend to be "exceptionally needy" and are more likely to be older, white, and married and receiving TANF benefits. This contradicts general perceptions that FBO service recipients are young and predominantly African-American.¹⁹

The results of the Reingold study point to the conclusion that the matched FBO's are *not* substantively different from secular providers. They are rather similar in organization, types of service provided, and efficacy. Most important, they are not an "alternative to secular or government social service delivery..." but are part of the same system.²⁰ The data do, however, support the contention mentioned above, and in the study by Unruh and Sider, that FBO's perform better in the area of spiritual and emotional support.

¹⁸ Reingold, et al., 2007: 272.

¹⁹ Reingold, et al., 2007: 260

²⁰ Reingold et al., 2007: 272

Conclusion

In the final analysis, there is not a single standard that can be applied to faith-based social service providers. There is not even much substantive agreement as to what measures constitute program success. Many studies, notably a comprehensive survey by Unruh and Sider, attempt to describe the success of faith-based organizations in terms of positive social and spiritual outcomes, what many would term “social capital.” The evidence they present is mostly anecdotal. They explain: “Our study has brought the arguments for the efficacy of faith-based approaches into sharper relief, but it cannot offer a rigorous evaluation of their veracity.”²¹ For instance, they provide interview responses from welfare-to-work program recipients who, for the most part, said that the program would not work as well without the faith factor. But they do not attempt a quantitative test of this claim.

In fact, such tests are difficult to conduct. They require matching types of services and program objectives, and a method for compiling data that does not violate recipient confidentiality. And there may still be a number of exogenous factors confounding the data, such as the local economy, which make outcome measures of welfare-to-work programs problematic. Given these limitations, even the more ambitious studies will only focus on a limited sample population in a small geographical area such as the aforementioned study by Reingold, et al. These studies will yield few generalizable conclusions. With this in mind, there are only a couple of general observations that can be made.

²¹ Heidi Rolland Unruh and Ronald Sider, *Saving Souls, Serving Society: Understanding the Faith Factor in Church-Based Social Ministry* (Oxford: Oxford University Press, 2005) 207

As David Reingold has pointed out, most church-based relief agencies are more adept at providing services for their parishioners "...in more traditional congregational activities like gathering food for the needy."²² They also are, for the most part, more effective at providing for the short-term needs of their recipients. For most congregations, it is a mistake to expect them to have the resources to administer large and complex programs. These types of large-scale programs like welfare-to-work require more than just faith, they require training, personnel, and community resources. Mark Chaves echoes this sentiment. Less than ten percent of congregations receiving public funds administer large ongoing programs like employment assistance, domestic violence, and substance abuse support.²³

As we have seen, there is a high degree of variability in the relative success rates of these organizations. Each must be considered locally and on its own merits. In some areas, a program may be a success while a similar program in another location may be a total failure. Will this increase the need for accountability on the part of federal and state authorities? This question is the subject of Chapter Four which examines bureaucracy and accountability.

²² Reingold quoted in Glazer, 2001: 27

²³ Mark Chaves, "Congregations' Social Service Activities," Report The Urban Institute, Center on Nonprofits and Philanthropy, Washington D C. December, 1999 2

CHAPTER IV

BUILDING THE BETTER BUREAUCRACY

“At both the state and federal level, President Bush has...Followed a two-pronged approach, diverting public funds to religious social service programs while simultaneously loosening regulations over faith-based providers.”

-Executive Summary, “The Texas Faith-Based Initiative
At Five Years

The decision to move some social services away from governmental control and place them in the hands of religious organizations rests on a set of assumptions about the role of religion in America and the role of government as a provider of services. Rather than aiding the privatization of social services, the faith-based initiative may have the paradoxical effect of expanding the entanglement of government and religion. Texas provides an interesting and illuminating example of this trend. If religious organizations receiving direct government funding become more numerous, the possibility increases that government will take a more active stance in regulating church-based groups.

“Capacity Building”: The New Language of Social Service Provision

The Salvation Army, one of the largest recipients of federal aid, gets only about 15% of its funding from the federal government. Another 7% comes from United Way, and the rest is from private donations. The Salvation Army has said it likes it this way as

it preserves “the Army’s independence and its ability to carry on programs—even if the government’s funding dries up.”¹ Catholic Charities, on the other hand, gets up to two-thirds of its funding from the government and has been often criticized by religious and political leaders, such as former Senator Rick Santorum (R-PA) for becoming too much like a “secular service provider.”

