

Harnessing Civic and Faith-Based Power to Fight Poverty



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Working Group on Human Needs
and Faith-Based and Community Initiatives
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Definitions

Religious activities include, but are not limited to, worship, religious instruction, and proselytization.

Non-religious program is a government-funded program administered by a secular organization or a faith-based organization that does not require participation in religious activities.

Public as used here refers to the general public, e.g., as in the public interest — as opposed to *public* agencies, which are referred to generally in this report as *government*.

Faith-based organization, as used in this report, is any entity that is self-identified as motivated by or founded on religious conviction. We are using the term in its broadest sense to include corporations, unincorporated associations, churches, trusts, foundations, and educational institutions. The characteristics of religious organizations (and their programs) are discussed in the typology included in Chapter V of this report. The six categories discussed and described in this typology are: *faith-permeated*, *faith-centered*, *faith-affiliated*, *faith-background*, *faith-secular partnership*, and *secular*.

Transparency in this context refers to explicit, clear statements about policies, standards, and instructions.

501(c)(3) organization, as used in this report, refers to charitable organizations certified as exempt from taxes by the Internal Revenue Service. In this report, it is used to describe exempt organizations other than churches, mosques, or other institutions of worship.

Firewalls refer to clear administrative separations within or between organizations.

Private funders include philanthropic institutions, corporations, and individuals.

Government leaders include government leaders in the executive and legislative branches, at the federal, state, and local level.

Government agency is an agency of federal, state, or local government that administers funding programs for providing services through non-governmental organizations, including community-based organizations and faith-based organizations.

Religious belief, as used here, covers all religious belief systems, including those that affirm or reject belief in a higher power or deity.

Community-based organization, a formal or informal association that aids and empowers people and communities in a particular geographic or ethnic community, led and managed by people drawn from that community. ■

Foreword

By Harris Wofford

Even in the midst of war, and faced with the challenges of terrorism at home and in the world beyond our borders, we need more than ever to keep in our minds and hearts the fundamental values and purposes of our democracy. To secure the blessings of liberty and justice for all should be the great aim of all governments. As Americans, we have a special obligation to be true to the creed that this nation's founders declared to be self-evident. So it is our duty, in war as in peace, not to forget the pressing needs of the poor, the disadvantaged, and those otherwise being left behind — our neighbors in this land we love.

From kitchen tables to the halls of Congress, we Americans like to argue for our ideas and our interests. This freedom to disagree with one another operates in a continual tension with the need to accept differences and find common ground for concerted action. With intense partisanship on so many sides of our public life, we need to learn how to disagree on beliefs we hold dear and yet proceed to sit down, reason with each other, narrow the areas of difference, discover areas of consensus, and agree to work together on vital matters affecting the common good.

Over the last ten months, it has been my privilege to join in doing just that with an extraordinary group of Americans with great diversity of views and great goodwill.

The 27 members of the Working Group on Human Needs and Faith-Based and Community Initiatives – 2003 include 15 who served in the first Working Group, started in June 2001 at the suggestion of Senator Rick Santorum and with the encouragement of Senator Joe Lieberman. The report of that previous Working Group — *Finding Common Ground* — was issued in January 2002, with 29 Recommendations agreed to by the consensus process. (That first report is available on its website, www.working-group.org).

Based on the success of that effort, we were asked to continue, with a number of new members, to build on those 29 Recommendations and seek further consensus on important questions and on ways to move forward. Our aim, as in the first Working Group, was to find common ground on guiding principles — and on specific steps to take — to increase the opportunities for people in need to get help from community-based organizations, including those inspired by religious faith. And we sought to show how this can be accomplished in a manner consistent with the constitutional principles of religious liberty, including the separation of church and state, and the equal protection of the laws, and thus to promote the “more perfect union” and other great purposes set forth in the Constitution's Preamble.

We hope that the 38 Recommendations in this new report, *Harnessing Civic and Faith-Based Power to Fight Poverty*, will be of assistance to the Congress as it considers pending (and future) legislative proposals; to the President and federal departments and agencies and to state and local governments as they deal with these issues; to foundations, corporations, and other private donors; to national and community organizations, both faith-based and secular; and to the concerned general public.

Some members — perhaps most — of the Working Group would go further in one direction or another, in facilitating the participation and funding of faith-based organizations or in establishing further safeguards. But all of us join in presenting these 38 Recommendations as contributions to the aim set forth in the first proposition of the Introduction and Summary, page 8. That proposition calls for “a broader mobilization of civic energies and resources” to confront poverty and other pressing social problems, and a closer collaboration between government and this country's community organizations, including its many faith-based institutions, both large and small, that work to meet human needs.

Similarly, the other major theme that pervades this report is the first Recommendation of the chapters on both government and private funding. There is an urgent requirement to expand the resources available for effective programs, and for government at all levels — as well as for foundations, corporations, and individuals — to assign a higher priority to meeting human needs.

These points to which the Working Group gave such emphasis seem particularly important to me. What drew me to this endeavor was not primarily how to help faith-based organizations get more, but how to help them give more — more leadership, more initiative, and more of their own resources. Our report, I believe, challenges, encourages, and I hope facilitates their doing so — and I believe that in doing so they will find that new resources will come, from private donors and from public funding.

Instead of repeating other points in the report, I invite readers to turn to the Introduction and Summary and to the Recommendations and exposition that follows. But before that, you should know that in this second round of the Working Group we depended upon the careful and constructive leadership and collaboration of our co-chairs: Ron Sider, President of Evangelicals for Social Action, and Barry Lynn, Executive Director of Americans United for Separation of Church and State.

On behalf of the Working Group, I also express great appreciation for Search for Common Ground and the Consensus Council, USA, which led the way in convening this second Group, enlisting new members, and facilitating our meetings. I thank particularly:

- ▮ Roger Conner and Gerald Kamens (with assistance from Brent Elrod) of the domestic arm of Search for Common Ground, a Washington, D.C.-based non-profit international conflict resolution organization;
- ▮ Larry Spears, founder of the Consensus Council, USA, which assists national and regional leaders and citizens to build agreements on difficult issues of American public policy; and
- ▮ Joshua Weinberg, our legal counsel from the law firm of Hogan and Hartson, which also hosted our meetings.

And we all warmly thank:

- ▮ Richard Nathan and David Wright of the Rockefeller Institute, at the State University of New York-Albany, our partner in furthering vital research on the outcomes of faith-based and secular providers of service; and
- ▮ Luis Lugo and Julie Sulc, of the Pew Charitable Trusts, which generously funded Search for Common Ground's work in exploring the possibilities for expanded faith-based support for this country's human needs.

This report should increase understanding of some of the challenges surrounding government and private assistance, both financial and other, to faith-based organizations providing social, educational, and health services to our fellow Americans in need. Despite the often divisive rhetoric on this subject, our agreements on the 38 Recommendations and the five general propositions that follow show there is indeed good reason to hope that a broader mobilization of civic energies and resources, including those inspired by religious faith, is possible. Taken together and well-implemented, these Recommendations can help to further tap the spirit of voluntary initiative by citizens, by organizations, and by government at all levels, to harness civic and faith-based power to fight poverty. ■

April 2003

Members of the Working Group on Human Needs and Faith-Based and Community Initiatives 2003

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I. Introduction and Summary:

The Setting for Our Recommendations

The haunting call for justice for the poor echoes across the decades of our history. Martin Luther King, Jr.'s urgent summons to open the “doors of opportunity to all of God’s children” still awakens a response in many hearts. America needs a broader mobilization of civic energies and resources to confront its widespread poverty and social problems — and a closer collaboration between government and this country’s community organizations, including its many faith-based institutions, both large and small, that work to meet human needs.

Americans today understandably are concerned with personal and national security as well as our uncertain economy. Yet they also know that the despair in our poorest communities weakens our democracy. Failing schools, scarce jobs, crime, drug addiction, and collapsing families undermine the spirits of even the most courageous residents. It is time to face these conditions as resolutely as we confront new threats to our security. As a society committed to opportunity for all, we can do much better.

The authors of this report — religious and civic leaders, and advocates for civil liberties — are members of the Working Group on Human Needs and Faith-Based and Community Initiatives. We have sought common ground on appropriate ways for increasing the opportunities for people in need to get help from community-based organizations, including those inspired by religious faith.

People committed to the values of social empowerment and religious freedom do not always agree on the meaning of the Constitution’s promises, on how to strike the right balance between positive values in tension. So we used a consensus-based process to examine the dimensions of the public controversy, identify areas for discussion, and consider the breadth of perspectives present in our group. We have sought to:

- ▮ Clarify the status quo and the issues raised by current legislative proposals, so that public debates around government support of faith-based organizations could be more fact-based, and centered on real differences;
- ▮ Assess issues in the light of concrete needs in key areas, including children and youth (mentoring, tutoring, after-school programs), drug and alcohol treatment, homelessness, and hunger; and
- ▮ Identify potential areas of agreement — focused on how to increase public and private funding of faith-based organizations in ways that are both effective and constitutional — especially where people are separated by misunderstanding rather than value conflicts requiring resolution by the courts.

We often have had sharply divergent political outlooks, but each of us has had the opportunity to express her or his perspective on the matters at hand. Each member’s opinion was considered carefully in making final decisions. All members supported, or at least did not oppose, each Recommendation.

For ten months, we met regularly — under the auspices of Search for Common Ground and Consensus Council, Inc., in cooperation with Hogan and Hartson and the Rockefeller Institute, and with financial support from the Pew Charitable Trusts — to grapple with these issues and explore areas of possible agreement. While serious disagreements remain in some areas, we’ve also made important progress. And if a group as calculatedly diverse as ours can find common ground, America’s political leaders should be able to do so as well.

Accepting our differences, the breadth of our agreement is profound. We jointly embrace the following propositions:

First, America can't adequately overcome poverty and social dysfunction with the resources now being dedicated to this mission. Government, voluntary associations, and private businesses and citizens must significantly expand the financial and human resources available for these urgent tasks. We realize all too well that in the current political climate, expanding social support for needy Americans is not to some a major priority. Nonetheless, one of our key goals is to try to change the way people think about aiding the poor. If Americans had more confidence in *how* social services are delivered today, they would be more willing to open their hearts and their wallets.

In this time of fiscal constraints, we think it imperative that social services of the kind we address, at the least, should not be cut back. And when economic resources are more available for domestic purposes, we believe that dealing with unmet human needs in our country should be the first area to have funds restored, and even increased. Such funding decisions reflect America's true priorities.

Second, addressing our communities' needs is not just government's job. It's everyone's job. Let us be clear. We do not think that private charities, secular or religious, can somehow supplant the crucial role of government in comprehensive efforts to alleviate poverty. But neither are we satisfied with a political debate that routinely pits government provision against market provision and overlooks the contributions, real and potential, of the "third sector" of civil society. What we envision is a new, more pluralistic way to deliver social services and meet human needs — a greater synergy between government, civic and community groups, religious congregations, and private donors — philanthropic, corporate, and individual.

Each sector must do its part, and each has a unique way to add value to the common good. To launch a new and more hopeful effort against poverty, America needs a broad civic mobilization that enlists community and faith-based organizations¹ in a new partnership with government and corporation and foundation funders, within a clear constitutional framework.

Third, religious faith is a powerful force in our society and we aim to connect it more firmly to the work of social regeneration. While this report addresses both faith-based and secular organizations dealing with human needs, the emphasis is clearly and intentionally on the former — because that is where today's controversies tend to be and where better public understanding of the facts can reduce concerns about the appropriate role of faith-based organizations in effectively and constitutionally meeting human needs. We are keenly aware that many Americans are torn about the role of religion in our nation's public life. At times in U.S. history, religion has been a source of intolerance and social conflict. But it has also supplied a durable foundation and motivation for much that is good and noble in our national character.

As de Tocqueville noted, community and religious groups are the backbone of civil society, nurturing America's core values of active citizenship, community self-reliance, and public spiritedness. Religious groups, for example, have played a key role in our nation's historic struggles for economic justice, a compassionate government, and civil rights for minorities and women. The provision of education, welfare, and health services by both faith-based and community-based organizations is a tangible manifestation of the American ethic of voluntary service and civic engagement, and has been an important means of building and sustaining our community.

¹ The term "faith-based organization," as used in this report, generally refers to faith-based providers of social, educational, and/or health services to people in need.

Fourth, a recognition of the variety of religious characteristics of faith-based organizations is urgently needed, to help bring greater clarity to the ongoing public debate on these issues. We have proposed a typology of such characteristics, including the role of religious transformation, as a way to improve the sorely needed recognition and understanding of the great diversity within and between faith-based organizations in this country.² This typology should be helpful to all of us in better understanding how to clarify the rules that govern the relationship between government and community and faith-based organizations — in ways that make the ground rules clear, facilitate closer collaboration, and protect our constitutionally guaranteed freedoms. Such understanding would also encourage private foundations and corporations to remove some of the current barriers to partnerships between them and faith-based organizations.

Fifth, closer collaboration between government and community and particularly faith-based groups will require a tenacious search for pragmatic, tailored, occasionally messy, but typically American solutions. A host of knotty questions are involved that highlight deeply held values that are in tension in our society. Can civic and religious groups maintain their distinct identity and autonomy or will they be swallowed up by rules-driven government bureaucracies? Will steering more public resources to religious charities run afoul of constitutional strictures against state “establishment” of religion? We hope our report will be a building block toward a public consensus on the answers to these questions.

We offer in the following section 38 concrete Recommendations that deal with individual rights, government responsibilities, responsibilities of faith-based organizations, community empowerment, research, and employment. If implemented, these Recommendations will generate these important benefits for all Americans:

- ▮ A significant increase in the priority and the resources that government, individuals, corporations, and foundations assign to meeting human needs — including new tax incentives to encourage charitable giving, tax deductions for charitable contributions by *all* Americans, and a new relationship between faith-based organizations and institutional givers. (Recommendations 1-6)
- ▮ New requirements that assure information and choices to protect the freedom of conscience of all program participants. (Recommendations 7 and 18)
- ▮ Consistent, specific, and public guidelines from all agencies administering public programs regarding the key issues of eligibility for funding, relationship to religious institutions or programs, and employment policies. (Recommendation 9)
- ▮ Clarification of the responsibilities of government agencies. (Recommendations 7-16)
- ▮ Clarification of the rights and responsibilities of faith-based organizations. (Recommendations 17-22)
- ▮ Measures to better empower communities.³ (Recommendations 23-29)

²The characteristics of religious organizations and of their programs are discussed in the typology included in Chapter V of this report. The six categories discussed and described in this typology are: “faith-permeated,” “faith-centered,” “faith-affiliated,” “faith-background,” “faith-secular partnership,” and “secular.”

³Since the issuance of our *Finding Common Ground* report in January 2002, regional demonstration projects supported by the federal government (See Chapter IV) have developed organizations that facilitate efforts of faith-based and other community-based organizations that operate in ways consistent with requirements outlined elsewhere in this report, while reducing their administrative and economic burdens. We urge the expansion of these and other projects on a non-partisan basis, as well as private support of efforts to increase capacity building.

- ▶ A public policy debate that is more fact-based, due to expanded, independent research that describes faith-based groups in their full diversity and incorporates them into evaluations of comparative outcomes, and the emergence of a new language to describe the variety of faith-based organizations and programs. (Recommendations 30-32)
- ▶ A new Agreed Statement on existing law regarding employment practices of faith-based organizations that receive government funds. (Recommendations 33-38)

We address our findings and Recommendations primarily to public officials at all levels, to business and philanthropic leaders, and to faith-based and secular providers of human services. We hope that the results of our work will also be of interest to clergy and congregations, to researchers, scholars and students, the media, and the general public. ■

Recommendations

I. Increased Resources to Meet Human Needs

A. Government Action

1. **Increased Government Funding:** Government leaders at all levels should give higher priority to meeting human needs, by expanding resources available to effective programs.
2. **Individual Tax Incentives:** To encourage greater individual giving to non-governmental organizations working to address poverty and related human needs, government leaders should adopt targeted tax law changes, including: deductibility of charitable contributions by non-itemizers, and allowing donations from IRAs without penalty.
3. **Corporate Tax Incentives:** To encourage corporate giving, government leaders should authorize tax deductions for in-kind transportation and storage costs, and ease other restrictions on in-kind contributions.

B. Private Action

4. **Increased Private Funding:** Individuals, corporations, and foundations should assign a higher priority to, and expand giving for, helping meet human needs.
5. **New Faith-Secular Relationships:** Private funders and potential faith-based recipients of such funding should consider adopting common standards and principles to enable institutional funders to understand their options, be clear about their limits, and level the playing field for eligible faith-based organizations.
6. **Technical Assistance:** Private funders and private institutions — such as accounting or law firms, law schools, bar associations, and community legal services agencies — should expand assistance to community organizations, including help for churches, mosques, synagogues, and other houses of worship in forming or affiliating with 501(c)(3) organizations and/or collaboration with separate intermediaries.

II. Responsibilities of Government Agencies

A. Agreements Related to All Forms of Government Assistance

7. **Religious Freedom for Individuals:** Government agencies are responsible for protecting the religious freedom of participants in government-funded programs.
8. **Religious Freedom for Faith-Based Organizations:** Government agencies are responsible for assuring that the religious and associational rights of faith-based organizations are protected, consistent with constitutional requirements.
9. **Transparency:** Government agencies should be transparent to potential providers, legislatures, and the general public regarding the agencies' eligibility criteria for different varieties of faith-based organizations, the standards for faith-related program content, any required separation of privately funded religious activities, employment practices, and any requirements of institutional separation of funded programs and houses of worship.
10. **Standards:** Government agencies should apply to all providers, in a supportive manner, the same standards for effectiveness, reporting, financial accountability, health, safety, and other consumer protection; in setting administrative procedures, agencies should take into account the practical limits of, and requirements for, smaller community organizations.