In response to these trends, authors Dave Donaldson and Stanley Carlson-Theis recommend indirect funding, or voucher systems.² Of course, vouchers for individuals and organizations are very controversial, as we know from the debate over private school vouchers. But the authors insist that enough voter pressure on elected representatives would be able to tip the balance in favor of a limited system for families. There is, they argue, a precedent in place: in the 2002 *Zelman v. Simmons-Harris* case, the Supreme Court ruled in favor of a Cleveland program awarding vouchers to families for religious schooling. They argue that vouchers provide a way for FBO’s to receive funding while maintaining their autonomy. Yet, despite this precedent, the rhetoric surrounding vouchers remains volatile and no further efforts have been taken, as of this writing, to extend vouchers to service providers.

Another plan, outlined in a 2006 report for nonprofits recommends forming “umbrella organizations” to act as facilitators between government funding initiatives and charitable recipients. The purpose of these organizations is to “...bring non-profits greater access to information about capacity-building opportunities available to them would provide a centralized mechanism for nonprofits to organize information-sharing

¹ Dave Donaldson and Stanley Carlson-Theis. *A Revolution of Compassion*, Grand Rapids, MI: Baker Books, 2003: 127

² Donaldson and Carlson-Theis, 2003: 167

and collaboration within the sector and offer capacity-building providers greater opportunities to collaborate and engage in self-improvement efforts.”³ These organizations would help write grants proposals, sponsor workshops, and match funders to service providers to facilitate enhanced access to funds for sponsored FBO’s in Central Texas.

In addition, the 80th Texas legislature proposed House Bill 289 in 2007 which would increase the state’s commitment to provisioning FBO’s. This bill would have required nine state agencies to act as liaison for faith- and community-based organizations. The proposed agencies are all major bureaucracies including the Texas Department of Criminal Justice, the Texas Workforce Commission, and the Texas Department of Housing and Community. In addition, the bill would have given the governor power to designate a faith-based liaison in other agencies as he deemed appropriate. The bill also stipulated the state “. . .shall monitor performance and outcome measures for persons to whom the entity awards grants using the measures established by the commission...”⁴ Although this bill died in Senate committee, it seems to be emblematic of further efforts to enhance FBO funding efforts and to heighten state government involvement in facilitating expedited funding.

The effort to expand faith-based liaisons offices would have supplemented an already large group of state employees tasked to work with FBO’s. In 1999, the state legislature passed HB 2017 which required Texas Department of Human Services eleven regional liaisons to work with FBO’s. The Texas Workforce Commission was also tasked

³ Nonprofit and Volunteer Capacity Study. “An Analysis of the Nonprofit and Volunteer Capacity-Building Industries in Central Texas.” Report Compiled for the United Way Capital Area and the Texas Nonprofit Management Assistance Network. presented April 26, 2006.

⁴ HB 289 80th (R) Texas 2007

to create faith-based liaisons in all of its 28 regional offices. These liaisons are required to spend 51% of their time interacting with FBO's.⁵ In June, 2003, Governor Rick Perry announced that he would create a central state faith-based outreach office to expand funding, outreach, and volunteer building efforts at the local levels.

This new central office would become a large state-funded umbrella organization to increase public-private partnerships. On January 4, 2004, the Texas OneStar Foundation was established to encourage volunteerism, oversee the Governor's Faith-Based and Community Initiative, and Community Capacity Development programs. The foundation expands an already growing state bureaucratic apparatus to administer a nominally community-based effort. Next, we will take a look at the OneStar Foundation.

Building a New Bureaucracy: The Texas Example

The state legislature wrote the first grants to OneStar in 2003. In 2006, OneStar awarded 103 sub-grants through its Americorp beneficiaries in the amount of \$13 million. Through Americorp, the partnership recruited and oversaw some 18,000 community volunteers. The volunteers renovated homes for low income families, tutored and mentored at-risk youth, hosted disaster prepared training, helped almost 800 homeless or displaced persons find homes.⁶ In 2006, OneStar administered \$10,987,706 in state grant revenue and \$180,966 in private donations.

⁵ Ebaugh, 2003: 3

⁶ OneStar Foundation Commission Report. "Celebrating Our Past. Building Our Future. 2006 Annual Report." Austin, Texas, October 2006

In addition, OneStar hosted over 100 training seminars across the state, hosting in excess of 2000 faith-based service providers in 2006. In 2007, they added capacity building workshops in order to expand outreach in large urban areas. In response to Hurricanes Katrina and Rita, OneStar also hosted seminars to teach church and community service groups how to interface with the state's emergency management authorities.

As mentioned above, OneStar was first funded in funded by the Texas Legislature in 2003 and opened its doors in January, 2004. Yet the first grants for faith-based social service providers were not tendered until 2006. This makes many wonder how the five million dollar annual budget was being spent in the three years leading up to the initial funding just prior to the 2006 elections.⁷ The Texas Freedom Network attempted to find out how the money was spent, but was denied an open-records request. The justification for this denial was that the OneStar Foundation is not a public entity and, thus, not subject to public scrutiny. This despite the fact that it is funded with taxpayer dollars. Texas Freedom Network has threatened a lawsuit, but as of this writing, the Texas ACLU has not committed to accepting the case.

When beginning this paper, it was my intention to gain financial and program records from OneStar to analyze their funding and oversight activities. What I found is that it is nearly impossible to obtain any information whatsoever. OneStar simply does not provide information to the public. Numerous requests by phone, e-mail and writing were rebuffed or ignored. Financial information for fiscal year 2006 funding recipients is

⁷ Texas Freedom Network. <http://www.tfn.org/religiousfreedom/faithbased/>. Accessed September 17, 2007.

posted online in their annual report, but any information other than this is not made available by OneStar staffers.

Despite their insistence that they are not a public entity, OneStar is being tasked by SB 758, passed in 2007 by the 80th Legislature, to administer privatization of child foster care programs. The bill creates a partnership under the Department of Family Protective Services to place ten-percent of Texas foster care services in private hands. Included in the new responsibilities are foster child monitoring, adoptive services, setting up pre-kindergarten programs and health subsidies. The new partnership would oversee professional teachers, psychologists, and counselors—all of which sound like functions that should be under the control of licensed state agencies. An ostensibly private agency is being charged with overseeing a program with vast legal responsibilities and liabilities.

And the program is not cheap. The Senate write-up called for a five-year cost to taxpayers of over \$34 million.⁸ This is not new money that was created anew to administer the program; it is being taken from other budgets. Of the appropriated amount, the bulk is coming from the state general revenue and federal matching funds. A significant amount, however, is being taken out of the Department of Family Protective Services budget and from state highway funds.

The public outcry from Texas Freedom Network is much like the warnings being sounded against the federal faith-based initiative. Allegations have been leveled that OneStar is not much more than a political tool to curry favor with clergy groups. Susan Weddington, the head of OneStar, is former chair of the Texas Republican Party, and has been criticized for appearing at church-organized political functions on behalf of Governor Rick Perry. Furthermore, OneStar is in charge of administering millions of

⁸ SB 758 (80R) Texas (2007)

dollars worth of public social service dollars, yet is not held to public scrutiny, giving rise to allegations of political cronyism. The foundation is being used as a tool for religious and political gain but operating almost wholly out of the public eye.

“Accounting for the New Religion”?

The pressing issue is: where do we draw the line in terms of government oversight? As Charles Glenn has written, “Must the effect of public funding be to make nongovernmental organizations as bureaucratic and rule-bound as the public agencies whose inadequacies they are intended to remedy?”⁹ We have already seen in Texas the growth of a large oversight agency that amounts to a bureaucracy in effect if not in name. From increased pressure to promote and fund government and church-based partnerships will inevitably come increased pressure to regulate these partnerships once established. This has already occurred with numerous agencies, as we saw in Chapter Two. The whole assumption that the faith-based initiative is fostering an effective partnership with private entities will fail if it becomes apparent that this new partnership is just leading to more regulation of nongovernmental entities.

Martha Minow has been a long-time supporter of funding expressly religious FBO’s and has proposed ways to ensure public accountability without infringing upon the religious message. She feels that no matter what “normative limitations” people may have in regards to “public-private partnerships, the trend is undeniable.” Privatization is in irresistible trend of history. And yet, in the same paragraph, she says that “With

⁹ Charles Glenn, *The Ambiguous Embrace: Government and Faith-Based Schools and Social Agencies* PRINCETON, NJ: PRINCETON UNIVERSITY PRESS, 2000 100

scandals revealing defects in the accountability of corporations and religious institutions, governments must set and enforce meaningful public standards for public services, even if delivered privately.”¹⁰ Immediately one is forced to ask how private this partnership can be if the language of “meaningful public standards” is being employed.