11. **Neutrality:** Government agencies must not discriminate against or in favor of qualified providers on account of their particular faith tradition, or lack of a stated faith tradition, or show favoritism on political or other partisan grounds related to the faith tradition of any organization.
12. **Remedies:** Government agencies should provide more effective remedies to prevent misunderstanding, resolve disagreements, encourage consistency, and otherwise promote a level playing field for resolution of disputes and disagreements.

B. Agreements Related to Direct Government Funding

13. **Limits on Religious Activities:** Government agencies should bear responsibility for assuring that government funds are not used for proselytization, religious instruction, or worship.
14. **Time/Space Separation:** Optional, privately funded religious activities must be adequately separated in time and/or space from publicly funded activities within the same organization.

C. Agreement Related to Maintaining Institutional Separation Between Houses of Worship and Government Funding.

15. **Administrative Separation:** Government agencies should require clear administrative separation between the financial records of government-funded programs and those of houses of worship.

D. Agreement Related to Indirect Aid

16. **Information and Access to Alternatives:** Where programs allow participants to select among different providers — including faith-based and community-based organizations — government is responsible for protecting the legal and constitutional rights of individuals and organizations.

III. Responsibilities of Faith-Based Organizations

17. **Transparency:** Faith-based organizations receiving government funding must be open and explicit with government agencies and participants about the religious aspects of their programs and policies.
18. **Religious Freedom of Participants:** Faith-based organizations should respect the religious beliefs of all persons who participate in their programs.
19. **Non-Discrimination among Beneficiaries:** Faith-based organizations receiving government funds should not limit participation by qualifying individuals on the basis of religion.
20. **Supporting Alternatives:** Faith-based organizations that receive government funds should work alongside other community groups to encourage government agencies to provide appropriate alternatives for all potential program participants.
21. **501(c)(3) Organizations:** To the greatest extent practicable, individuals and groups that seek to provide services with government assistance should do so through 501(c)(3) organizations that are institutionally separate from churches or other houses of worship.
22. **Code of Conduct:** Associations of faith-based organizations should come together to develop an interfaith code of conduct applicable to all faith-based organizations.

IV. Community Empowerment

23. **Technical Assistance:** The capacities and skills necessary for community-based organizations, including faith-based organizations, should be increased to allow them to compete for public and private funding.
24. **Equal Access:** Federal and state government grant scorings should give bonus points to effective community-based organization proposals, including faith-based organizations, that include programming targeted to low income participants, low income people in governance and operations positions, and explicit community empowerment strategies.
25. **Government Administrative Policies:** Federal and state agencies should modify administrative policies to remove barriers to participation by effective community-based organizations, including faith-based organizations.
26. **Volunteer Staff:** The federal government should increase funding of AmeriCorps, VISTA, and the RSVP sector of Senior Corps volunteers to help enhance the capabilities of community organizations, including faith-based organizations, to provide their own fiscal and administrative services.
27. **Model Projects:** In order to promote innovation, federal agencies should encourage and fund demonstration projects providing programming outside of existing delivery systems conducted by community-based organizations, including faith-based organizations that operate in ways consistent with the requirements outlined elsewhere in this report.
28. **Policy Role for Community Organizations:** Government agencies should give community organizations, including faith-based organizations, regular and legitimate roles in shaping public policy and in monitoring program regulations and their implementation.
29. **New Empowerment Tools:** Federal, state, and local officials should work with leaders of community-based organizations, including faith-based organizations, and provide modest funding to both increase understanding of empowerment tools, and develop a new generation of such tools, that can give residents of poor communities limited, yet real, authority to govern key institutions affecting the use and flow of human and economic resources.

V. Closing the Gaps of Knowledge and Perception

30. **Variety of Faith-Based Organizations:** Policymakers, funders, and other leaders should better understand the variety of faith-based organizations providing services to meet human needs, and consistently use language in public discussions that clarifies these distinctions.
31. **Research:** Government agencies, foundations, other civic and business leaders, funders of social services, and the providers themselves should support, financially and otherwise, the conduct of independent, relevant, rigorous, and non-partisan research that compares outcomes of a wide range of approaches, including faith-based, secular, and other national and community-based organizations and programs.
32. **Data Collection:** Government agencies should help collect information on the extent and nature of government funding for faith-based programs delivering social and educational services.

VI. Employment Policies

33. **Transparency by Public Agencies:** Government agencies should be required to explicitly state their interpretation of applicable law regarding the effect, if any, of each program on the employment policies of participating faith-based organizations.
34. **Research:** Faith-based organizations, public agencies, and private researchers should work together, in ways that do not overly burden faith-based organizations, to ascertain the extent of religiously based employment preferences in government-supported positions.
35. **Transparency in Government-Supported Programs:** Faith-based organizations that seek or already receive government funds should be transparent about their employment policies and practices.
36. **Certification:** Faith-based organizations should develop a common mechanism for self-certification for those organizations that wish to inform public agencies and secular funders of their employment policies.
37. **Goods and Services:** Where government agencies provide goods, services, and government-produced information to beneficiaries through privately funded faith-based organizations without supporting the cost of staff or other program expenses, the faith-based organization should not be at risk of loss of any applicable employment exemption in the context of meeting needs for emergency assistance.
38. **Agreed Statement:** To increase public understanding, an agreed statement on current law on employment practices, faith-based organizations and government funding should be made widely available through the Working Group, and periodically updated using appropriate consensus processes. ■

I. Increased Resources to Meet Human Needs

While the current economic climate is challenging, human needs in our country are even greater than before. The impact of economic disruption such as we have experienced in the post-9/11 period falls most heavily on those without an economic safety net. Thus, in order for effective community-based and faith-based groups to address poverty and related unmet human needs, a major increase in financial resources is needed from government, private individuals, foundations, corporations, and other philanthropic institutions. One thing is certain to us: If civic groups and religious charities are forced to resolve these already contentious issues in a context of a fixed or even shrinking pool of government investment in human needs, political strife will be far higher and consensus more difficult to attain.

A. Government Action:

- 1. Increased Government Funding:** Government leaders at all levels should give higher priority to meeting human needs, by expanding resources available to effective programs.

The public investment of governmental resources in effective programs to overcome systemic poverty and injustice has fallen short for many decades. We call for a systemic, long-term change in the priorities of government at all levels. We realize how hard it will be for political leaders to protect effective programs to fight poverty in the current economic situation. Even after the current economic downturn is reversed, it will not be easier to put the poor first. We need political and moral leadership from our elected officials, beginning today, so that the priorities reflected in government budgets match the vision of a country where no child, no family, and no community is left behind.

- 2. Individual Tax Incentives:** To encourage greater individual giving to non-governmental organizations working to address poverty and related human needs, government leaders should adopt targeted tax law changes, including: deductibility of charitable contributions by non-itemizers, and allowing donations from IRAs without penalty.

Political leaders of both parties are proposing changes in tax laws that will, from their perspective, provide a combination of economic stimulus and greater equity. As Congress chooses among alternatives, high priority should be given to changes that would encourage private giving to organizations that help those in need.

Permitting non-itemizers to deduct their charitable tax deductions would affirm the generosity of all those who give, and encourage others to do so. Congress should consider and adopt provisions comparable to the original proposal submitted by President George W. Bush in early 2001, which allowed deductibility from the first dollar contributed up to a ceiling equal to the standard deduction. The first dollar given by one who cleans the office building by night should receive the same treatment as that of the executive who runs the building by day.

For many years, the tax code has given favorable treatment to taxpayers who contribute appreciated securities to qualified non-profit organizations. Taxpayers whose primary appreciated assets are contained in IRAs or other retirement accounts, however, cannot make comparable gifts without incurring significant tax liabilities. We urge Congress to remove penalties on these generous Americans, providing them tax treatment at least as favorable as those allowed to high-income donors of capital gain assets.

- 3. Corporate Tax Incentives:** To encourage corporate giving, government leaders should authorize tax deductions for in-kind transportation and storage costs, and ease other restrictions on in-kind contributions.

Procedures with which non-profit organizations must comply to assure deductibility of in-kind gifts should be altered or clarified in ways that will assure accountability for donors and minimize paperwork requirements for community-based groups. The typical local organizations that distribute food and clothing are almost entirely volunteer-based, with limited capacity for financial reporting. The value of in-kind contributions can be very large by comparison to their budgets. Existing rules have the effect, in the interpretation of some non-profits, of requiring financial audits and other costly accounting procedures, which would impose a substantial fund-raising requirement on groups without such capacity. The IRS and Congress should change existing rulings so that the transportation and storage of in-kind contributions are fully deductible. In some instances, needed supplies and materials are destroyed rather than being reused because of limitations on the deductibility of costs related to storage and transportation.

If Congress adopts a stimulus package including some kind of tax cuts, it should give high priority to targeted tax cuts of benefit to low income Americans.

B. Private Action:

- 4. Increased Private:** Individuals, corporations, and foundations should assign a higher priority to, and expand giving for, helping meet human needs.

A significant expansion in the work of non-governmental organizations, including community-based and faith-based organizations, will require more support from individuals and philanthropic institutions. Also, within existing resources, we believe it possible and desirable for foundations, corporations, and other philanthropic institutions to take more risks and be more flexible than government in supporting innovative social entrepreneurs and emerging grassroots leaders.

- 5. New Faith-Secular Relationships:** Private funders and potential faith-based recipients of such funding should consider adopting common standards and principles to enable institutional funders to understand their options, be clear about their limits, and level the playing field for eligible faith-based organizations.

Some foundations and corporations maintain policies that exclude faith-based organizations from consideration. A forthcoming study by the Rockefeller Institute suggests that some of these limits are based on a lack of knowledge about the practices of faith-based groups, as well as a belief that, for a variety of reasons, funding of some or all faith-based groups may be inappropriate for certain private funders.

We propose the following standards to facilitate better communication between these groups and open new possibilities for mutually beneficial partnerships, while respecting the diversity of the stakeholders of the corporations, foundations, and other philanthropic institutions from which grants are sought.

Statement of Common Principles and Standards

Americans daily experience many urgent and unmet needs. In America we have a long history of forming and supporting voluntary organizations that work to improve their communities and help people in need. The provision of community health, education, and social welfare services by community-based organizations, including faith-based organizations, is a tangible manifestation of the American ethic of civic engagement, and is fundamental to the American way of building and sustaining community. The goals of the following guidelines are to assist private funders to communicate clearly the standards to be met by all providers, both secular and faith-based, which wish to be considered as potential recipients of funds, and assist them in ascertaining which organizations fit within those guidelines.

We recognize the positive role of faith in providing services, as well as the right of providers to freely express and practice their faith. We also respect the rights of private funders to set their own priorities and follow their conscience in determining how and to whom they grant funds. Because we believe there should be consistency in the respective standards for faith-based service providers in their funding applications, and by persons in need seeking services, we agree to the following:

Standards for Private Funders:

1. We are transparent to potential applicants about the relationship of faith traditions, if any, to our preferences or exclusions.⁴
2. Faith-based organizations within the scope of our guidelines that adopt the following standards will be evaluated on the same basis and under the same conditions as other applicants.

Standards for Service Providers:

1. We are transparent to funders and participants about our religious affiliation and about the religious characteristics of our programs, particularly the role of personal transformation in desired outcomes.⁵
2. All who seek our aid will be treated equally, without regard to religious beliefs.
3. Participants will be offered consistent conditions of participation and service without regard to religious beliefs.
4. Applicants or participants who seek alternatives for reasons of conscience will be assisted.

Signatory Lists

- 6. Technical Assistance: Private funders and private institutions — such as accounting or law firms, law schools, bar associations, and community legal services agencies — should expand assistance to community organizations, including help for churches, mosques, synagogues, and other houses of worship in forming or affiliating with 501(c)(3) organizations and/or collaborating with separate intermediaries.**

Such assistance, particularly on the part of institutions with a nationwide presence, could work in conjunction with publicly funded technical assistance (e.g., from the Compassion Fund) to increase the financial and other management capabilities of smaller groups, and also assist houses of worship to form separate 501(c)(3) organizations where needed. ■

⁴ We, the signatories, will use the Working Group Typology to communicate preferences or exclusions based on the religious characteristics of service providers.

⁵ We will explain the religious characteristics of our programs with reference to the Working Group Typology, where indicated by funder guidelines.

II. Responsibilities of Government Agencies

A. Agreements Related to All Forms of Government Assistance

This chapter deals with the responsibilities of government agencies to use taxpayer funds in an effective and constitutional manner when they support faith-based organizations, especially as they relate to program activities. Issues related to employment policies of government-funded groups are dealt with in Chapter VI.

The Recommendations that follow represent our agreement on the conditions that should apply to government-funded *programs*, assuming that the *organization* is otherwise eligible to participate. It should be noted that some of us believe Supreme Court precedent precludes government funding for houses of worship as well as some faith-permeated and faith-centered organizations. Others of us believe, with equal conviction, that recent Supreme Court cases plainly reject any such blanket restrictions.

In this Chapter we refer to the varieties of faith-based organizations using terms from our Typology of Religious Characteristics of Social Service and Educational Organizations and Programs, which is found in Chapter V of this report.

7. Religious Freedom for Individuals: Government agencies are responsible for protecting the religious freedom of participants in government-funded programs.

The rights of individuals to religious freedom are protected by the U.S. and state Constitutions, as well as federal and state laws. With respect to government-funded social or educational services, government agencies should be responsible, at a minimum, to assure that potential participants:

- ▶ Have an accessible alternative that is secular or otherwise without objectionable religious messages;⁶
- ▶ Have that accessible alternative reasonably equal in quality to funded faith-based programs;
- ▶ Be allowed to exercise their constitutionally protected right to choose such an alternative if they do not wish to participate in a program with religious messages;
- ▶ Receive sufficient information about the available programs in order to be informed, in advance, about the extent to which any program is (or is not) religious;
- ▶ Be allowed to exercise their constitutionally protected right to participate or not participate as they choose in any separate, privately funded religious activity conducted by the same or related organizations;
- ▶ Have notice of, and access to, a practical way of informing public officials and receive appropriate assistance if he/she finds that the program is religious and in conflict with his/her values or beliefs. This is particularly important in the case of participants who have diminished capacity or urgent care needs when making an initial decision about their preferred provider of services.

⁶ The requirement for an alternative that is secular or otherwise without objectionable religious messages does not impose an affirmative duty on government to create programs to satisfy particular religiously based preferences or desires.

8. Religious Freedom for Faith-Based Organizations: Government agencies are responsible for assuring that the religious and associational rights of faith-based organizations are protected, consistent with constitutional requirements.

Faith-based organizations have rights of expression and association based on the U.S. and state Constitutions, as well as statutory rights based on the Religious Freedom Restoration Act of 1993 (PL 103-194) and other similar state and federal laws. Just as public agencies have a responsibility to affirm and protect individual rights (see Recommendation 7), these same agencies have a responsibility to recognize and implement the laws that protect religious institutions. We acknowledge that these legal and constitutional rights are sometimes in tension with others. It is vital that public agencies acknowledge these tensions, rather than ignore them, and make the balancing and resolution of these potential conflicts open and explicit, while also assuring that any claim based on statutes or agency rules gives way to constitutional rights.

9. Transparency: Government agencies should be transparent to potential providers, legislatures, and the general public regarding the agencies' eligibility criteria for different varieties of faith-based organizations, the standards for faith-related program content, any required separation of privately funded religious activities, employment practices, and any requirements of institutional separation of funded programs and houses of worship.

Every government program is potentially affected by a number of different statutes, executive orders, regulations and policies from federal, state, and local levels. Faith-based organizations need to know how the agency charged with administering the program will interpret and apply these laws. Such notice should also include recognition that policies are subject to review and modification. Legislators and citizens' groups that may wish to understand, support, or to challenge agency interpretations of constitutional or statutory limits also deserve to know.

Government agencies should be particularly explicit on the following questions:

- ▶ Does the agency exclude or limit houses of worship, or any other types of faith-based organizations?
 - ▶ To what extent may faith-based organizations with privately funded religious program components participate in government-funded programs? In the context of specific programs, what are the standards for separation of religious and non-religious components (if any are needed)?
 - ▶ What is the effect on eligibility, if any, of a faith-based organization's use of religious preferences in hiring?
 - ▶ What is the effect on eligibility, if any, of the visible display of religious symbols, presence of religious statements in charters, and religious affiliation of board members?
- 10. Standards:** Government agencies should apply to all providers, in a supportive manner, the same standards for effectiveness, reporting, financial accountability, health, safety, and other consumer protection; in setting administrative procedures, agencies should take into account the practical limits of, and requirements for, smaller community organizations.

As with many of the issues addressed in this report, there is a need for a level playing field in applying such evaluation criteria. Without compromising standards of performance and accountability, government agencies should also design and implement administrative requirements in a manner that takes into account:

- ▮ The practical limits of smaller community-based non-governmental organizations, including those that are faith-based, that sometimes have unique capabilities to meet program goals;
- ▮ The special needs of populations extremely isolated by geography or social conditions; and
- ▮ The historic barriers to participation by excluded classes of providers.⁷

11. Neutrality: Government agencies must not discriminate against or in favor of qualified providers on account of their particular faith tradition, or lack of a stated faith tradition, or show favoritism on political or other partisan grounds related to the faith tradition of any organization.

Among qualifying faith-based organizations, government agencies must not show favoritism for or against any particular faith tradition, or for political positions taken by such organizations. These agencies should review any standards that may have the effect of limiting or favoring the faith-based organizations of a particular faith tradition to assure that they are directly related to assuring desired program outcomes and/or public accountability. (See footnote 2, p. 9, and the typology in Chapter V.)