Minow recognizes the pitfalls of taking welfare to church. She admits that privatizing programs may “...balkanize communities, produce less visibility or public access, and result in less protection for members of minority groups.” She also recognizes that with privatization comes the increased risk of “...reduced quality, unequal treatment, and outright corruption.”¹¹ She suggests making public and private providers compete with one another, just like market-based economies, in order to give consumers choice and promote service excellence. But, she admits that this may serve to diminish “experiences of commonality and [foment] tension and distrust across groups already experiencing religious or ethnic tension.”¹² There may be additional worries about placing religions in competition with each other and placing them within a market economy context. The rationale behind making churches tax exempt was predicated in part on the principle that they are essentially non-economic entities.

To avoid these pitfalls, she endorses a system for ensuring that standards are met and sanctions are in place for those not meeting those standards. This accountability program is to be based on the principles of contract law and involve the same “public enforcement” of “promises” as traditional contractual obligations. She speaks of courts,

¹⁰ Martha Minow, “Public and Private Partnerships: Accounting for the New Religion,” *Harvard Law Review*, 116:5 (2003) 1236

¹¹ Minow, 2003: 1246

¹² Minow, 2003: 1253

arbitration, and rules about what kind of conduct is permissible under the rules established by the legislatures, and patient's rights under the Equal Protection and Due Process Clauses.¹³ An accreditation process is also proposed. For those of us who are not attorneys, this sounds like anything but privatization.

David Saperstein takes exception to all of this and says that the accountability debate is a "problem best avoided." He argues that the faith-based initiative is a clear case of "government withdrawing from its responsibility to the needy...and hoping that churches and the needy somehow connect with each other."¹⁴ The proposition that government can fund social services "on the cheap," he says, is not a feasible idea. With government funding comes "...rules, regulations, audits, monitoring, interference, and control..." The idea that government can abrogate responsibility for welfare, entrust it to autonomous church groups, and then run it all without strings is simply a pipe-dream.

In addition, critics of Charitable Choice like Stanley Carlson-Thies have noted that faith-based organizations that receive federal funds often "shift emphasis" in a process he calls "vendorism." As a result of their dependence on government, the character of their mission changes to reflect this new priority. They become, essentially, just vendors of government sponsored programs.¹⁵ We mentioned above the problems with inducing competition among religious groups. We risk also the prospect of a sort of religious pork-barrel with favored groups receiving the lion's share of funding and smaller or minority religious groups being left out.

¹³ Minow, 2003 1267-8

¹⁴ Saperstein, 2003 1362

¹⁵ Quoted in Saperstein, 2003 1368 See Stanley Carlson-Thies, "Faith-Based Institutions Cooperating with Public Welfare," in *Welfare Reform and Faith-Based Organizations*, Derek Davis and Barry Hankins eds, 1999 29 36

Conclusion

As part of the rationale for endorsing public-private partnerships, Minow argues that “public bodies are often ineffective.”¹⁶ But instead of working to improve the public entities which are often strapped with budget shortfalls and understaffed, she recommends pulling even more money from them in order to fund private religious groups. And, as part of this nominally “private” partnership, new agencies must be set up to ensure that standards of service provision and proper use of funds are met. This does not sound like an attempt to free government from its responsibility for the social welfare; it sounds like an attempt to put government in the business of regulating religion.

As Saperstein worthily argued, this not only endangers the autonomy of religious organizations and the religious liberty of service recipients, it endangers the very principle of separation of church and state. It is not clear if indirect funding, in the form of vouchers will ever work. The courts and legislatures have been notoriously fickle on the subject of vouchers. What is clear is that with direct funding comes the looming possibility of direct control.

¹⁶ Minow, 2003 1242

CHAPTER V

SOME FUNDAMENTAL ASSUMPTIONS

So why religious organizations, and why now? This question has caused many to take a look at the way religion functions in American life. It has also caused many to question the political motives behind the decision to undertake such a broad shift in responsibility for social service provision. The issues are too deep to consider here in great depth, but concern competing visions of government's role in the welfare state and the extent to which religion can ameliorate social problems. They also involve the political dimension and the extent to which welfare reform can be manipulated to gain votes and win influence over interest groups. Many feel that President Bush's faith-based welfare reform is merely a political tool to woo the religious electorate.

The Welfare State versus the Conservative Vision

Many commentators are skeptical of the rationale for shifting an ever greater burden for the welfare state onto church-based institutions. Marvin Olasky, whose books *The Tragedy of American Compassion* and *Compassionate Conservatism* helped usher in the new era of FBO expansion, echoed the message of Ronald Reagan that government is not the solution but the problem. The generation of Republicans who built political

careers in the Reagan-Era has continued to cling to this notion. At the center of this argument is an idea that America was better off before the 1960's brought about the expansion of the welfare state. The welfare state, some insist, has created a permanent underclass unwilling to pull themselves up by their bootstraps and work for a living. How realistic is this vision of the American past and the failures of the welfare system?

Sarah Glazer questions the validity of Olasky's vision of the mythical American past. Olasky claims that "...the poor were better off in 1890, when charity was in private hands. But the consensus view among historians is that the proportion of American poor was as high in the 19th century as it has ever been since..." Further she says, quoting journalist Eyal Press, Olasky's critique of the 1960's social welfare programs ignores such valuable programs as Medicare, Medicaid, and Social Security, "...which many scholars credit with all but eliminating poverty among the elderly." In fact, "The historical argument illuminates a central ideological divide between liberals, who tend to blame poverty on the structure of the economy, and conservatives, who traditionally blame poverty on the individual's lack of values."¹

This sort of attitude is typified in Lewis Solomon's book *In God We Trust?* His book opens with the sentence, "At the Dawn of the twenty-first century, the social fabric of America is unraveling."² He goes on to explain how the "...pernicious impact of the underclass has not remained contained in the inner cities, but instead its attitudes and behavior have filtered into the middle-class culture as well." Of course, he takes this not to be evidence of the economic erosion of the middle class, but evidence of a vast spiritual illness afflicting America for which faith and values are the cure. He suggests

¹ Sarah Glazer, "Faith-Based Initiatives," *Congressional Quarterly*, 11: 17 (2001): 34

² Solomon, 2003: 1-2

that only traditional values “coupled with realistic expectations” can drag one out of the cycle of poverty and crime.³ Solomon does not say what these realistic expectations may be, but they presumably include staying on one’s own side of town.

An indication of this emphasis on values, specifically Christian values, can be seen in FBO’s that provide drug treatment and even job training. Victory Fellowship in San Antonio uses the “faith factor” to treat drug addiction. The director, Freddie Garcia, claims that the real culprit in drug abuse is lack of belief. Garcia says that: “Sin is the problem. Jesus Christ is the solution.” The addiction is not the disease; it is merely a symptom of the real malady which can only be cured by belief in Christ.⁴ Similarly, Teen Challenge refers to Jewish patients as “incomplete” and will only consider them “complete” and cured of their addiction once they have converted to Christianity. Job Partnerships of Washington County, whose program was later found by the courts to be unconstitutional, pledged to help clients find employment through a “relationship with Jesus Christ.”⁵

Bob Wineburg, reverend, author, and opponent of the Bush program to expand faith-based outreach finds the opposite to be true. He quotes Reverend Odell Cleveland of Mount Zion Baptist Church in Greensboro, North Carolina, a major service provider, who “...balks at the idea that salvation is the solution to social problems. Black people, he said, have plenty of religion. They need skills!”⁶ He and other critics claim that the emphasis on religious programs obscures the real root problem in America, that many

³ Solomon. 2003 279

⁴ Quoted in Texas Freedom Network, 2001 18

⁵ Texas Freedom Network. 2001· Appendix L

⁶ Bob Wineburg. “Salvation is Not the Solution” *Forward Forum*, March 2, 2007 A-11

economically disadvantaged Americans simply lack access to resources that would enable them to gain valuable job skills and turn their lives around. Further, he claims, and I argued this point in Chapter Three, church-based providers are not geared to formulating long-range strategies for dealing with social ills; they are more adept at reacting to short-term needs.⁷

Instead, what the Bush White House is doing is diverting billions of dollars away from secular welfare service providers to those that promote a specific “Christ-centered” religious agenda. Evidence of this can be seen in the 2007 budget proposed by the president which cuts funding to services for children and the poor while “...programs high on the right-wing evangelical agenda, such as abstinence education...in many cases...has not been cut at all.” Wineburg claims that the plan is not really aimed at fighting poverty but instead, “Their scheme is aimed at winning souls, paying off their rightwing evangelical base and, if they’re lucky, chipping away at the black and Jewish vote.”⁸ Some claim that the extent of the program’s reach has resulted in “preferential treatment” for religious providers in awarding contracts.⁹

Wineburg is not the only voice questioning the president’s motives for pushing the faith-based initiative. Two former White House heads of the initiative have quit over allegedly tainted political motivations surrounding the expansion of faith funding. David Kuo, as mentioned in Chapter One, quit in disillusionment after becoming convinced that President Bush was merely paying lip service to the faith-based initiative as a way to win

⁷ Bob Wineburg, *A Limited Partnership: The Politics of Religion, Welfare, and Social Service* (New York: Columbia University Press, 2001) 51ff

⁸ Wineburg, 2007: A-11

⁹ Texas Freedom Network, 2001: 8

votes with the conservative base. John DiIulio, director of the White House's faith-based office from February to August 2001, left with a similar conclusion.