12. Remedies: Government agencies should provide more effective remedies to prevent misunderstanding, resolve disagreements, encourage consistency, and otherwise promote a level playing field for resolution of disputes and disagreements.

In our discussions of government funding, we saw the need for appropriate and symmetrical means for redress when people disagree with the way public agencies interpret broad or ambiguous constitutional and statutory principles with regard to faith-based providers. In addition to traditional legal processes, we see the need for other kinds of remedies:

- ▮ To the extent practicable, agencies should institute procedures for interpretative rulings or advance directives on ambiguous policy questions;
- ▮ Individual program participants and organizations should have access to prompt, low-cost, and transparent dispute resolution processes;⁸
- ▮ Federal agencies should implement existing laws that allow maximum use of Alternative Dispute Resolution for resolution of legal disputes;
- ▮ Stakeholders should have access to legal services through non-governmental organizations, *pro bono* programs from the private bar, law schools, and others; and
- ▮ Federal funding agencies should make transparency a requirement for state and local agencies administering federal programs, and faith-based organizations seeking financial support.

B. Agreements Related to Direct Aid

In general, support is “direct” when it flows from the government in the form of a grant or contract to a non-governmental organization without going through a private intermediary — for example, government grants to colleges for recruitment and support of minority students, in order to encourage more minority students to attend college. It is “indirect” when the government support reaches a non-governmental organization as a result of intervening decisions by beneficiaries — as illustrated by government scholarships to minority students, which can be used at the school of the latter’s choice.

⁷ See related Recommendations in IV. Community Empowerment, pp. 25ff.

⁸ We are not calling for the creation of new, special purpose structures, but rather the utilization of existing ones.

13. Limits on Religious Activities: Government agencies should bear responsibility for assuring that government funds are not used for proselytization, religious instruction, or worship.

14. Time/Space Separation: Optional, privately funded religious activities must be adequately separated in time and/or space from publicly funded activities within the same organization.

Program guidelines and materials should make this limitation explicit. Agencies should also provide individuals with information about their rights and remedies if a program fails to meet this test.

We acknowledge that careful attention is needed especially in situations that can involve a combination of publicly funded secular components and privately funded religious components within one organization. Courts and agencies have provided very little guidance on the degree of required separation. The underlying principle is to respect the religious conscience of all participants, avoiding situations that require an individual to face unwanted attention in order to exercise choice. Thus, for example, Working Group members report that allowing participants to join an additional activity that occurs before or after the program, rather than requiring them to leave an ongoing activity, helps to prevent discomfort of this kind.

C. Agreement Related to Maintaining Institutional Separation Between Houses of Worship and Government Funding.

15. Administrative Separation: Government agencies should require clear administrative separation between the financial records of government-funded programs and those of houses of worship.

We are in agreement that agencies should establish conditions of participation in government-funded programs that assure financial accountability for taxpayer funds without government intrusion into the financial records of a church, mosque, synagogue, or other house of worship. Whether or not legally required, we are also in agreement on the wisdom of operating government-funded programs through separate 501(c)(3) corporations.⁹ To encourage the use of separate 501(c)(3) organizations:

- ▶ The federal government should waive or reduce fees for community-based groups; create simplified forms; and provide technical assistance;
- ▶ State governments should follow the federal lead and reduce complexity and cost of forming new corporations;
- ▶ All government agencies should pro-actively encourage formation of separate 501(c)(3) organizations where services are supported with government funds by providing technical assistance, securing the assistance of volunteer attorneys and other professionals; and
- ▶ Federal agencies should solicit data, without intimidation or interference, to document the extent to which this objective is already being met within their programs, and to determine whether agency action may be needed to remove barriers or assist groups with this important step in institutional capacity-building.

⁹ See Recommendation 21, p.23, for further discussion of our reasons.

D. Agreement Related to Indirect Aid

Some of our members and the larger community interested in expanding the role of faith-based providers of services see indirect funding as a means of support to such providers in a way that poses less constitutional and other problems — and some do not. The following Recommendation is not meant to express agreement on whether houses of worship and other faith-permeated organizations (see typology in Chapter V) should be invited or excluded from participation in programs of indirect aid.¹⁰

16. Information and Access to Alternatives: Where programs allow participants to select among different providers — including faith-based and community-based organizations — government is responsible for protecting the legal and constitutional rights of individuals and organizations.

We acknowledge that reasonable people — including members of the Working Group — disagree on the wisdom of the recent Supreme Court decisions on school vouchers, their application outside the public school context, and whether indirect aid should be expanded or contracted in social services programs.

That said, we have found significant common ground, not only as to direct funding but also standards that must be met, at a minimum, for programs where government funds may reach faith-based organizations through the intervening choices of individual beneficiaries. We offer our Recommendation to decision makers in the public and private sectors who seek, in good faith, to operate in a manner consistent with settled law and shared values.

At a minimum, government agencies must assure that participants:

- ▶ Have an accessible alternative that is secular or otherwise without objectionable religious messages;
- ▶ Have that alternative be reasonably equal in quality to funded faith-based programs;
- ▶ Be free of any penalty, coercion, or government promotion to elect a faith-based or non-faith-based provider;
- ▶ Receive information about secular as well as faith-based choices, including the religious background or content, if any;
- ▶ Possess the opportunity to reevaluate their original decision early, based on their own values, and make a change, *away* from or *to* a religious provider, especially in those situations where the initial choice must be made at a time of diminished capacity or urgent need. ■

¹⁰ See our discussion of the disputed constitutional questions concerning eligibility of houses of worship and some permeated organizations at p. 18., and eligibility of organizations that exercise religious preferences in hiring in our “Agreed Statement of Current Law on Employment Practices of Government-Funded Religious Programs, pp. 40 ff.

III. Responsibilities of Faith-Based Organizations

- 17. Transparency:** Faith-based organizations receiving government funding must be open and explicit with government agencies and participants about the religious aspects of their programs and policies.

Faith-based organizations should be proactive to inform government funding agencies about the religious content and nature of their programs, and seek agency guidance in advance on conditions and limitations affecting their program content, internal structure, and hiring practices.

- 18. Religious Freedom of Participants:** Faith-based organizations should respect the religious beliefs of all persons who participate in their programs.

Faith-based organizations should:

- ▮ Take responsibility to help potential participants understand the religious nature of the program;
- ▮ Allow individuals appropriate avenues to express concerns about the religious content of a program or its absence, and should not maintain barriers for any individual who comes to desire an alternative service for reasons related to their religious beliefs or secular or religious values;
- ▮ Seek in good faith to comply with the letter and the spirit of the laws;
- ▮ Respect the religious faith of all participants; and
- ▮ Maintain a commitment to effectiveness, including openness to honest evaluation.

- 19. Non-discrimination among Beneficiaries:** Faith-based organizations receiving government funds should not limit participation by qualifying individuals on the basis of religion.

No person who qualifies for a program's benefits and who is willing and able to participate in the program of a particular non-governmental organization provider should be denied services on account of his or her religious beliefs.

- 20. Supporting Alternatives:** Faith-based organizations that receive government funds should work alongside other community groups to encourage government agencies to provide appropriate alternatives for all potential program participants.

Government agencies have the legal responsibility to assure appropriate alternatives for all participants (see Recommendation 8, p.19). However, everyone loses if courts and agencies are required to resolve the unanswered legal question of what happens to effective faith-based programs if other options are *not* available. Faith-based organizations have a role to play, as concerned citizens and local leaders, to encourage the development and maintenance of appropriate alternatives.

- 21. 501(c)(3) Organizations:** To the greatest extent practicable, individuals and groups that seek to provide services with government assistance should do so through 501(c)(3) organizations that are institutionally separate from churches or other houses of worship.

We believe it is prudent for houses of worship, such as churches, synagogues, mosques, or other similar religious institutions, that seek government funding to form a separate 501(c)(3). We do not suggest that a separate tax-exempt entity solves all issues related to public funding, but it does allow, at a minimum, segregation of government funds and activities for purposes of accountability. The creation of such corporations can strengthen the capacity for legal and financial accountability without requiring or permitting government to examine a church's work and finances.

22. Code of Conduct: Associations of faith-based organizations should come together to develop an interfaith code of conduct applicable to all faith-based organizations.

We note that codes of conduct have been developed within existing faith traditions. We urge that broadly representative interfaith groups seek to develop codes of conduct that could be acceptable across faith traditions, for the benefit of the organizations themselves as well as funders from outside those traditions. ■

IV. Community Empowerment

Community associations have served a critical role in the founding and sustaining of America's experiment in self-governance. Meeting human needs requires more than increased availability of services to individuals. It requires a community rich in associations that are led by members of the community — community-based organizations, some of which may be faith-based, and others secular.

Today, non-governmental organizations are being asked to substantially expand their assistance to empower individuals to become productive citizens in productive communities. We seek a renewed national commitment to empower the resources within these communities. For this to happen, federal, state, and local government policies must support communities with the appropriate authority, resources, and tools to do their important work.

Such efforts are particularly required for those neighborhoods where poverty, weak schools, high crime, family instability, substance abuse, lack of economic development, and racial and ethnic discrimination are concentrated. We cannot and must not abandon these communities, but instead must make a renewed commitment as a nation to stand with those who struggle, helping them find the strength they need from within, and the help they need from without, to change and improve their lives.

Empowerment of individuals and communities is an integral component of sustainable change. Such empowerment should be the framework for the way in which the poor are engaged in the provision of services with the intent of reducing dependency and encouraging individual and group initiatives.

The vast federal system calls for the efforts of many different organizations to realize a national scope of effective and responsive services. But one size does not fit all. The inception of the poverty program was accompanied by a sustained effort to empower community organizations. It sought new ways to overcome such systematic issues as bureaucratic co-option of local processes, over-regulation, lack of viable community participation, and sub-optimal results from programs.

If our society is to achieve the outcomes we seek in afflicted communities, many more communities need to be empowered. Such communities may be defined by geographic proximity or self-defined by affinities such as common ethnicity, recent refugee/immigrant status, or faith. Members of such communities are not necessarily located in close geographical proximity to each other, but are nonetheless often closely tied to each other by ethnic, religious, and other bonds.

Neighborhood organizations and associations of like-minded people can bring natural advantages to society's struggle against poverty. They offer greater personal access to those in need, bridge the divide between wealth and poverty, cross cultural and linguistic barriers, and tap into people's willingness to help each other. Empowerment programs and initiatives:

- ▶ Are accountable to the community that they serve;
- ▶ Encourage participants of services, as well as community leaders and staff to take part in decisions and have regular channels of input;
- ▶ Provide full information to participants;
- ▶ Encourage community-based and faith-based groups to participate and collaborate with other groups seeking to address issues of equity and justice;
- ▶ Encourage capacity building and leadership development in faith-based and community-based programs, including smaller groups who practice effective empowerment approaches; and

- ▶ Give individuals choices among programs in their community.

We attempt to address these long-standing issues and foster the conditions that allow communities and individuals to solve their own common problems.

23. Technical Assistance: The capacities and skills necessary for community-based organizations, including faith-based organizations, should be increased to allow them to compete for public and private funding.

Since the issuance of our *Finding Common Ground* report in January 2002, regional demonstration projects, e.g., the Indian Self-Determination and Education Assistance Act (P.L. 100-472), supported by the federal government, have developed organizations that facilitate efforts of faith-based and other community-based organizations while reducing their administrative and economic burdens. In addition, several federal agencies and privately funded programs have been designed for the specific purpose of building capacity so that these organizations might be more competitive. An example is the October 2002 Department of Labor seminars on grant writing. We support these projects, and urge their expansion, as well as private support of similar efforts to increase capacity building.

24. Equal Access: Federal and state government grant scorings should give bonus points to effective community-based organization proposals, including faith-based organizations, that include programming targeted to low income participants, low income people in governance and operations positions, and explicit community empowerment strategies.

Rewarding such proposals will encourage the poor to participate in their organizations' programming and in the political process necessary to facilitate success. Community organizers, such as trained VISTA volunteers recruited from the program neighborhood, can make sure that an organization identifies and attracts people to the organization. They also develop new leadership and improve relationships among the people to make the organization more effective. Such organizers are trained to encourage people to take greater responsibility for the future of their communities, and thus build mutual respect for one another and achieve growth as individuals.

25. Government Administrative Policies: Federal and state agencies should modify administrative policies to remove barriers to participation by effective community-based organizations, including faith-based organizations.

Models like the Regulatory Flexibility Act of 1980 (PL 96-354) and several acts affecting small communities can provide reasonable regulatory relief to facilitate the grants process for faith-based and community-based organizations. The 990EZ streamlined financial reporting Internal Revenue Service (IRS) form is recognition of the need to scale down the volume of required reporting to the scale of the program. The first *Finding Common Ground* report recommended an EZ 501(c)(3) application as well. Such continued regulatory relief should be encouraged at all levels, including a simplification of state incorporation procedures.

26. Volunteer Staff: The federal government should increase funding of AmeriCorps, VISTA, and the RSVP sector of Senior Corps volunteers to help enhance the capabilities of community organizations, including faith-based organizations, to provide their own fiscal and administrative services.

The Corporation for National and Community Service, the umbrella organization for AmeriCorps, VISTA, and RSVP (of the Senior Corps), encourages innovative, flexible use of trained service members. For example, VISTA contracted with the Corporation for Enterprise Development (www.cfed.org) to train Vista Volunteers as administrators for local Individual Development

Account (IDA) programs. Establishment and/or expansion of appropriate accounting practices, outcome measurement, report writing, resource identification and grant-writing, budget development and human resources training would be extremely valuable to both faith-based and community-based organizations. Such specific, capacity building support should be expanded.

27. Model Projects: In order to promote innovation, federal agencies should encourage and fund demonstration projects providing programming outside of existing delivery systems conducted by community-based organizations, including faith-based organizations that operate in ways consistent with the requirements outlined elsewhere in this report.

All federal agencies should identify funding sources and make this information easily accessible regarding innovative demonstration projects. These may not fit current ways of providing services, but are nonetheless outcome-focused. These programs should always operate within the confines of respect for the personal and religious liberties of the program participants, consistent with legal requirements and the Recommendations in this report.

28. Policy Role for Community Organizations: Government agencies should give community organizations, including faith-based organizations, regular and legitimate roles in shaping public policy and in monitoring program regulations and their implementation.

There is well-established evidence of successful citizen oversight and enforcement of social service programming. This participation is in addition to the mandated bureaucratic oversight and is supported by the Community Reinvestment Act, Superfund, Community Right to Know Law, and Housing and Urban Development regulations allowing tenant participation in management of public and assisted housing. Community Development Block Grant monitoring allows for citizen involvement as well.

29. New Empowerment Tools: Federal, state, and local officials should work with leaders of community-based organizations, including faith-based organizations, and provide modest funding to both increase understanding of empowerment tools, and develop a new generation of such tools, that can give residents of poor communities limited, yet real, authority to govern key institutions affecting the use and flow of human and economic resources.

A small but growing movement is taking place across the United States in the use of special purpose governing units that are focused on issues of inner city and other poor communities, such as: business development districts to focus economic development monies; community improvement districts to focus the activities of community-based groups; charter schools to give citizens of poor communities a greater stake in their school; and neighborhood governing structures to integrate community and governmental efforts.

A 15-year study by the Harvard Project on American Indian Economic Development, tracking the changes brought about by the 1997 federal Indian Self-Governance Act, finds that the single best predictor of success is limited yet real sovereignty. Likewise, in the state of Maryland, the City of Baltimore under the leadership of Mayor Schmoke and residents of Charles Village, created the Charles Village Community Improvement District, which has been able to utilize \$500,000 of its own tax resources as well as focused federal, state, and city aid for the last ten years. This represents just one of the many efforts by inner city and other poor neighborhoods to gain some control over their communities nationwide.

Relatively modest federal government funding could help catalog the existence and use of such tools, as well as in evaluating their potential. ■

V. Closing the Gaps of Knowledge and Perception

The debates over faith-based initiatives have underscored the critical need for a new vocabulary that more accurately reflects the complex realities in contention. The current catchall term, “faith-based organizations,” confuses and divides because no clear definition exists of what it means to be “faith-based.” Similarly, the absence of a large, widely accepted body of research about the extent and effectiveness of faith-based social service programs, and on the administrative, legal, and other potential problems associated with these programs is a serious hindrance to the development of consensus on important policy questions. To address these two related and vital gaps in our knowledge and perception, we make the following Recommendations.

30. Variety of Faith-Based Organizations: Policymakers, funders, and other leaders should better understand the variety of faith-based organizations providing services to meet human needs, and consistently use language in public discussions that clarifies these distinctions.

Lack of clarity in our vocabulary on this subject creates problems for studying, funding, and making policies regarding social service and educational entities with a connection to religion.

Research that lacks careful distinctions may end up overstating or understating the role of faith in program outcomes. It may also miss the relationship between particular sets of religious characteristics and other key variables such as resource level or administrative capacity. Without clear categories, public or private funding decisions may rest more on a funder’s preconceptions about an entity’s religiosity (or about its religious tradition) than on rational assessments of what types of entities are compatible with their style, vision, and approach. Public policy debates are often hindered by the use of one-size-fits-all language, which closes the doors to constructive and creative policy-making. What we need now is more precision in describing different types of faith-based organizations so that we can accurately appraise a whole wardrobe of options.

The typology that follows includes five categories of faith-based organizations or programs: faith-permeated, faith-centered, faith-affiliated, faith-background, faith-secular partnerships — in addition to the secular type. The typology includes two sections: characteristics of organizations, and characteristics of programs or projects. This division reflects the fact that an organization in one type may run a program that has a different set of religious characteristics. For example, a faith-centered organization may run a program that is faith-background in nature, or vice versa. Moreover, an organization may run several different programs, each falling into a different category. Thus to get an accurate picture it is often necessary to consider the organization as a whole and each of its programs separately.