DiIulio was the first director of the Bush faith-based office. In an interview that he claimed to have believed would be off-the-record, he called Karl Rove and the Bush policy making team "Mayberry Machiavellians." He accused the Bush White House of "...reducing policy issues to their simplest terms and steering them to the far right."¹⁰ In an October, 2002 letter to *Esquire* magazine, DiIulio said that "politics, not policy" dictate actions in the Bush White House and "...that Bush is kept on the short leash of far right preconceptions of the world that often don't jibe with reality, and that fear of Karl Rove prevents staffers from providing him with news from the real world that might contradict his extreme, conservative vision."

Spiritual Outreach or Political Agenda?

President George W. Bush made extensive use of executive orders to push through his faith-based initiatives, affecting a short-cut to congressional wrangling. From Austin to the campaign trail in 1999 to the present day, George W. Bush has consistently championed his faith-based initiatives. This being the case, why have so many criticized the President on this issue? David Kuo and John DiIulio, former heads of the White House Faith-Based Office have quit and have been openly critical of the program. Questions linger about Bush's motivation for endorsing faith-based initiatives.

¹⁰ *Esquire* article by Ron Suskind, "Why Are These Men Laughing," January, 2003, quoted in Fermeola, Segers and Weber, 2003: 153.

Bush's early espousal of faith-based in the presidential campaign, Black, Koopman, and Ryden, point out, may have been a simple case of "issue ownership." While both Bush and Al Gore came out in support of the initiative, Bush felt more compelled to make this one of his distinctive issues. The Republican message of dismantling the welfare state has long appealed to the conservative base, and the evangelical social conservatives are a major part of the Republican base. But Bush took a more moderate approach to welfare and insisted that government *must* be involved as an active partner with religion in addressing social ills.¹¹ The Bush strategists recognized a valuable tool for appealing to the religious of *both* parties while at the same time taking a stance on welfare that many considered to be more moderate. The Bush camp knew there was a significant degree of support among Democrats for Bill Clinton's faith-based efforts and correctly saw this as a good chance to draw upon a large base of support.

The faith-based initiative, then, was a huge boon to the Bush campaign. It allowed the Bush strategists to espouse welfare reform, an issue with great appeal to social conservatives. It also allowed them to appeal to the religious members of both parties by adopting a somewhat centrist position and portraying himself as a "compassionate" conservative. Perhaps another consideration was the appeal to black conservative voters he may have garnered by his close association with J.C. Watts, Republican representative from Oklahoma who co-authored the original version of the H.B. 7 Charitable Choice legislation.

Contrary to expectation, however, the 2000 election may have had a particularly adverse effect on the faith-based initiative. When H.B. 7 was introduced in 2001, efforts to push it through Congress were stalled by partisan wrangling. Democratic support for

¹¹ Black, Koopman, and Ryden, 2004 78

the initiative was badly damaged. As Black, Koopman, and Ryden point out, “The bitterness of the election aftermath had destroyed bipartisan accord and trust, vanquishing most hope of working smoothly and harmoniously across party lines.” They quote the Democratic bill sponsor Representative Tony Hall who said that the election had “poisoned...the water.”¹²

The problems facing the faith-based initiative boil down to the essential nature of politics: the people most intimately involved with it were willing to treat it as a political football. Black, Koopman, and Ryden quote a White House insider who they identify only as “S” on condition of anonymity who said, in part, “Nobody in the Administration except George W. Bush [had] any time at all for the faith-based issue; it is, for them, symbolic politics...” He goes on to claim that the Republicans wanted to use the bill’s failure as a “club to beat up the Democrats.”¹³ Regardless of how Bush really felt about the initiative, it suffered, and continues to suffer, the fate of many well-intentioned political actions: it became a tool for competing interests.

Conclusion

It can be safely stated that the faith-based initiative is becoming another issue in the liberal-conservative divide. The initiative has not had the intended effect but has generated more tension between those on either side in the culture wars. Meanwhile, it is decreasing the budgets of mainstream providers and occupying government with an issue that was essentially intended to reduce government’s role in welfare provision. While

¹² Black, Koopman, and Ryden. 2004: 99.

¹³ Quoted in Black, Koopman, and Ryden, 2004: 111

politicians quarrel among themselves, it is perhaps those with little or no voice in policy matters—the homeless, jobless, and in need—that suffer the most.

Perhaps the most effective way to finish this section up is with the words of Paul Weber:

“Many experts believe the biggest problem facing organizations that deliver social services is inadequate funding—not moral failure, inefficiency, or lack of commitment. Many of the problems of those needing social services are such things as lack of affordable housing, an inadequate minimum wage, and understaffed agencies. Conservatives will immediately dismiss these as liberal assertions but they are accurate statements about real issues. What do faith-based initiatives do to address them? The answer is very little.”¹⁴

The Bush faith-based initiative has not resulted in more money being spent to address America’s social issues, it has just reallocated money to unproven providers.

¹⁴ Formicola, Segers, and Weber, 2003: 106

CHAPTER VI

CONCLUSION: THE LIMITS OF FAITH

Faith-based organizations provide “...\$20 billion of privately contributed funds to social service delivery for over 70 million Americans annually.”¹ There can be little doubt that congregations are an integral part of American life and provide meaning, structure, and aid to society. They also build communities and provide social outreach to those who would perhaps lack those things. From the above discussion, however, we must ask if it is reasonable to expect faith-based organizations to take over the provisioning of social services, thereby abrogating some governmental responsibility for these functions. Given the current atmosphere of rancorous debate over the proper role of religion in society and the torrent of legal battles that accompany this debate, is extending faith-based social provision under public auspices even a possibility?

In 1831, Alexis de Tocqueville visited America, and one of the things he found most remarkable was the fact that Americans took care of themselves. And where they could not take care of themselves, the local church was there to take over. Churches cared for the sick, provided for the poor, and educated the young. They acted as a makeweight against the power of the government; people did for themselves and others without

¹ Johnson. 2002 7

turning to the government for all of their needs in times of trouble. This tendency acted to promote social welfare while at the same time limiting the power of the government.²

Of singular importance in this equation was the fact that these agencies were *non-governmental*. Tocqueville, like Jefferson and Hamilton before him, realized the dangers inherent when religion is tied to or controlled by the governing powers. As he wrote, “In proportion as a nation assumes a democratic condition of society, and as communities display democratic propensities, it becomes more and more dangerous to connect religion with political institutions: for the time is coming when authority will be bandied from hand to hand...”³ When the temporal powers are tied to spiritual authority, the result is invariably tyrannical.

The faith-based initiative is facing such a challenge. Among the religious leaders who oppose federal funding of religious social service providers, as we have seen, there lurks a growing fear of increasing governmental control over religious institutions. Among secular leaders there is an equal but opposite fear of the wielding of religious power in the hands of those pursuing a political agenda. The potential for abusing religious principles to promote discrimination, exclusivity in service provision, and a pervasively sectarian message has been a cause of concern among those who seek to limit the influence of religion on public policy and policy on religion.

Yet we have seen the important contributions to social welfare that can be provided by church-based organizations. In terms of positive enabling outcomes, faith-based providers have shown that they are capable of fostering a sense of capability in

² Alexis de Tocqueville, *Democracy in America*, Henry Reeve, trans. New York: Bantam Dell, 1835; 2002. see pp. 348-361

³ Tocqueville 1835-2002: 361

their clients. They provide valuable services to their congregations and shelter, food, clothing and immediate needs for those who would otherwise have nowhere to go. To not have this valuable safety net would harm more than just the congregations, it would harm society as a whole.

We must seek to provide the best avenue for achieving the ends and value of religion as a social institution. Do we want the congregations engaged in social outreach spending more time in court, engaged in the occasional legal skirmish? Should they have to spend a sizeable portion of their limited resources on lawyers and litigation? Or do we want to have bureaucrats and government overseers constantly assuring that assessment standards are being met? By making government an ever-larger partner in the provisioning of religious services we risk having these potential outcomes. We risk taking church and faith out of the community where it is most effective and placing it under the direction of public administrators which will most likely remove it at some length from the personal lives of their members.

So how do we strike a compromise between the social benefits of FBO's while preserving the subtle balance between religion and government? David Saperstein suggests a middle-ground which may preserve the balance. He insists that "...innovation, competition, and expanding provision of services...can be obtained without direct government control of pervasively sectarian service providers."⁴ As we have seen, there already exists a legal and less controversial method for obtaining funds by setting up a non-profit secular arm of their agency to accept the monies. Additionally, for those who desire a pervasively sectarian provider, "indirect benefits" in the form of vouchers may be provided. He also suggests "in-kind" benefits, such as food, clothing, and supplies are

⁴ Saperstein, 2003: 1394-5

provided to feeding programs in order to avoid the direct-funding controversies and potential for fraud.