The typology assesses each category in terms of several characteristics.

Organizations:

- ▶ Mission statement;
- ▶ Founding history;
- ▶ Affiliation with external agencies;
- ▶ Controlling board;
- ▶ Senior and other staff selection; and
- ▶ Financial and non-financial support.

Programs:

- ▶ Religious environment;
- ▶ Religious program content;
- ▶ Integration of religious content with other program components; and
- ▶ Expected connection between religious content and desired outcomes.

This typology:

- ▶ Attempts to identify the visibly expressive ways that religion may be present in a community-serving organization or program. It is concerned primarily with observable and explicit manifestations of religion, such as language, symbols, policies, and activities. This typology does not fully reflect the ways in which personal convictions and religious values, like service, mercy, and justice, motivate and give deeper meaning to social service and educational work, although this is an important dimension of faith.
- ▶ Refers to “explicitly religious” program content to identify activities and verbal messages that are, on their surface, intrinsically religious (such as prayer, study of sacred texts, discussions of religious doctrine, worship services, invitations to personal religious commitments, etc.). The typology focuses on these particular characteristics because (1) they are more readily observable and verifiable, and (2) they are, at present, the most controversial and relevant to questions of public policy. This is not meant to imply that program content that derives from religious teachings or conveys a nonverbal religious message, while outwardly appearing similar to that of secular programs, is any less “faith”-ful.
- ▶ Acknowledges that some faiths express their religiosity in less explicit, visibly evident ways than others. Some faiths, for example, place a high importance on communicating their religious beliefs to the people who receive services, in the hope that a spiritual conversion will contribute to improved quality of life; for other religious traditions, such verbal faith-sharing in the context of social service provision would be considered not only irrelevant to social outcomes but also inappropriate.
- ▶ Is thus not a tool to characterize an entity from left to right as being more to less religious in the sense of faith as a set of personal beliefs that gives meaning to one’s actions. An organization in any of the types (excluding “secular” and “faith-background”) may be deeply religious in this sense, if the individuals who work there infuse their vocation with their spiritual commitments.

Like any classification system, this typology is inherently limited. Life is more complex than can be depicted on a chart. A typology is meant to capture general trends, while the reality is that few actual organizations or programs fit perfectly into any abstract type. Many organizations and programs will fall in the gray area between the types, or combine elements of different categories. It is the overall picture (the type where the most significant characteristics of an organization or program fall) that indicates how best to classify an entity. We do not suggest this typology as a conclusive work, but rather as a tool to improve understanding. Further research to refine these types and their applications is important.

Table 1:
Typology¹
of religious
characteristics²
of social service
and educational
organizations
and programs

	Faith-permeated	Faith-centered
Mission statement	Explicitly religious	Explicitly religious
Founding	By religious group or for religious purpose	By religious group or for religious purpose
If affiliated with an external agency, is that agency religious? (e.g., a congregation or denomination)	Yes	Yes
Selection of controlling board	Explicitly religious. May be a) self-perpetuating board with explicit religious criteria; b) board elected by a religious body	Explicitly religious. May be a) self-perpetuating board with explicit religious criteria; b) board elected by a religious body
Selection of senior management	Faith commitment an explicit prerequisite	Faith commitment an explicit or implicit prerequisite
Selection of other staff	Religious faith is very important at all staff levels; most or all staff share organization's faith commitments	Religious faith is very important for faith-centered projects, but is sometimes less important in other positions. Most staff share organization's faith commitments
Financial support and non-financial resources	Policy of refusing funds that would undermine religious mission/identity; intentional cultivation of support from religious community	Often has policy of refusing funds that would undermine religious mission/identity; intentional cultivation of support from religious community

Faith-affiliated	Faith background	Faith-secular partnership	Secular
May be either explicit or implicit	Implicit (e.g., general reference to “promoting values”)	No reference to religion in mission of the partnership or the secular partner, but religion may be explicit in mission statements of faith partners	No spiritual content, but implicit or explicit references to values are often present
By religious group or for religious purpose	May have historic tie to a religious group, but connection is no longer strong	No reference to religious identity of founders of the secular partner. Faith partners founded by religious group or for religious purpose. Founders of the partnership may or may not be religious.	No reference to religious identity of founders
Often	Sometimes	Sometimes	No
Some, but not all, board members may be required or expected to have a particular faith or ecclesiastical commitment	Board might have been explicitly religious at one time, but now selected with little or no consideration of members’ faith commitment	Program controlled by secular partners, with little or no consideration of faith commitment of board members; input from faith partners	Faith commitment of board members not a factor
Normally (perhaps by unwritten expectation) share the organization’s faith commitment	Faith commitment is not relevant	Required to have respect for, but not to share faith of religious partners	Consideration of faith commitment considered improper
Project staff expected to have knowledge of and sensitivity to faith commitment of the organization; religious beliefs motivate some staff/volunteers	Little or no consideration of faith commitment of any staff; religious beliefs may motivate some staff/volunteers	Staff expected to understand and respect faith of religious partners; program relies significantly on volunteers from faith-based organizations	Consideration of faith commitment for any staff considered improper
May cultivate volunteer and in-kind support from religious community	May or may not cultivate support from religious community	Significant cultivation of volunteer and in-kind support from faith-partners	Little cultivation of support from religious community

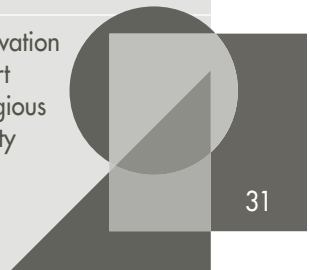


Table 2:
Characteristics
of programs/
projects

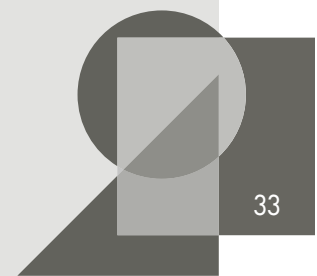
	Faith-saturated	Faith-centered
Religious environment (building, name, religious symbols)	Usually	Usually
Religious content of program	In addition to acts of compassion and care, also includes explicitly religious, mandatory content integrated throughout the program; staff and participants are expected to take part in religious activities and discussions of faith	In addition to acts of compassion and care, also includes explicitly religious content that is usually integrated with social service provision, but may be segregated into separate components. Participants have the option not to take part in religious activities. Staff may initiate discussions of faith or invite participants to religious activities outside the program
Main form of integration of religious content with other program components *See Addendum	Integrated/mandatory (engagement with explicitly religious content is required of all participants)	Integrated/optional or invitational (engagement of participants with explicitly religious content is optional, or takes place in activities outside program parameters)
Expected connection between religious content and desired outcome	Expectation of explicitly religious experience or change, and belief that this is essential to desired outcome	Strong hope for explicitly religious experience or change, and belief that this significantly contributes to desired outcome

1 This Typology identifies the visibly expressive ways that religion may be present in a community-serving organization or program. The categories are not necessarily meant to be interpreted from left to right as being "more" to "less" religious. Some faiths express their religiosity in less visibly evident ways than others; faith-based organizations and programs that are deeply rooted in these traditions may be located more toward the center of the Typology, without diminishing their religious nature.

2 Few actual organizations or programs fit perfectly into any abstract type. Many organizations and programs will display characteristics from more than one type, but a few characteristics belong with another. Classifying an entity entails looking at its overall pattern of religious characteristics or identifying the type where its most significant characteristics fall.

Faith-related	Faith background	Faith-secular partnership	Secular
Often	Sometimes	Sometimes (program administration is usually located in a secular environment, while program activities may be located in a religious environment)	No
The religious component is primarily in acts of compassion and care. Little (entirely optional) or no explicitly religious activities or discussions of faith initiated by staff as part of the program. Staff may invite participants to religious activities outside program parameters, or hold informal religious conversations with participants	No explicitly religious content in program. Religious materials or resources may be available to participants who seek them out. The religious component is seen primarily in the motivation of individual staff members	No explicitly religious content in program activities designed by secular partners; faith partners sometimes supplement with optional religious resources and activities.	No religious content
Invitational or relational (virtually all engagement of participants with explicitly religious content takes place in optional activities outside the program, or in informal relationships cultivated with staff)	Implicit (participants only encounter religious content if they seek it out)	Implicit, invitational, or relational, depending on volunteers/staff of the faith partner	None
Little expectation that explicitly religious experience or change is necessary for desired outcome. Some believe that acts of compassion alone (without a verbal religious component) have a spiritual impact that contributes significantly to desired outcome	No expectation that explicitly religious experience or change is needed for desired outcome	No expectation that religious experience or change is needed for desired outcome, but the faith of volunteers from religious partners is expected to add value to the program	No expectation of religious change or experience

3 The Typology is divided into two sections: characteristics of organizations, and characteristics of programs/projects. The organizational section focuses on features related to administration, sponsorship, personnel, and resources; the program/project section focuses on the integration of religious content into service provision. This division reflects the fact that organizations may run programs that have a different set of faith characteristics. For example, a faith-centered organization may run a program that is faith-background in nature, or a secular organization such as a community hospital might operate a 12-step addiction treatment program (which courts have held to be religious in nature). An organization may also run several different programs, each falling into a different category.



Addendum
to Table 1
and Table 2

Definitions of terms for integration of religious content in program

Appropriate term	Is the religious content of the program...		
	Explicitly verbal?	Part of the formal program design?	Mandatory?
Passive	No	No	No
Invitational	No in the program; Yes in activities outside the program parameters to which participants are invited	No	No
Relational	No in the program; Yes in informal interactions with staff	No in the program; Yes in intentionally cultivated relationships	No
Integrated/optional	Yes, unless participants decline to take part in religious activities	Yes	No
Integrated/mandatory	Yes	Yes	Yes

Adapted from a typology originally developed by Ronald J. Sider and Heidi Rolland Unruh, based in part on the research of the Congregations, Communities and Leadership Development Project, which they direct.

To deal with many of the problems outlined earlier in this report, it is necessary to rigorously assess and describe the types, extent, and effectiveness of social services that faith-based groups now provide — and can provide — across a spectrum that involves different types of social services, especially those that aim to change personal attitudes and behavior.

31. Research: Government agencies, foundations, other civic and business leaders, funders of social services, and the providers themselves should support, financially and otherwise, the conduct of independent, relevant, rigorous, and non-partisan research that compares outcomes of a wide range of approaches, including faith-based, secular, and other national and community-based organizations and programs.

Policymakers and other leaders need a clearer understanding of the varieties of faith-based and other non-profit organizations providing services to meet human needs. Our country lacks adequate research that describes the content and practices of services provided by faith-based, community-based, and non-religious organizations in a way that allows comparison by policy makers and the public. Remedying this deficiency will provide a more robust foundation of commonly understood and accepted facts that will provide a basis for public policy debates.

Such research should utilize an explicit vocabulary and typology of religious characteristics that allows comparison among various providers and to other research.

Starting with our primary goal of helping meet key human needs in this country, we believe that case studies and other descriptive materials are needed to give potential donors and the general public detailed, factual, rigorous, and objective information on such services. Such research should include descriptions of:

- ▶ The way organizations and service providers define *their own* religious identities in relation to their services to citizens;
- ▶ The character, language, rhetoric, activities, graphic materials, and intensity of the spiritual/faith messages being offered;
- ▶ The extent to which participants had genuine choices before entering the programs of different types of providers, i.e., whether participant choice would have been for a *more* faith-based or *less* faith-based program, or a non-faith-based organization;
- ▶ Whether participants are allowed to *accept or reject spiritual transformation components* of their programs; and
- ▶ The extent of any explicit or implicit *spiritual motivation* of participants in seeking out specific providers.

We believe that, using such tools as the Working Group's religious organization/program typology and the Rockefeller Institute Roundtable's Faith Integration Scale, researchers can help distinguish among the different vocabularies used by faith-based organizations, government agencies, the public, and the courts. In particular, they should be aware of the legal implications of the language used to describe various faith-based organizations and providers, and be explicit about the way their terminology compares to the same or different terms in the law. Lastly, research in this area may have significant political and legal consequences — even in the midst of the current policy debates — especially around the choice of terminology and language. Academic specialists may find that advisory committees and consensus processes can make the results of the research more useful and avoid needless controversy.

Rigorous research should seek to provide a clearer picture of which kinds of providers and programs are most effective in dealing with specific needs. Research should include analysis of all aspects of the “faith factor,” both explicit and implicit, including the role of spiritual transformation for the participants, as well as the spiritual motivation of the employees of providers, in producing effective outcomes. Such research should be explicit on the extent to which it has been able to separate the “faith factor” from other elements that contribute to the effectiveness of organizations and programs. It should assess whether the population served in particular programs is different from others in their explicit or implicit spiritual motivation to seek assistance. Where the method chosen by providers — faith-based or non-faith-based — seeks to increase the long-term capacity of individuals and communities, it is important that comparative research seek to capture such results. In particular, where spiritual, psychological, or emotional transformation or personal empowerment is a key element of a treatment or service, the benefits to participants and society should be identified. This applies to any organization, from faith-permeated to secular. Where building capacity of individuals and community-based organizations is a result of an intervention or program, these benefits should be captured in comparative research.

32. Data collection: Government agencies should help collect information on the extent and nature of government funding for faith-based programs delivering social and educational services.

We need better information on the extent of direct, indirect, and in-kind support being provided to the various types of faith-based, secular, and community-based groups and the changes over time, if any, in the structure of public funding for human services delivery. Greater clarity would give both policymakers and the general public a better factual basis on which to decide needs for expanded funding. ■

VI. Employment

One of the most contentious issues faced by the Working Group is the employment policies of religious institutions and other faith-based organizations that accept government funds, directly or indirectly. The issue generates tension between constitutional rights we all support, and among values that we all share. People of good will sometimes disagree on the way the tension should be resolved.

The Constitution protects a faith-based organization's right to autonomously define and pursue its religious mission. Some of us believe that necessarily includes the right to select who will implement that mission, and accepting government funds doesn't convert this protected right into a prohibited wrong.

The Constitution bars government from discriminating on the basis of religion in hiring. Some of us believe that to allow faith-based organizations to use religious preferences in hiring for positions paid, in whole or in part, with government funds collected involuntarily from all taxpayers (believers and nonbelievers alike) is prohibited government discrimination.

The goals of public policy in this area should be:

- ▶ Clear rules;
- ▶ Understanding of those rules by government agencies, citizens' groups, and the public; and
- ▶ Compliance by providers and government at all levels with a minimum of adversarial disputes and litigation.

We began our work on this issue by developing an Agreed Statement,¹¹ arrived at by consensus, on what is fairly settled in current law and what is still unresolved concerning whether a faith-based organization may receive government funds and select its staff on a religious basis. The U.S. Supreme Court has yet to rule definitively on some of the key constitutional issues involved. Along with our Agreed Statement, we offer the following Recommendations as steps which legislatures, agencies, and faith-based organizations can take now in order that our country can move — more slowly than we would all prefer, to be sure — toward a public consensus on these difficult questions.

33. Transparency by Public Agencies: Government agencies should be required to explicitly state their interpretation of applicable law regarding the effect, if any, of each program on the employment policies of participating faith-based organizations.

Government programs that involve grants and contracts to non-governmental organizations are often affected by several different federal statutes, state and local laws and ordinances, executive orders, and agency rules. Faith-based organizations, legislators, courts, and the public need to know how the agency interprets these various sources of authority when it comes to the employment policies of participating organizations. Legislation should require that agencies make a determination whether a faith-based organization that participates in their program is required to limit its hiring policies in any way.

In addition, public agencies charged with enforcement of anti-discrimination laws at the federal, state, and local level should adopt rules that clearly state whether the acceptance of government support modifies the current exemptions of faith-based organizations.

¹¹ See page 40.

Members of the Working Group may well disagree on *how* the agencies should interpret applicable law. But we are in agreement that a lack of clarity by public agencies is harmful to the process by which Americans will come to judgment on these difficult issues.

34. Research: Faith-based organizations, public agencies, and private researchers should work together, in ways that do not overly burden faith-based organizations, to ascertain the extent of religiously based employment preferences in government-supported positions.

The Working Group found that there is no common knowledge of the actual employment policies of publicly funded faith-based organizations or the potential impact of various alternative policies. Better information is needed. We also recognize that the reporting and paperwork requirements for *all* publicly funded non-governmental organizations is significant, and we urge researchers and agencies to gather this new data in ways that do not unduly burden those who are already stretched to meet both the human needs and administrative requirements.

35. Transparency in Government-supported Programs: Faith-based organizations that seek or already receive government funds should be transparent about their employment policies and practices.

Where they use government funds to pay for staff positions, faith-based organizations should be transparent about the way they apply and interpret existing laws that affect their rights and policies in the areas of employment.

36. Certification: Faith-based organizations should develop a common mechanism for self-certification for those organizations that wish to inform public agencies and secular funders of their employment policies.

Many faith-based organizations have elected to limit the use of religious hiring preferences for some positions and programs. However, there is no mechanism by which they can clearly communicate such policies to important stakeholder groups. We recommend that faith-based organizations develop a common set of terms, modeled on the Working Group typology (see Chapter V) to characterize the applicable employment policies.

37. Goods and Services: Where government agencies provide goods, services, and government-produced information to beneficiaries through privately funded faith-based organizations without supporting the cost of staff or other program expenses the faith-based organization should not be at risk of loss of any applicable employment exemption in the context of meeting needs for emergency assistance.

It is commonplace for government agencies to seek the assistance of faith-based organizations as a way to deliver needed goods and services to individuals. In the case of disaster relief and other emergency assistance, for example, government agencies call upon non-governmental organizations, including faith-based organizations, to deliver food, blankets, emergency shelter, and other necessities where the government pays for the out-of-pocket costs of the in-kind assistance while the non-governmental organization provides the coordination, staffing, and volunteer recruitment. Other common examples include distribution of informational brochures and pamphlets about subjects ranging from health to accessing governmental services.

Our Agreed Statement on Employment Practices below includes our common understanding of the state of the law concerning the employment policies of privately-funded faith-based organizations. This Recommendation clarifies our agreement that the rights of a faith-based organization as

applied to hiring policies should not be changed solely because it offers its privately funded staff and other program services to distribute government-paid assistance to needy individuals and groups.

38. Agreed Statement: To increase public understanding, an agreed statement on current law on employment practices, faith-based organizations, and government funding should be made widely available through the Working Group, and periodically updated using appropriate consensus processes.

We are not necessarily in agreement on the wisdom of the current laws and policies that are described in the Agreed Statement that is set forth below. Some of us would like to see some change. But we are agreed that a common understanding of the current situation is an important first step toward the goals outlined above. We also recommend that Search for Common Ground, in consultation with members of the Working Group, should support an ongoing consensus process to make this document available to the broader public and also review and update the document periodically. ■

Agreed Statement of Current Law On Employment Practices, Faith-Based Organizations, and Government Funding

This section of our report contains a series of statements, arrived at by consensus, on what is fairly settled in current law and what is still in dispute among us concerning whether a faith-based organization* may receive government funds and select its staff on a religious basis.

The statements in bold-faced type are findings of the Working Group. Each finding is accompanied by comments to assist readers who wish to explore any given subject more deeply. The comments were prepared by counsel to the Working Group, with the advice and consent of the Working Group's Employment Committee.¹

The members of the Working Group are not necessarily in agreement on the *wisdom* of the current laws and policies, and on court interpretations that make up the current "state of the law." Some of us would like to see some change. But we are agreed that a common understanding of the current situation is an important contribution as America comes to a public decision on these important matters.

CONSTITUTIONAL RIGHTS, EMPLOYMENT POLICIES,² AND RELIGIOUS INSTITUTIONS

1. **Faith-based organizations are an important vehicle through which religious communities manifest their religious missions. Allowing a faith-based organization to choose staff to carry out its mission who subscribe to the creed and practices of its faith is a fundamental aspect of the religious freedom protected by the First Amendment. Important questions do remain about the breadth of this right, especially where government funding is involved.**

Courts have recognized that a faith-based organization is profoundly shaped by the beliefs and values of its employees.³ All three branches of government have recognized that allowing religious institutions to carry out their mission with minimal interference from government promotes these fundamental freedoms.

1.1 WHAT IS IN DISPUTE: How courts may interpret the scope of this right.

One view is that where a social services program operates without government support, government has no power to interfere with the faith-based organization's employment decisions. Another view is that this remains an open question, especially where the employees do not have religious duties. (Statutory issues are addressed below, at pages 43 ff.) There are few court decisions primarily because there are few reported instances of government agencies seeking to enforce anti-discrimination laws with regard to privately funded faith-based programs. In this Agreed Statement, we will leave such questions to another day, and focus on issues related to employment practices of faith-based organizations that accept public funds. (See Statements 3.1 – 3.4 at page 42-43 and following.)

* In this Statement we use a Working Group Typology (see pp. 30 – 34) that places faith-based groups in the following categories: Faith-permeated, faith-centered, faith-affiliated, faith-background, secular, and faith-secular partnerships. As this document suggests, the constitutional and statutory provisions may affect each of these groups in a somewhat different way.

2. Courts have repeatedly held that the First Amendment prohibits government from interfering in the employment relationship between a church, synagogue, mosque, or certain other religious institutions and their “ministerial” employees.

The constitutional “Ministerial Exception” provides protected organizations with complete freedom to make employment decisions regarding clergy based on whatever criteria they choose.⁴ Courts have recognized that “any attempt by government to restrict a church’s free choice of its leaders ... constitutes a burden on the church’s free exercise rights.”⁵ They also have held that such restrictions would result in impermissible government inquiries into the spiritual leadership of religious institutions.⁶ All federal appellate courts that have considered the issue have recognized the validity of the exception.⁷

2.1 WHAT IS IN DISPUTE: The extent to which this exception protects other religious institutions.

One view is that the Ministerial Exception should be sharply limited, applying only to houses of worship and closely related institutions such as seminaries. Another view is that it should be applied to any faith-based organization.

2.2 WHAT IS IN DISPUTE: The extent to which non-clergy staff members can be considered “ministerial” employees for the purposes of this exception.

Courts have found some non-clergy positions are sufficiently “important to the spiritual and pastoral mission of the church” and “should be considered clergy”⁸ for purposes of the Ministerial Exception. Courts have considered a number of factors including whether the employment decision was based largely on religious criteria, whether the employee was qualified and authorized to perform the ceremonies of the church, whether the employee engaged in activities traditionally considered ecclesiastical or religious, and whether the employee attends to the religious needs of the faithful.⁹

Applying these criteria, courts have found that the Ministerial Exception applies to lay choir directors,¹⁰ members of a university’s canon law faculty,¹¹ non-ordained associates in pastoral care,¹² and faculty of a seminary,¹³ but not to a professor of psychology at a religiously affiliated college.¹⁴

There are three views of the proper approach courts should take in defining the scope of the constitutional protection: 1) that the exemption should not apply to any position other than a formal member of the clergy; 2) that it should also apply to lay positions with responsibilities such as leading worship, religious instruction, and spreading the faith; and 3) that it should apply to any position, based on the view that a faith-based group must be free, without government oversight, to determine how staff contributes to its religious mission.

3. Government itself may not discriminate on grounds of religion in hiring under the United States Constitution.

The First Amendment, as well as the Equal Protection Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution prohibit the government from making employment decisions on the basis of religion. The interplay of different constitutional provisions when faith-based organizations, programs, or positions receive government funds is the subject of considerable disagreement. The principal positions are set forth in the following paragraphs.

3.1 WHAT IS IN DISPUTE: Whether or not courts may determine that the Constitution prohibits the government from providing public funds to faith-based organizations that consider religion in employment decisions.

One view is that the government violates the Establishment Clause and the Free Exercise Clause of the First Amendment and the Equal Protection guarantees of the Fifth and Fourteenth Amendments by funding a religious program or position if religious criteria are used in employment decisions (some would extend this constitutional limitation to all positions in an organization once any program or position receives government funds¹⁵). The Supreme Court has held that “the Constitution does not permit the state to aid discrimination.”¹⁶ These advocates state that such funding advances religion in violation of the Establishment Clause,¹⁷ constitutes government support for employment conditioned on a person’s willingness to adhere to a particular faith in violation of the Free Exercise Clause, and constitutes support for discrimination in violation of Equal Protection.¹⁸

Others disagree.¹⁹ The U.S. Constitution regulates the conduct of the government, not that of private citizens. The U.S. Supreme Court has held, in a case involving discharges of employees, that “receipt of public funds does not make the discharge decisions acts of the state.”²⁰ These advocates state mere public funding of faith-based employers does not render faith-based organizations “state actors,” leaving them free to make employment decisions on the basis of religion and to condition employment on religious considerations.²¹ With respect to the Establishment Clause, these advocates state that government-funded programs provided by religious institutions serve a secular purpose by delivering social services and that, because any employment decisions are made by the private employer, they are not reasonably attributable to the government and therefore result in no advancement or endorsement of religion *by the government*.²²

The Supreme Court has not yet had the opportunity to provide a definitive answer.²³

3.2 WHAT IS IN DISPUTE: Whether or not courts may determine that the Constitution requires the government to allow publicly-funded faith-based organizations to consider religion in employment decisions.

One view is that the Constitution protects the freedom of religious institutions to consider religion in employment decisions, regardless of how the institutions are funded. These advocates state that, as with other expressive associations under the Free Speech Clause, religious associations must be free to choose their membership according to the mission that defines the association.²⁴ In addition, these advocates state, if the government allows mission-based hiring rights to secular service providers, it must extend that same right to religious service providers, lest it run afoul of the Free Exercise Clause and the Equal Protection Clauses.²⁵ In this view, the unique character of religious organizations implicates an additional layer of constitutional protection under the Free Exercise and Establishment Clauses. Specifically, these advocates state, these clauses prohibit excessive government entanglement in religious affairs, including government interference in religious groups’ selection of their leaders, followers, or employees.²⁶

An alternative view is that neither the First Amendment nor any other provision of the Constitution requires government-funded religious institutions to be given unlimited autonomy in their employment decisions, and that the Constitution, in fact, prohibits the government from

funding any employer who considers religion in employment decisions, or at least the programs or projects in which positions are filled using religious criteria, because the government cannot *fund* what the government cannot *do*.²⁷ These advocates further state that government has broad discretion to attach conditions to the receipt of government funds;²⁸ so that it cannot be the case that government is precluded from conditioning funding upon an agreement to relinquish the right to use religious preferences in employment.

3.3 WHAT IS IN DISPUTE: Whether or not courts may determine that the Constitution leaves it up to the legislative and executive bodies to decide whether or not to permit or limit consideration of religion in employment practices of government-funded organizations, programs, and/or positions.

Another view is that the Constitution does not require either outcome, so that legislative and executive branches have the discretion to choose appropriate policies. While the spending power of the federal government gives the government considerable authority to attach conditions that must be satisfied by a private entity that wishes to receive government funds, it has not been decided whether this power extends to regulating employment relationships of religious institutions that receive government funds.²⁹

3.4 WHAT IS IN DISPUTE: Whether the power of government, including the courts, to affect the employment policies of a faith-based organization is enhanced if the aid is “direct,” or diminished if the aid is “indirect.”

Some government assistance is provided in the form of contracts and grants, and others is provided through means such as vouchers.³⁰ One view is that “indirect” funding is less likely to be seen as a government advancement of religion, or government action. Others maintain that the distinction between direct and indirect funding should make no difference for constitutional purposes.

FEDERAL STATUTES AND EXECUTIVE ORDERS AFFECTING HIRING POLICIES

4. The basic federal employment anti-discrimination law that expressly pertains to religious discrimination (Title VII of the Civil Rights Act of 1964) explicitly permits “religious associations, organizations, and educational institutions,” if they so choose, to make employment decisions based on religion, no matter what duties individual employees would perform.

Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex, or national origin for any employer with 15 or more employees, and gives individuals a right of action to enforce the law.³¹

Section 702 of Title VII states that the restrictions imposed by Title VII do not apply “to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities” (the “Title VII exemption”). The exemption extends to all of the organization’s activities and employees. Also, it applies only to discrimination on the basis of religion — not race, gender, or national origin.

4.1 WHAT IS IN DISPUTE: Which faith-based organizations may assert the Title VII exemption.

Courts have not clearly delineated the religious characteristics required to qualify for the Title VII exemption. For example, while the Salvation Army was held to be a religious entity for purposes of section 702 because its central purpose remained religious,³² a children’s home that was originally founded by the Methodist Church was not, having lost its religious mission over time to the point that “as far as the direction given the day-to-day life for the children at the home is concerned, it is practically devoid of religious content or training.”³³

4.2 WHAT IS IN DISPUTE: Effect of government funds on exercise of the statutory Title VII exemption: Whether or not courts may hold that the Title VII exemption is waived or otherwise lost as to organizations, programs, or specific positions paid with public funds.

Few courts have directly addressed the impact of government funding on the Title VII exemption. One view is that government funding alone does not affect the Title VII exemption without express Congressional language.³⁴

Another view is that an organization receiving substantial government aid should be presumed ineligible to claim the exemption as to any position within the entire organization.³⁵ Others maintain that there should be a presumption that the Title VII exemption does not apply to *individual staff* positions supported by government cash assistance.³⁶ Still others suggest that eligible organizations should not be able to claim the exemption for positions within any *program* that receives substantial public funding. Finally, some state that there should be a distinction between funding received through voucher-type programs as opposed to direct aid.³⁷

5. RFRA: The Religious Freedom Restoration Act of 1993 (“RFRA”) prohibits the federal government from substantially burdening the exercise of religion except to further a compelling governmental interest through the least restrictive means of furthering that interest.

RFRA³⁸ applies only to federal agencies and programs,³⁹ as the Supreme Court has held that RFRA is unconstitutional with respect to state laws.

5.1 WHAT IS IN DISPUTE: Whether or not the courts will hold that RFRA requires exemption of faith-based organizations from limits on considering religion in hiring decisions when they participate in government-funded programs.

One view is that a government limitation on the right to use religion in employment imposes a “substantial burden” because preventing religious organizations from choosing like-minded employees threatens their essential mission. Further, these advocates state, RFRA requires an exemption for religious organizations because preventing religion-based employment decisions is neither a “compelling government interest” nor the “least restrictive means of furthering any interest of government.”

Another view is that many faith-based groups providing social services do so without government funds. Those wishing to consider religion in employment decisions can avoid any “burden” by simply choosing not to participate in the government program.⁴⁰ Furthermore, in this view, a general ban on religious discrimination by all publicly-funded employers – or, alternatively, a ban with respect to government-funded programs or positions — furthers a compelling governmental interest of eradicating discrimination, and there are no less restrictive means available to fully vindicate that interest.⁴¹

These advocates also contend that Congress never intended RFRA to be used in this fashion. They state that, should RFRA be interpreted as limiting government’s ability to restrict religion-based employment decisions by government-funded employers, the statute is unconstitutional to that extent. By contrast, others maintain that RFRA is in accord with, and perhaps required by, the Constitution. See Statements 3.1 – 3.4, above.⁴²

6. *Bona fide occupational qualification:* Title VII creates an exception available to all employers, including faith-based organizations, permitting employers to defend against a discrimination claim on the grounds that age, gender, disability, or religion (but *not* race) is a “bona fide occupational qualification” (BFOQ) for a position. The burden of proof of establishing a BFOQ is on the employer.

The Supreme Court has held that all employers, including religious organizations, may rely on age, gender, disability, or religion in employment decisions where that qualification is “reasonably necessary” to the operation of that particular business. The Court has stated that the exception is extremely “narrow” and that the occupational qualification must relate to the “essence” or “central mission” of the employer’s business.⁴³

6.1 WHAT IS IN DISPUTE: What would be required for faith-based organizations to establish that religious beliefs or practices are a “bona fide occupational qualification” for a particular position.

The exact contours of what is “reasonably necessary” in the context of faith-based organizations have not been defined. For example, courts have allowed an employer to assert a religious occupational qualification with respect to hiring a Jesuit philosophy professor at a Jesuit university,⁴⁴ and with respect to employment of helicopter pilots required to fly over areas where a foreign country severely restricts the freedom of movement of non-adherents,⁴⁵ but have not allowed an employer to rely on the occupational qualification defense with respect to the hiring of prison chaplains of a particular faith where the duties were largely administrative.⁴⁶

6.2 WHAT IS IN DISPUTE: Whether or not the U.S. Constitution would prohibit direct aid for any position that required religious qualifications to the degree necessary to be a BFOQ.

One view is that the same evidence that would make religious belief a *bona fide* occupational qualification would also, pursuant to the Establishment Clause, disqualify the organization from direct funding for that position, or perhaps for the entire program. Another view is that the constitutionality of government assistance should be determined by the content of the program rather than the qualifications for a position. There do not appear to be any reported federal cases that reach this issue. See also Statements 3.1 – 3.4, pp. 42-43.

7. Federal Agency Contractors: An Executive Order has directed that no federal agency may restrict the religiously-based employment practices of contractors that are faith-based organizations without Congressional authorization to the contrary.

Federal contracting is governed, in part, by a Presidential Executive Order that sets general conditions for all federal contractors.⁴⁷ Since 1965, among other provisions, the Executive Order had required contractors not to discriminate in hiring on the basis of religion. On December 12, 2002, President George W. Bush modified this previous Executive Order by issuing a new Executive Order, stating that this particular requirement “shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.”⁴⁸

This new Executive Order does not modify provisions in the earlier Executive Order that prohibit federal contractors, including religious organizations, from discriminating in employment on the basis of race, color, national origin, handicap, sexual orientation, or parental status as a condition of receiving federal funds.⁴⁹

7.1 WHAT IS IN DISPUTE: Whether the courts will rule that the Executive Order is in conflict with, or in accordance with the U.S. Constitution.

Depending on the outcome of court decisions on the constitutional issues discussed in paragraphs 3.1 – 3.4, the Executive Order may be limited, affirmed, or invalidated.

7.2 WHAT IS IN DISPUTE: What effect this new Executive Order has on conflicting rules and regulations that were in effect when the Executive Order was issued.

One view is that current agency rules, even if potentially inconsistent with the Executive Order, remain in effect until new rules are promulgated after required notice and comment procedures. Others maintain that any rules or regulations that are inconsistent with the Executive Order cannot be enforced and should no longer be applied to government grants and contracts.

In some situations, Congress has reauthorized a program after rules limiting employment practices of faith-based organizations had been adopted. One view is that such rules have acquired the required Congressional support to continue in effect notwithstanding any conflict with the Executive Order. Another view is that the President’s Executive Order is controlling absent express statutory language to the contrary.

8. General conditions on government grants and contracts: A generally applicable federal law governing nondiscrimination by organizations receiving federal funds (Title VI of the Civil Rights Act of 1964) does not prohibit religious discrimination; nor does it apply to employment practices unless employment is the primary objective of the government program.

Title VI of the 1964 Civil Rights Act applies to “any program or activity receiving Federal financial assistance” where employment is the primary objective of the government-funded program. While it prohibits discrimination in employment “on the ground of race, color, or national origin,” where employment is the primary purpose of the program, it does not prohibit discrimination based on religion.⁵⁰

9. Program-specific provisions: Federal statutes and regulations for some programs have specific provisions that prohibit recipients of grants, contracts, and/or vouchers, including faith-based organizations, from religion-based hiring for positions funded within these programs. Other programs are governed by statutes and regulations that explicitly preserve the Title VII exemption that permits religious preferences in employment.