Saperstein favors increasing tax incentives to encourage charitable giving among individuals. This effects an end-run around the accountability problems since charities receiving private contributions are free to function with complete autonomy. But where money is given, he argues for the establishment of publications, communication, and programs to ensure proper “skills training and certification” among staff members.⁵ These groups would function as intermediaries and make agencies self-policing by promoting an atmosphere of service excellence while diminishing the potential for government interference.

These intermediaries, in fact, already exist. They are the Catholic Charities, Red Cross, Salvation Army, Jewish League and others, and they already channel billions of dollars annually into community charities. They do so legally, effectively, and most importantly, with a minimum of government interference. They have long-standing established procedures and act as valuable intermediaries between government and religious charities. Pushing these programs beyond reasonable limits, however, and giving them more leeway to engage in sectarian or proselytizing activities, is inviting trouble. This trend will only increase the opportunity for fraud, lawsuits, ineffective program administration, and increasing amounts of government red tape.

Further, pushing local religious organizations to do more and accept more of the responsibility for services the government and secular non-profits are asked to provide may be asking far too much. Programs such as job training and drug and alcohol counseling go well beyond what the majority of congregations are willing or qualified to

⁵ Saperstein, 2003 1395

provide. Community congregations are most adept at providing for the immediate needs of their parishioners and local persons in temporary crisis. Asking them to do much more is to place unfair expectations and burdens on them.

Mary Segers points out that New Jersey is one place where faith-based initiatives seem to be successful and are almost completely uncontroversial. The faith-based initiative started by then-Governor Christine Todd Whitman has not provoked the ire and lawsuits that have plagued the Texas and federal programs. The reason for this is that New Jersey FBO's are required to have incorporated 501 (c)(3)'s and are prohibited from proselytizing and discriminating in their hiring practices. Whitman, unlike Bush, has not pushed for expansions and exemptions.⁶ The New Jersey program accepts the limitations and avoids most of the problems that we have discussed in this paper. It, rather than Teen Challenge, should be upheld up as a model for the nation on the benefit of FBO's.

In sum, the conclusions of this paper can be simply stated in a paragraph. Faith-based organizations are a hugely important part of our social service network. The best way to preserve them and the distinctive nature of the services they provide is to limit government intervention and control. Continue to fund them on a limited basis as 501 (c)(3) organizations on the premise that they not engage in proselytizing or sectarian activities in the part that receives direct government funding. Most providers, as we have seen, only receive less than twenty percent of their budgets from the government. For the pervasively sectarian organizations, enlarge the tax break for donations to encourage charitable giving. In this way, we keep FBO's where they do the most good—in the community—and out of the offices of government assessors, overseers, and out of the courts.

⁶ Ferminola Segers and Webb, 2003 48-50

The Limits of Faith

In a recent book, former senator and ordained Episcopal minister John Danforth questions the intrinsic motives behind the push to privatize social services to charitable organizations. He writes, “Even our best intentions toward others are mingled with the pursuit of our own interests. We want to do well by doing good. We want people to recognize us for our generosity...it encourages our best instincts by the Peace Corps, the faith based initiative and the charitable deduction to the tax code.” He questions whether the rationale to place religion in the role of service provider is based on a genuine belief in the merits of religion or the self-aggrandizing motivations of political elites. “Is the faith-based initiative merely helping religious groups do their jobs, or is it governmental intervention into religion?”⁷

Danforth, a deeply religious man, is concerned about the ways in which the “moral values” debate has divided America in the last thirty years. There is an increasing divide between religious conservatives who wish to claim exclusive and absolute truth and liberals who view them as mean-spirited, intolerant, or just plain wrong. The country is torn over so-called “wedge issues” like abortion, stem cell research, and gay rights.

The question that must be asked is if we wish for social service provision to become just another one of these wedge issues. Is a rhetorical fight for the hearts and minds of America more important than providing food and clothing to the homeless and basic needs to those facing hard times? The best way to ensure that these valuable

⁷ John Danforth, *Faith and Politics: How the “Moral Values” Debate Divides America and How to Move Forward Together*. New York: Penguin, 2006. 30

services do not devolve into legal and political wrangling is to keep them private. This is the legitimate limit of faith in the faith-based initiative. It is the most realistic way to ensure that the *limited* partnership between government and religion does not turn into a vehicle for the mutual harm of both.

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