“Charitable Choice” laws — which now cover the Community Services Block Grant (CSBG), Temporary Assistance to Needy Families (TANF) and the Substance Abuse and Mental Health Services Act (SAMHSA) — expressly state that participation in these programs does not affect an organization’s eligibility for the Title VII exemption.⁵¹

By contrast, the Child Care and Development Block Grant Act of 1990 states that a funded organization “shall not discriminate in employment on the basis of the religion of the prospective employee if such employee’s primary responsibility is or will be working directly with children in the provision of child care services.”⁵² Included among the other programs requiring non-preferential hiring as a condition of eligibility for funding are housing and job training programs contained in statutes such as the Omnibus Crime Control and Safe Streets Act, the Community Development Block Grant Program of the Housing and Community Development Act of 1974, the Workforce Investment Act of 1998, and the Job Access and Reverse Commute grant program of the Federal Transit Act of 1998, as well as other federal housing and community development programs, and the National Service and Community Service Trust Act of 1993⁵³

Other programs have specific language that exempts faith-based organizations from generally applicable statutory prohibitions on religion-based employment policies.

9.1. WHAT IS IN DISPUTE: Whether or not the Supreme Court may rule that the Constitution requires, limits, or prohibits these provisions and exemptions.

See Statements 3.1 – 3.4.

RIGHTS, EXEMPTIONS, AND OBLIGATIONS UNDER STATE AND LOCAL LAW

10. Many states have their own sources of applicable law: States may adopt general anti-discrimination policies or program-specific rules and procurement laws or ordinances that seek to limit employment practices of faith-based organizations.

Professors Chip Lupu and Robert Tuttle have compiled a comprehensive analysis of state laws and ordinances affecting religious preferences in employment decisions.⁵⁴ Lupu and Tuttle report that faith-based groups are permitted to consider religion in employment decisions in most states. Eighteen states explicitly forbid faith-based organizations from discriminating in employment with respect to a contract with that state to provide services.

10.1 WHAT IS IN DISPUTE: Whether state supreme courts may forbid or require state and local agencies to allow government-funded faith-based groups to consider religion in hiring decisions. Each of the unresolved issues as to federal constitutional and statutory law is also unresolved as to state constitutional and statutory state law. Most states have not addressed these questions, and a ruling by one state’s high court does not decide the matter of another state’s law.

To the extent that the U.S. Supreme Court has not resolved a Constitutional issue, state courts must independently interpret and apply the U.S. Constitution as well as their own state constitutions and statutes.

10.2 WHAT IS IN DISPUTE: Whether some state laws limiting consideration of religion in hiring decisions by funded faith-based organizations may be overridden by federal law.

Within its enumerated powers, Congress can adopt legislation that expressly replaces state or local law, however, the expression of such intent must be clear. More over, if there is a direct conflict between a federal law and a state or local law, to the extent that it is not possible to accommodate both, federal law governs; otherwise both remain in effect. Thus, for example, courts have held that Title VII does not “trump” or displace state employment discrimination laws.⁵⁵

In addition to possible Congressional preemption, if the courts were to settle the issues in State-ments 3.1 – 3.4, and determine that the U.S. Constitution forbids or requires government to allow funded faith-based groups to consider religion in hiring decisions, any contrary state or local laws would be overridden.

11. Municipalities can only legislate regarding employment practices to the extent they are explicitly delegated such authority by state law, and some have done so.

Local governments have enacted a wide variety of laws that prohibit private employers from giving preferential treatment in employment based upon religion (and a number of other categories). In some cases, these local rules simply repeat protections offered by state and federal law; in other cases, they extend farther. Some of these local laws expressly state that they do not apply to religious organizations; others, however, contain no such limitation.

11.1 WHAT IS IN DISPUTE: Whether and to what extent courts may determine that some of the municipal anti-discrimination laws are unenforceable because they are beyond the power of the municipal governments to enact.

Cities, counties and other local governments derive their authority to legislate from their respective state legislatures. Local authorities can legislate only so far as allowed by the authority given them by their respective states, and ordinarily cannot enact employment ordinances that are inconsistent with, or preempted by, state law; nor can they enact ordinances that exceed the legislative power that the state has conferred upon them.⁵⁶

12. Potential conflict between federal and state law: In the Welfare Reform Act of 1996, Congress enacted provisions to prevent state or local agencies, with respect to programs covered by the Act, from enforcing any law or policy that would “impair the religious character” of a faith-based organization, alter its policies of “internal governance,” or impede its independent “control over the definition, development, practice, and expression of its religious beliefs.”

In the Welfare Reform Act (formally titled the Personal Responsibility Work and Opportunity Reconciliation Act, or “PRWORA”), Congress has expressly stated that a religious organization that receives federal funds through the programs covered by the Act — TANF (Temporary Assistance to Needy Families) and Welfare-to-Work⁵⁷ — “shall retain” their independence with respect to “definition, development, practice, and expression of” religious beliefs,⁵⁸ and also retain their Title VII exemption. In addition, the Act precludes any federal, state, or local government agency from discriminating against a provider on the basis of that provider’s religious identity with respect to programs covered by the PRWORA.⁵⁹

The PRWORA does place limitations on this autonomy. Religiously-based providers (or the accounts in which those providers retain their federally-provided funds) are expressly subjected to the same financial accountability requirements as other providers, and may not discriminate among beneficiaries on the basis of religious belief or a refusal to engage in religious practices.

12.1 WHAT IS IN DISPUTE: Whether or not this language will be held by courts or interpreted by agencies to overrule any state or local laws that would have the effect of limiting the hiring practices of faith-based organizations that receive federal funds under PRWORA.

This question is separate from the constitutional issues cited at Statements 3.1 – 3.4. It has to do with the interpretation of a federal statute — the PRWORA — and any local or state laws that attempt to impact the ability of faith-based organizations to consider religion in employment decisions. Some have argued that the religious identity protection in the PRWORA is drafted with broad language, manifesting a clear Congressional purpose to protect against state interference in a wide range of the organization’s activities and fundamental characteristics.⁶⁰ Others state that the PRWORA does not expressly state that it is intended to displace state employment law, so that the clear Congressional intent required to displace a state or local law is lacking. In addition, these advocates note that the PRWORA expressly refrains from restricting state regulation of programs that are state-funded.⁶¹

No court has yet decided these questions. ■

Endnotes

- ¹ This document is not intended to provide the reader with legal advice. When faced with difficult or complex questions regarding employment law or decisions, employers should consider obtaining legal advice.
- ² In this document, we use the terms “hiring,” and “employment” to include all important employment decisions, including firing, promotion, and payment of benefits.
- ³ See, e.g., *Corporation of the Presiding Bishop v Amos*, 483 U.S. 327, 339 (1987).
- ⁴ The United States Court of Appeals for the Fifth Circuit first recognized this exception in 1972. See *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972); see also *Williams v. Episcopal Diocese*, 2001 WL 721453 (Mass. Sup. Ct. June 8, 2001).
- ⁵ *Rayburn v. General Conference of Seventh-Day Adventists*. 772 F. 2d 1164 (4th Cir. 1985).
- ⁶ See, e.g., *Bollard v. California Province of the Soc’y of Jesus*, 196 F.3d 940, 948-49 (9th Cir. 1999) (“On a substantive level, applying the statute to the clergy-church employment relationship creates a constitutionally impermissible entanglement with religion if the church’s freedom to choose its ministers is at stake.” (Internal quotation marks and citation omitted) *Gellington v. Christian Methodist Episcopal Church*, 203 F. 3d 1299 (11th Cir. 2000).
- ⁷ *Bollard v. Calif. Province of the Soc’y of Jesus*, 196 F. 3d 940 (9th Cir. 1999); *Young v. Northern Ill. Conference of United Methodist Church*, 21 F. 3d 184 (7th Cir. 1994); *Scharon v. St. Luke’s Episcopal Presbyterian Hosp.*, 929 F. 2d 360 (8th Cir. 1991).
- ⁸ *EEOC v. The Roman Catholic Diocese*, 213 F.3d 795, 801 (4th Cir. 2000 (quoting *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985)); *Miller v. Bay View United Methodist Church, Inc.*, 141 F. Supp. 2d 1174, 1181 (E.D. Wisc. 2001).
- ⁹ See *Starkman v. Evans*, 198 F.3d 173, 176 (5th Cir. 1999); *Miller*, 141 F. Supp. 2d at 1181.
- ¹⁰ See *Starkman* at 198 F.3d 173, 176.
- ¹¹ *EEOC v. Catholic University of America*, 83 F.3d 455 (D.C. Cir. 1996).
- ¹² *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164 (4th Cir. 1985).
- ¹³ *EEOC v. Southwestern Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. 1981).
- ¹⁴ *EEOC v. Mississippi College*, 626 F.2d 477, 485 (5th Cir. 1980). See also *Gargano v. Diocese of Rockville Ctr.*, 80 F.3d 87, 90 (2d Cir. 1996).
- ¹⁵ For a detailed presentation of this view, with full citations to supporting cases, see Luchenitser, Alex, “Casting Aside the Constitution, the Trend Toward Government Funding of Religious Social Services Providers,” 35 Clearinghouse Review 615 (January-February 2002). See especially the text and citations at footnotes 20 – 67. Cited hereafter as Luchenitser Article. An updated version of this article is found at www.au.org/legal/luchenitser.htm. For further discussion of supporting arguments, see generally, Alan E. Brownstein, *Constitutional Questions About Charitable Choice, in Welfare Reform and Faith-Based Organizations* 219, 239 (Derek H. Davis & Barry Hankins, eds. 1999).
- ¹⁶ *Norwood v. Harrison*, 413 U.S. 455, 466 (1973). There is a vigorous debate over the applicability of *Norwood* and related cases in determining “state action” in the context of government-funded social services.
- ¹⁷ See Luchenitser Article, *supra* note 15, at notes 39 – 51.
- ¹⁸ *Id.*, at notes 23-51.
- ¹⁹ For a more detailed explanation of this view, see Carl H. Esbeck, *The Neutral Treatment of Religion and Faith-Based Social Service Providers: Charitable Choice and Its Critics*, in *Welfare Reform and Faith-Based Organizations* 173, 190 (Derek H. Davis & Barry Hankins, eds. 1999). See also Carl H. Esbeck, Testimony before the Subcommittee on the Constitution, Committee on the Judiciary, United States House of Representatives, Concerning Section 1994A (Charitable Choice) of H.R. 7, the Community Solutions Act, June 7, 2001, at notes 19 – 29. The testimony is available at: http://www.house.gov/judiciary/esbeck_060701.htm. Referred to hereafter as “Esbeck Testimony.”
- ²⁰ *Rendell-Baker v. Kohn*, 457 U.S. 830, 841 (1982).
- ²¹ See Esbeck Testimony, *supra* note 19. See also *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).
- ²² See *Siegel v. Truett-McConnell College*, 13 F. Supp. 2d 1335 (N.D. Ga. 1994), *aff’d* 73 F.3d 1108 (11th Cir. 1995); *Zorach v. Clauson*, 343 U.S. 306, 314 (1952); *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327, 336 – 337 (1987).

- ²³ See *Amos*, 483 U.S. at 339 & n.17. *Amos* involved a privately-funded position. The Court held, in that case, that Congressional enactment of the Title VII exemption did not violate the Establishment Clause. The Court has reserved the questions of whether the Free Exercise Clause might *require* such an exemption and whether the exemption would violate the Establishment Clause if applied to a government-funded position.
- ²⁴ See Esbeck Testimony, *supra* note 19. See also *Roberts v. Jaycees*, 468 U.S. 609, 622 (1984); *Boy Scouts v. Dale*, 530 U.S. 640, 657 (2000). For further discussion of supporting arguments see Paul Taylor, *The Costs of Denying Religious Organizations the Right to Staff on a Religious Basis when the Federal Social Service Efforts* 12 Geo.e Mason U. Civ. Rts. L.J. 159 (Spring 2002).
- ²⁵ See *Employment Division v. Smith*, 494 U.S. 872, 881-84, 886 n.3 (1990); *City of New Orleans v. Duke*, 427 U.S. 297 (1976); *Ball v. Massanari*, 254 F.3d 817, 823 (9th Cir. 2001). *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537-38 (1993).
- ²⁶ See Esbeck Testimony, *supra* note 19. See also *Employment Division v. Smith*, 494 U.S. 872, 877 (1990).
- ²⁷ See Luchenitser Article, *supra* note 15, at nn. 26-39.
- ²⁸ See, e.g., *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 549 (1983) (“[A] legislature’s decision not to subsidize the exercise of a fundamental right does not infringe the right.”); see also *National Endowment for the Arts v. Finley*, 524 U.S. 569, 588 (1998); *Rust v. Sullivan*, 500 U.S. 173, 193 (1991).
- ²⁹ The Supreme Court has applied this principle to government conditioning of Free Exercise rights of religious organizations, but has also expressly recognized that, at least in some circumstances, First Amendment rights may provide an independent bar to conditions on the grant of government funds. *Compare Lyng v. Northwest Indian Cemetery Prot. Assoc.*, 485 U.S. 439, 451 (1988) and *Bowen v. Roy*, 476 U.S. 693, 700 (1986) with *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995) and *Good News Club v. Milford Central School*, 533 U.S. 98 (2001) and *Buckley v. Valeo*, 424 U.S. 1, 91 (1976).
- ³⁰ There are different views on the precise conditions that must be met before a program is “indirect” rather than “direct,” for purposes of constitutional law.
- ³¹ See 42 U.S.C. § 2000e *et seq.*
- ³² *McClure v. Salvation Army*, 323 F. Supp. 1100, 1102 (D. Ga. 1971), *aff’d*, 460 F.2d 553 (5th Cir. 1972).
- ³³ *Fike v. United Methodist Children’s Home of Virginia*, 547 F. Supp. 286, 290 (E.D. Va. 1982), *aff’d*, 709 F.2d 284 (4th Cir. 1983).
- ³⁴ For an explanation of this view, see Esbeck Testimony, *supra* note 19. See also *Hall v. Baptist Memorial Health Care Corp.*, 215 F.3d 618, 625 (6th Cir. 2000); *Ward v. Hengle*, 706 N.E.2d 392, 400 (Ohio Ct. App. 1997)
- ³⁵ See Luchenitser Article, *supra* note 15 at nn. 52-67.
- ³⁶ See *Dodge v. Salvation Army*, 1989 WL 53857 (S.D. Miss. 1989).
- ³⁷ See *Siegel v. Truett-McConnell College*, 13 F. Supp. 2d 1335 (N.D. Ga. 1994) (expressly distinguishing *Dodge* on source of government funding), *aff’d* 73 F.3d 1108 (11th Cir. 1995).
- ³⁸ 42 U.S.C. 2000 bb *et. seq.*
- ³⁹ Some courts have affirmed the constitutionality of RFRA, see, e.g., *Guam v. Guerrero*, 290 F.3d 1210, 1221-22 (9th Cir. 2002); *Kikumura v. Hurley*, 242 F.3d 950, 959-60 (10th Cir. 2001); *In re Young*, 141 F.3d 854, 857-60 (8th Cir. 1998). Other courts have expressed doubt as to the constitutionality of RFRA even as applied to the federal government. See, e.g., *La Vox Radio de la Comunidad v. F.C.C.*, 223 F.3d 313, 319 (6th Cir. 2000).
- ⁴⁰ See *Branch Ministries v. Rossotti*, 40 F. Supp 2d 15 (D.D.C. 1999).
- ⁴¹ For a further explanation of this view, see Comments from Americans United for Separation of Church and State to the Department of Health and Human Services, February 18, 2003, available at <http://www.au.org/legal/samhsareg.htm>.
- ⁴² These different views have been vigorously argued in comments to a recent proposed rulemaking. For an explanation of the arguments on all sides, see Lupu, Ira, and Robert Tuttle, “Developments in the Faith-Based and Community Initiatives: Comments on the Proposed Rule-Making and Guidance Document,” Roundtable on Religion and Social Welfare Policy, Rockefeller Institute (January 2003), at p. 14 and following. Also available at

- http://www.religionandsocialpolicy.org/docs/legal/reports/1-9-2003_exec_order_analysis.pdf. Thomas C. Berg, *The New Attacks on Religious Freedom Legislation, and Why They Are Wrong*, 21 *Cardozo L. Rev.* 415 (1999).
- ⁴³ *International Union, United Auto. Workers v. Johnson Controls, Inc.*, 499 U.S. 187, 200 (1991). See also *Western Air Lines, Inc. v. Criswell*, 472 U.S. 400, 413 (1985); *Dothard v. Raulinson*, 433 U.S. 321, 332-37 (1979)
- ⁴⁴ See *Pime v. Loyola Univ. of Chicago*, 803 F.2d 351, 353-54 (7th Cir. 1986) (holding that “Jesuit presence in the Philosophy faculty is ‘reasonably necessary to the normal operation’ of the enterprise.”).
- ⁴⁵ See *Kern v. Dynallectron Corp.*, 577 F. Supp. 1196, 1201-02 (N.D. Tex. 1983) (employer was entitled to religious occupational qualification defense where helicopter pilots were required under Saudi law to subscribe to Islam).
- ⁴⁶ See *Rasul v. District of Columbia*, 680 F. Supp. 436, 440-41 (D.D.C. 1988) (finding occupational qualification of being a Protestant not “reasonably necessary” where “absent from the . . . list of specified duties is any suggestion that chaplains are to preside over all services.”).
- ⁴⁷ See Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (Sept. 24, 1965). The Department of Labor’s regulations implementing E.O. 11246 contained an exemption for religious schools but not for other religious entities. 41 C.F.R. 60-1.5(a) (5).
- ⁴⁸ See Exec. Order: Equal Protection of the Laws for Faith-Based and Community-Based Organizations § 4 (Dec. 12, 2002).
- ⁴⁹ See Exec. Order No. 13,152, 65 Fed. Reg. 26,115 (May 2, 2000) (parental status); Exec. Order No. 13,087, 63 Fed. Reg. 30,097 (May 28, 1998) (sexual orientation); Exec. Order No. 12,106, 44 Fed. Reg. 1,053 (Dec. 28, 1978) (handicap); Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (Oct. 13, 1967) (age); Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (Sept. 24, 1965).
- ⁵⁰ 42 U.S.C. § 2000d. See *New York City Jaycees, Inc. v. U.S. Jaycees, Inc.*, 377 F. Supp. 481 (S.D.N.Y. 1974) (concluding that Title VI prohibits only discrimination based on expressly enumerated categories).
- ⁵¹ See 42 U.S.C. § 604a(f) (“A religious organization’s exemption provided under section 2000e-1 [Title VII] ... regarding employment practices shall not be affected.”); 42 USC § 9920; 42 USC § 290KK-1; 42 USC § 300x-65.
- ⁵² See Child Care Development Block Grant Act of 1990 § 5082, 42 U.S.C. § 9858l(a)(3)(A).
- ⁵³ 42 U.S.C. § 10604(e) (federal domestic violence programs); 42 U.S.C. § 3789d(c)(1) (Omnibus Crime Control and Safe Streets Act of 1998); 42 U.S.C. § 13603(b) (prohibiting preferential hiring in federally-funded housing programs); 42 U.S.C. § 2938 (Workforce Investment Act of 1998); 49 U.S.C. § 5332 (Job Access and Reverse Commute grant program of the Federal Transit Act of 1998); 42 U.S.C. § 5304(b)(2) (Housing and Community Development Act of 1974); 42 U.S.C. § 12635 (National and Community Service Trust Act of 1993).
- ⁵⁴ See Lupu, Ira C. and Robert Tuttle, “Government Partnerships with Faith-Based Service Providers: The State of the Law (December 2002). Also found at http://www.religionandsocialpolicy.org/docs/legal/reports/12-4-2002_stat
- ⁵⁵ See, e.g., *California Fed. Sav. & Loan Assoc. v. Guerra*, 479 U.S. 272, 290-91 (1987); *Hirase-Doi v. U.S. West Communications, Inc.*, 61 F.3d 777 (10th Cir. 1995).
- ⁵⁶ See, e.g., *Cranford v. City of Slidell*, 25 F. Supp.2d 727, 728 (E.D. La. 1998) (rejecting local ordinance governing employment of police officers as inconsistent with state law).
- ⁵⁷ See 42 U.S.C. § 604 *et seq.*
- ⁵⁸ 42 U.S.C. § 604a(d)(1). As part of its right to maintain its religious identity, a participating religious organization is expressly allowed to retain its own methods of internal governance and retain any religious art, icons, or symbols that it displays. See 42 U.S.C. § 604a(d)(2).
- ⁵⁹ See, e.g., 42 U.S.C. § 604a(c).
- ⁶⁰ See Esbeck Testimony, *supra* at note 19. See also 42 U.S.C. § 604a(c,d).
- ⁶¹ See 42 U.S.C. § 604a(k).

VII. Conclusions

Our Working Group produced this report during a very challenging period. Since we began work last May, the Supreme Court issued a landmark decision on the use of school vouchers in parochial schools, major legislative battles on the above topics have been under way in the U.S. Congress, various implementation rules were proposed, President George W. Bush issued two new Executive Orders, and lawsuits were filed that could clarify important constitutional questions.

While many important issues remain unresolved, we believe that the Recommendations in this report, if implemented, significantly reduce unnecessary conflict, expand effective efforts to address poverty, and take us closer to a working public consensus on the issues that remain. ■

John Atlas

My own studies on housing for the poor as well as my experience as a legal aid lawyer, led to a clear conclusion about reducing poverty: if we are to improve public education, housing, health care, and job opportunities for the poor, we need to strengthen our inner city community organizations, especially those inspired by faith.

So I am grateful to the leaders of this Working Group, who had the confidence to think that you could bring together an enormously diverse political and ideological group for the purposes of strengthening government anti-poverty collaborations with faith based institutions without violating the constitution.

Roger Conner and Gerald Kamens, and the rest of the staff at Search for Common Ground, are not only dedicated to this unique process but also have the competence to make it work. Roger has this unique ability to simultaneously lead, follow and facilitate. I have never seen anything quite like it. Harris Wofford's leadership brings a sense of history and magnitude to the process. It is hard to imagine a better person to chair this effort. The two co-chairs, Ronald J. Sider and Barry Lynn, bring not only intense fundamental differences that enlighten those sitting around the table, but also an impressive ability to strongly disagree while remaining friendly. How could the rest of us behave differently?

Ultimately, what could be more important to the soul of America than to know that such a diverse group can make common cause to reduce poverty?

John Castellani

It was an honor to be invited to be a part of the Working Group discussion. The Faith-Based and Community Initiative can be helpful and productive in providing aid for the various social needs of our society.

It was profitable to be a part of discussions where many people shared their opinions and interacted as to how the government could assist the faith-based community with support, which we all know is so desperately needed.

I personally felt that it was important to interact with people of varied backgrounds and opinions to develop a healthy coalition. I feel that the summation is not only going to benefit those who are looking for opportunities to overcome the difficulties of life, but also to empower providers to furnish the aid needed for those individuals who depend on us to be there in their time of need. I have a great appreciation for each of the providers that worked on this initiative. This is just the beginning of a healthy discussion that I believe will continue in a positive way for months and years to come.

Richard T. Foltin

At the risk of seeming to indulge in anticipatory nostalgia, I thought of a few lines from a Bob Dylan song in which the singer remembers "...the room where my friends and I spent many an afternoon, where we together weathered many a storm, laughin' and singin' till the early hours of the morn." I don't know about the "laughin' and singin' till the early hours of the morn" (although it sounds like a great idea), but it is fair to say that we have weathered many a storm for many an afternoon — and morning — in finding the common ground reflected here. That weathering has taken place with utmost civility throughout, we have learned from one another (and not only about issues relating to the topic of the day), and the various Recommendations, if adopted, will mean an improvement in the way that social services are funded and provided to those who need them most. That is a terrific epitaph for any process.

Steven Kelban

Finding common ground: the phrase implies searching for something that exists. My learning from this remarkable process is that the work is more that of creation than search. I credit three factors for our success here.

The skillful chairs and staff created a space and structure safe enough to allow dialogue and flexible enough to encourage more inquiry than advocacy. I want to express particular appreciation to our chair Harris Wofford for his calm and balanced leadership and to Barry Lynn and Ron Sider, our co-chairs, who had to navigate choppy waters both within the group and without.

The process also required considerable courage from each participant, most specifically though from those who represented constituent groups with strongly held views. Each of us had to question our own assumptions closely; for some of us that questioning was largely a solitary exercise. For many others, that questioning required serious dialogue with those who felt that the Working Group member was there to represent their particular group and should hold fast to positions previously developed. I honor the work each of us did but want to acknowledge the special challenge faced by some of my colleagues and thank them for their commitment to the process.

Finally, it is not enough to look for common ground, imagining diligence and goodwill will lead to consensus. It is much more of an active process than I had originally imagined. Finding common ground requires not just structure and safe space and not just well intentioned folks. It requires processes that expose different assumptions, even different definitions of similar terms; processes that build on early agreements to allow deeper explorations of real difference; and processes that allow each of us to appreciate the values animating positions so that we can create agreements that speak to those values while honoring differences.

Mary Nelson

I came to this table of consensus building out of a grassroots context representing a faith-based community development corporation. Theoretical issues and the legal ramifications of them are “foreign” to me. My experience coming out of a faith context informed my intellect that there is something “extra” and “second mile” that comes in relating one’s faith, to seeking to change things and reduce poverty in this country. What a delight it has been to find a consensus among this amazing group of people in the need to harness civic, faith, and government efforts towards reducing poverty. How important it is to experience that, though we come from strong positions that vastly differ and often are in conflict, with persistence and willingness to “hang in the discussion”, respect for each other’s opinions, and creative people who can help postulate a “third way,” there can be real breakthroughs. So I commend both the process and the product of these deliberations as solid progress towards mobilizing our energies and resources around overcoming poverty in this country.

Karen Woods

One of my most basic beliefs is that God loves people more than anything. As the Working Group 2003 has committed hours and energy to this consensus effort, I pray that these ideas and innovations will assist those committed to effectively addressing the massive human need in this country. The Group’s expanded Recommendations and the refinement of the faith-based organization typology, I believe, provide broadened perspective and opportunity to actually *do* something that makes a difference rather than merely debate.

Winston Churchill said it best: “Never, never, never, never give up.” It’s so tempting to give up when you are at apparent impasse with those who you know will never have the same perspective

Member Reflections

on faith-based and community initiatives as you do. But the key is not to give up. The Working Group 2003 has been an exercise in staying the course on this important issue, including adding clarity to the reasons for continued disagreement. I have learned much. I have deeply appreciated the opportunity to participate.

John D. Atlas

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John Atlas is the founder and President of the National Housing Institute (NHI). A think tank on affordable housing and community building, NHI has produced several studies dealing with such topics as public housing, homelessness, employee assisted housing and crime prevention and publishes *SHELTERFORCE*, the oldest independent magazine dedicated to creating and preserving thriving communities. Atlas also produced the award-winning documentary on the housing crisis, "Not the American Dream."

For 21 years, Atlas also was the executive director of the nationally recognized Passaic County Legal Aid Society (PCLAS) that provided free legal services to the poor. PCLAS was known for its innovative legal representation of faith based organizations.

Atlas is a board member of the New Jersey Tenant Organization (NJTO), the nation's largest and most successful statewide consumer housing organization. He was one of the founders of New Jersey Citizen Action and the Campaign For America's Future. As Co-Chair of New Jersey Citizen Action, he was involved in building coalitions of the middle class and poor around activities dealing with voter registration, health care, fair taxes, utility rates, and fair banking issues.

Atlas has served on several advisory boards and commissions, including the New Jersey State Planning Commission. In 1993, the Clinton Administration appointed Atlas to the Advisory Board of the Resolution Trust Corporation (RTC).

A writer and speaker, Atlas has appeared on numerous television and talk shows. His articles have appeared in *The New York Times*, *Dissent*, *The American Prospect*, *The New Jersey Reporter*, *The Nation*, *The Progressive*, *The Washington Post*, *Tikken*, *Foundation News* and *The Star Ledger*.

John L. Avery

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John L. Avery, LICSW, MPA, is Director of Public Policy for NAADAC, the Association for Addiction Professionals. Avery is a certified alcohol and drug abuse counselor (CADAC), and has served in a variety of treatment modalities including halfway house residential treatment for the Volunteers of America (VOA) in Boston, MA, and intensive outpatient treatment (IOP) at Mt. Auburn Hospital, Cambridge, MA. Just prior to joining NAADAC he directed a post-detox transitional program for homeless patients awaiting residential treatment for CASPAR in Somerville, MA. His clinical career has been focused on the public sector client.

Avery served on the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Treatment Plan "Stigma" Panel and the Health Resources Services Administration's (HRSA) project for access to mainstream services for homeless populations.

John grew up in Miami, FL. He holds a B.A. in Political Science from New York University, a Masters in Social Work from Simmons College, a Masters in Public Administration from Suffolk University and a certificate in alcohol and drug counseling from the University of Massachusetts.

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John Castellani is the President of Teen Challenge International USA — a faith-based substance abuse program with 178 Centers ranging from crisis counseling to residential.

A 1959 graduate of Eastern Bible College (now Valley Forge Christian College), Rev. Castellani pastored four churches with the Assemblies of God, and from 1989-2002 was the President/Executive Director of a Training Center in Pennsylvania with 250 residents. He is a certified Allied Addiction Practitioner with the Pennsylvania Chemical Abuse Certification Board, a member of the National Association of Forensic Counselors, a Certified Criminal Justice Specialist (CCJS), and has received the Master Addictions Counselor Endorsement (MACE). Rev. Castellani received the American Century Award from The Washington Times Foundation in February 2000.

Richard T. Foltin

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Richard Foltin is Legislative Director and Counsel in the American Jewish Committee's Office of Government and International Affairs in Washington, D.C. He is responsible for the development, promotion and execution of AJC's legislative agenda and regularly deals with church-state matters, including the issues presented by "charitable choice."

Mr. Foltin serves as co-chair of the First Amendment Rights Committee of the ABA's Section on Individual Rights and Responsibilities and is a member of the National Council of Churches' Committee on Religious Liberty. Mr. Foltin speaks and lectures regularly on church-state and other issues, and has published articles on various topics. A native of New York City now residing in Montgomery County, Maryland, Mr. Foltin received his B.A. in

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Wilson Goode is Senior Advisor on Faith-Based Initiatives for Public/Private Ventures and a member of the board of trustees, and trustee in residence, at Eastern University in St. Davids, PA. Dr. Goode is the Chairman of Self Incorporated, Goode Cause Incorporated, Philadelphia Leadership Foundation, and Cornerstone Christian Academy. Prior to these positions, Dr. Goode was the Deputy Assistant Secretary for the U.S. Department of Education from 1993 to August 2000. He also served as the Mayor of Philadelphia, PA from 1984 to 1992. From 1980 to 1983 he served as the City's Managing Director.

Kevin J. ("Seamus") Hasson

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As President and General Counsel of The Becket Fund, Seamus Hasson has defended the religious rights of Catholics, Protestants, Muslims, Jews, Buddhists, Sikhs, and Native Americans in cases throughout the country in courts at all levels. Before founding The Becket Fund in 1994, he was an attorney at Williams & Connolly in Washington D.C., where he focused on religious liberty litigation. From 1986 to 1987, he was in the Office of Legal Counsel of the Justice Department, where he advised the cabinet departments on church-state relations. He is a 1985 magna cum laude graduate of Notre Dame Law School and also holds a masters degree in theology from Notre Dame. Mr. Hasson has appeared in numerous public debates, both in universities and in the national media.

Donna L. Jones

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The Reverend Donna Lawrence Jones has served as Pastor of the Cookman United Methodist Church in inner-city Philadelphia for ten years. The congregation hails from the community and remains in-touch with the spiritual, emotional and economic challenges of our time.

Together, she and the congregation have developed innovative strategies toward the elimination of poverty in their community. Cookman church is a relatively small (152 members) congregation in an economically challenged neighborhood of North-Central Philadelphia. The Church has a history of community empowering ministries including job development, job placement and training, after school tutoring and nutrition, arts and spirituality, educational enrichment, and youth leadership development through youth-led entrepreneurship.

Cookman was one of the first churches in the nation to take advantage of the Charitable Choice provision of the Welfare Reform Bill in order to expand the Transitional Journey Ministry to include recipients of Temporary Assistance to Needy Families (TANF) and youth-at-risk. To date, the church has helped over 502 persons maneuver through the changes in the welfare entitlement system, achieve and sustain employment, tackle literacy, and work toward earning a GED or High School Diploma while developing the holistic life-skills necessary to achieve individual and family stability and purpose.

Rev Jones also serves on the Cabinet of Black Clergy of Philadelphia and Vicinity, Board of Metropolitan Christian Council of Philadelphia, Chair of the Bishop's Task Force on Children and Poverty for the Eastern, PA Conference of the United Methodist Church, and is part of the community advisory committee for the Neighborhood Action Bureau.

Steve Kelban

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Steve Kelban is the Executive Director of both the fifth generation Andrus Family Fund (AFF) and the Andrus Family Philanthropy Program (AFPP). The AFF supports non-profit organizations in the areas of community reconciliation and the transition from foster care to independence. The AFPP is a network encompassing all of the Andrus Family's philanthropic, community service and educational activities.

Prior to this appointment in January 2000, he served for 12 years as the Executive Director of the Public Interest Law Center at the NYU School of Law, and directed the school's prestigious Root-Tilden Public Interest Scholarship Program. While at NYU, he created Pro Bono Students America, a national organization that matched law student volunteers at 120 member law schools with over 8,500 public interest organizations around the country.

Earlier in his career, Mr. Kelban was Speaker's Counsel for the Committee on Children and Families of the New York State Assembly, a Program Associate at the Edna McConnell Clark Foundation's Justice Program, Associate Director of the Court Employment Project (a court-related social service program), a staff attorney of the Criminal Defense Division of The New York City Legal Aid Society, and a VISTA attorney in the Civil Division of the Westchester Legal Aid Society. He is a graduate of Lehigh University and Brooklyn Law School, and has been admitted to the Bar in New York State and the Southern and Eastern United States District Courts.

Richard Land

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Richard Land has served as President and Chief Executive Officer of the Southern Baptist Convention's Ethics & Religious Liberty Commission since 1988. As spokesman on Capitol Hill for the largest Protestant denomination in the country, Dr. Land has represented Southern Baptists' views before Congress, before U.S. Presidents, and in the media. As host of radio program "For Faith & Family," Dr. Land speaks on the social, ethical and public policy issues facing our country. An internationally renowned scholar with a D.Phil. from Oxford University, Dr. Land has worked tirelessly for the past two decades as a pastor, theologian and public policy maker addressing our nation's social and cultural ills. Dr. Land's record as a pro-family advocate is capped by his proudest accomplishment — his 30-year marriage and personal investment in the lives of his three children and his wife, Dr. Rebekah Land, a psychotherapist in private practice.

Eileen Williams Lindner

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Eileen Williams Lindner is Deputy General Secretary for Research and Planning at the National Council of the Churches of Christ in the USA, a community of thirty-five Protestant and Orthodox communions. She formerly served as Director of the Child Advocacy Office of the Division of Church and Society which sponsored the most extensive study ever undertaken of child care in the U.S. churches, the findings of which are contained in *When Churches Mind the Children*. Named by President Jimmy Carter to the U.S. National Commission for the International Year of the Child, Rev. Dr. Lindner is an ordained minister in the Presbyterian Church (USA) and is active in serving the Presbyterian Church of Leonia

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Barry W. Lynn

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Barry Lynn is Executive Director of Americans United for Separation of Church and State. Before accepting the post at Americans United, Lynn held a variety of positions related to religious liberty. From 1984 to 1991 he was legislative counsel for the Washington office of the American Civil Liberties Union, where he frequently worked on church-state issues. From 1974 to 1980, Mr. Lynn served in a variety of positions with the national offices of the United Church of Christ, including a two-year stint as legislative counsel for the Church's Office of Church in Society in Washington, D.C. A member of the Washington, D.C. bar, Mr. Lynn earned his law degree from Georgetown University Law Center in 1978. In addition, he is an ordained minister in the United Church of Christ, who received his theology degree from Boston University School of Theology in 1973. Mr. Lynn earned his bachelor's degree at Dickinson College, Carlisle, Pennsylvania, in 1970. An accomplished speaker and lecturer, Mr. Lynn has appeared frequently on television and radio broadcasts to debate and discuss First Amendment issues.

Will Marshall

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Will Marshall is President and a founder of the Progressive Policy Institute (PPI). Marshall is editor of *Building the Bridge: 10 Big Ideas to Transform America* and co-editor of *Mandate for Change*, PPI's best-selling policy blueprint for President Clinton's first term. He has written on a wide array of political subjects, including welfare reform and urban revival, race and affir-

mative action, new models for governing, and defense and foreign policy. His articles have appeared in *The New York Times*, *The Wall Street Journal*, the *Los Angeles Times* and many other newspapers as well as *The American Prospect* and other policy-oriented journals.

As policy director of the Democratic Leadership Council (DLC) from that organization's inception in 1985 until 1989, Mr. Marshall worked with leading members of Congress and other elected officials around the country — including Bill Clinton, DLC chairman in 1990-1991 — to establish the DLC as the premier forum for policy and political debate within the national Democratic Party. He is Editor-at-Large of the DLC's *Blueprint Magazine*. Born in Norfolk, Virginia in 1952, Mr. Marshall is a 1975 graduate of the University of Virginia, where he received his Bachelor of Arts degree in English and History.

Steven T. McFarland

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Steven T. McFarland, Esq., is Vice President of Government Affairs, and Counsel to the President for Prison Fellowship International (PFI), the world's largest prison ministry, serving inmates, ex-prisoners, victims, and their families in the name of Jesus Christ and promoting Biblical standards of restorative justice.

Steve brings expertise in First Amendment legal issues as well as experience in government policymaking and building coalitions among disparate groups.

In 1999, Steve was appointed Executive Director of the U.S. Commission on International Religious Freedom, an independent bipartisan federal watchdog agency advising the executive and legislative branches how U.S. policy can promote religious liberty abroad. Prior to that, for over eight years he was Director of the Center for Law and Religious Freedom, the Christian Legal Society's legal advocate and lobbyist for all faiths. Before CLS, he was a trial lawyer for 11 years in Seattle,

defending religious institutions and persons against government encroachment on First Amendment rights.

He received his B.A. (Law and Society) and J.D. degrees from the University of California.

Elliot M. Mincberg

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Elliot Mincberg is Vice-President, General Counsel, and Legal and Education Policy Director of People for the American Way Foundation, a national organization that promotes public education and constitutional and civil rights. He has served as co-counsel in a number of important First Amendment, religious liberty, and education cases, including litigation challenging school voucher programs in Milwaukee, Cleveland, Pennsylvania, and Florida, and has played an important role in drafting the Federal Guidelines on Religious Exercise in the Federal Workplace in 1997, the *Joint Statement of Current law on Religion in the Public Schools* in 1995, and similar guidelines. Prior to joining PFAWF, Mr. Mincberg was partner at the law firm of Hogan and Hartson. Mr. Mincberg has written and spoken extensively on education and on First Amendment issues, and serves as a member of the Committee on Religious Liberty of the National Council of Churches. He holds a law degree from Harvard University.

Mary Nelson

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Mary Nelson is President and CEO of Bethel New Life, a 23 year old faith-based community development corporation on the low income, primarily African American West Side of Chicago where she lives, works and worships. Bethel has a national reputation for cutting-edge initiatives in housing, community development, smart growth, employment and family support. Mary holds a Ph.D. from Union

Graduate School, and had five honorary degrees. She is a faculty member of the Asset Based Community Development Institute, and teaches at the University of Illinois-Chicago and SCUPE. She is on the Boards of Christian Community Development Association, Call to Renewal, National Congress of Community Economic Development (immediate past chair), and chair of the Boards of Good City (Chicago based Leadership Foundation) and Loretto Hospital Foundation. Mary seeks to be faithful to God's call to justice and compassion.

Robert Pianka

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Robert Pianka is the Director of the new US Program of International Orthodox Christian Charities (www.iocc.org), a humanitarian aid agency founded in 1992 by the Standing Conference of Canonical Orthodox Bishops in the Americas "to respond to the call of our Lord Jesus Christ, to minister to those who are suffering and are in need throughout the world, sharing with them God's gifts of food, shelter, economic self-sufficiency and hope." IOCC continues to expand beyond its initial focus on Eastern Europe and to move beyond emergency relief to economic and local capacity development projects. IOCC's newest programs are in Ethiopia, the West Bank, and the United States. As many as 5 million Americans in over a dozen communities of Eastern European, Middle-Eastern, and African origin are of Orthodox heritage. The mission of IOCC's U.S. Program is to promote meaningful and effective opportunities for Orthodox Christians to practice their philanthropy.

Mr. Pianka was IOCC's first Country Representative in Yugoslavia in 1993 and in the Republic of Georgia in 1994, and worked subsequently in its Baltimore headquarters to develop IOCC's organizational capacity. He has worked in the private sector, as a risk/opportunity analyst and marketer in the defense export sector, and as an entrepreneur developing and licensing a corrosion-resistant

construction material for the marine environment. Mr. Pianka received his MBA from the American Graduate School of International Management in Phoenix, AZ.

Khaled Saffuri

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Khaled Saffuri is the Chairman of the Board of the Islamic Institute, which he established in May 1998, to create and facilitate a better understanding between the Muslim community in America and policy makers. The Islamic Institute works on various political, economic, social, and domestic issues, such as taxation policy, education, health reforms, social security, and international trade.

In 2000, Khaled Saffuri worked extensively with the Bush presidential campaign to ensure the American Muslim representation during the campaign. During the Republican convention in Philadelphia in 2000, a Muslim prayer was given for the first time at a Republican convention. During the campaign, Saffuri had also organized a series of meetings between American Muslims and Republican leaders, including a visit by George W. Bush to an Islamic Center in Michigan. Saffuri gained a strong Republican support for the national campaign to have a postage stamp honoring Eid, the Muslim feast. Bush, House Speaker Dennis Hastert, Chairman Jim Nicholson, and Chairman of the National Republican Campaign Committee, Tom Davis wrote letters in support of the Eid stamp.

Before establishing the Islamic Institute, Khaled Saffuri was the Executive Director of the American Task Force for Bosnia (ATFB), which he established in December 1992. ATFB was a coalition of mainstream Muslim, Christian, Jewish, and other ethnic organizations in the United States, which aimed to coordinate efforts to end the carnage in Bosnia. As an important accomplishment of the ATFB, Mr. Saffuri organized several international conferences on Bosnia, which led the American

Security Council to nominate the AITF for the 1996 Nobel Peace Prize for its efforts toward peace in the region. Mr. Saffuri was also the Director for Government Affairs for the American Muslim Council from September 1995 until December 1997.

An expert on Arab-American issues, Mr. Saffuri moved to Washington, DC in 1987 to work as Development Director with the American Arab Anti-Discrimination Committee, a major civil rights group founded by former US Senator James Abourezk. In 1990, he joined the National Association of Arab-Americans as an Assistant Executive Director until September 1993.

Mr. Saffuri has appeared on many television and news programs and has been numerous times quoted by media organizations, such as CNN, WSJ, BBC, VOA, *The Christian Science Monitor*, *LA Times*, *The Wall Street Journal*, *The Washington Post*, *The Washington Times*. He also has been interviewed by Arab Satellite Stations and print publications such as MBC, Al Jazeera, Abu Dhabi Television, Al-Watan and many others.

Mr. Saffuri has also acted as a National Advisor on Arab and Muslim Affairs for the 2000 presidential campaign of Texas Governor George W. Bush from June 1999 up to the election.

Mr. Saffuri was born in Beirut, Lebanon, and moved to the U.S. in 1982, in order to continue his education. Mr. Saffuri holds a Bachelor's degree in Business Administration and a Masters degree in Management Science from the University of Redlands, California. He lives in Great Falls, Virginia.

David Saperstein

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David Saperstein is the Director of the Religious Action Center of Reform Judaism. Described in a recent profile in *The Washington Post* as the "quintessential religious lobbyist on Capitol Hill," he represents the national Reform Jewish Movement to Congress and the

administration. In 1999, Rabbi Saperstein was elected as the first Chair of the U.S. Commission on International Religious Freedom created by a unanimous vote of Congress. Honored recently for his 25 year tenure as director of the Center, Rabbi Saperstein has headed several religious coalitions and currently serves on the boards of numerous national organizations including the NAACP and People For the American Way, and co-chairs the Coalition to Preserve Religious Liberty, comprised of over 60 national Catholic, Protestant, Jewish, and educational organizations opposing school prayer amendments and legislation.

Also an attorney, Rabbi Saperstein teaches seminars in both First Amendment Church-State Law and in Jewish Law at Georgetown University Law School. A prolific writer and speaker, Rabbi Saperstein has appeared on a number of television news and talk shows including "Nightline," "Oprah," "Lehrer News Hour" and ABC's "Sunday Morning." His articles have appeared in *The Washington Post* and *The New York Times* and his latest book is, *Jewish Dimensions of Social Justice: Tough Moral Choices of Our Time*.

Jill Schumann

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Jill Schumann, MBA, serves as the President and Chief Executive Officer of Lutheran Services in America. LSA is an alliance of the Evangelical Lutheran Church in America and The Lutheran Church-Missouri Synod and their nearly 300 health and human service organizations. Lutheran social ministry organizations form one of the largest non-profit networks in the country.

Prior to her work with LSA, she served in executive roles with non-profit and for-profit organizations and has launched ground-breaking programs in post acute healthcare, behavioral health and chemical dependency treatment. She is often invited to consult with

organizations in the areas of strategic planning, joint venture and merger activities, marketplace assessment, and project development. She serves on the boards of directors of the Council on Accreditation for Children and Family Services and the National Assembly of Health and Human Service Organizations.

Ms. Schumann holds a Master's in Business Administration from Mount Saint Mary's College and did Ph.D. work in history and alcohol studies at Rutgers University. For many years she held certifications in alcoholism counseling and employee assistance programming.

Ronald J. Sider

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Ronald Sider (Ph.D., Yale) is Professor of Theology and Culture at Eastern Baptist Theological Seminary and President of Evangelicals for Social Action. A widely known evangelical speaker and writer, Sider has spoken on six continents, published twenty-two books and scores of articles. His *Rich Christians in an Age of Hunger* was recognized by *Christianity Today* as one of the one hundred most influential religious books of the twentieth century. He has recently published *Just Generosity: A New Vision for Overcoming Poverty in America*, which wrestles with the role of faith-based organizations in overcoming American poverty. Sider is the publisher of *PRISM* and *Creation Care* and a contributing editor of *Christianity Today* and *Sojourners*.

Harris Wofford

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Harris Wofford is the Chairman of the Working Group on Human Needs and Faith-Based and Community Initiatives and former US Senator from Pennsylvania. He is the Co-Chairman of America's Promise: the Alliance for Youth, the campaign launched by the 1997 Presidents' Summit in Philadelphia. In 1961, he helped launch the Peace Corps. He has served as Counsel to the U.S. Commission on Civil Rights, Special Assistant to President Kennedy, the Peace Corps' Special Representative to Africa, President of the State University of New York at Old Westbury and of Bryn Mawr College, Secretary of Labor and Industry for the Commonwealth of Pennsylvania, and CEO of the Corporation for National Service. An alumnus of the University of Chicago and both Howard University and Yale Law Schools, he has also practiced law and authored several books, including *Of Kennedys and Kings*.

Karen M. Woods

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Karen M. Woods is Executive Director of The Empowerment Network (TEN), www.empowermentnetwork.com, a national focus research and information hub that assists grassroots leaders and state legislators to facilitate family and community renewal. She is a certified Empowerment Resource Network (ERN) trainer for Raising Resources, a technical assistance seminar empowering organizations to effectively establish and sustain visionary programming.

Mrs. Woods is the Executive Director of the Foundation for Michigan's Future, a state nonprofit that promotes civil society in Michigan. She has been affiliated with state think tanks, has served as a policy analyst for the director of Michigan's state social service

agency, and is a writer, speaker, and consultant on state public policy, particularly innovative welfare reform policy and faith-based and community initiatives.

Robert L. Woodson, Sr.

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Robert Woodson, Sr. is Founder and President of the National Center for Neighborhood Enterprise, which he established in 1981 to assist and empower leaders of faith-based and community organizations. In 1995, at the request of the Speaker of the House of Representatives, Mr. Woodson brought together a panel of faith-based and community program leaders. Their report to Congress on barriers they face and public policy recommendations laid the ground for Charitable Choice and the Community Renewal Act legislation. Mr. Woodson's crusade on this issue eventually led to the establishment by Texas Governor George W. Bush of a commission on faith-based programs, and legislation to assist faith-based programs in Texas. Since the launching of the national Faith-Based and Community Initiative, Mr. Woodson has been active in leading support and disseminating information about the benefits of these important programs and the barriers they face.

Nancy M. Zirkin

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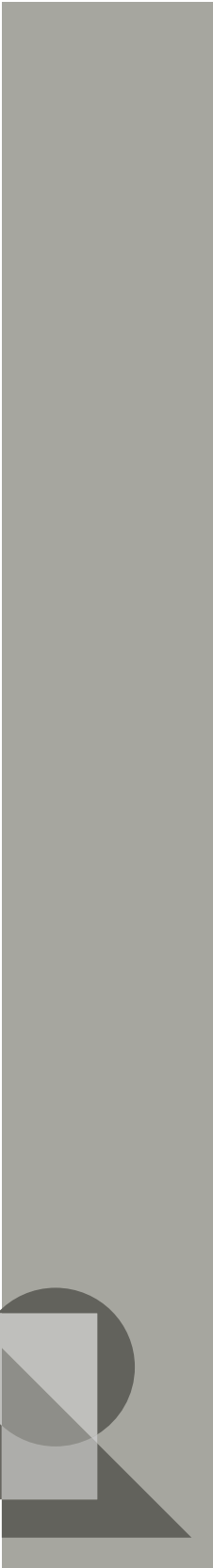
Nancy M. Zirkin has long been active in issues involving civil rights. Since 1971, she has worked to advocate public policy that improves the lives of all people by promoting civil and constitutional rights and equity in education and in the workplace for women and girls. Her efforts to advance civil rights have included grassroots organizing, lobbying members of Congress and state legislators, and personally sup-

porting candidates who believe in equal opportunity and fair treatment for all Americans.

In September 2002, Zirkin became Deputy Director/Director of Public Policy for the Leadership Conference on Civil Rights, the nation's oldest and largest civil and human rights coalition, consisting of more than 180 national organizations. Zirkin leads the coalition's congressional lobbying efforts in the defense and promotion of civil and constitutional rights and liberties. She directs, manages, formulates, and coordinates LCCR's public policy, communications/media strategy, and grassroots strategy. Zirkin is overseeing the expansion of LCCR's Public Policy Department in order to more effectively promote the policy goals of LCCR and its member organizations.

Before coming to LCCR, Zirkin served as Director of Public Policy and Government Relations for the American Association of University Women (AAUW), a 150,000 member national organization. She directed, managed, and coordinated the implementation of AAUW's public policy agenda in Congress and the executive branch by overseeing the legislative, grassroots, and coalition efforts on AAUW priority issues including: civil rights, education, reproductive choice, and work place issues. As well as having been AAUW's chief lobbyist, in 1995 Zirkin created and directed the AAUW Voter Education Campaign, which reached more than one million women voters during the 2000 election.

Zirkin's efforts for the advancement of women began when she worked in the Women's Rights Division for the Muskie for President Campaign. Since that time, she has worked on various issues, elections, and voter education campaigns advocating to improve the lives of women and girls. From 1980 to 1985 Zirkin held a number of positions at AAUW including: Coordinator of the ERA ratification campaign and of the Women's Vote Project. She left AAUW in 1985 to work in the private sector. She returned to AAUW in 1989 as the Campaign for Choice Coordinator, and became Director of Public Policy and Government Relations in 1992.



While in the private sector, Zirkin was Executive Vice President of Harry D. Myerberg Associated Companies, Inc., in Baltimore, Maryland. Zirkin directed all aspects relating to the operation and administration of companies responsible for the property management of approximately 2,000 HUD insured apartments in Baltimore City, Baltimore County, and Annapolis, Maryland.

As a volunteer, Zirkin has served for over seven years on the Executive Board of the Women's Campaign Fund, a bi-partisan organization dedicated to electing pro-choice women to office. She is also on the Executive Board of the Women's Leadership Forum and the National Family Planning & Reproductive Health Association and is active in several community-based projects.

Nancy is married to Harold Zirkin, an investment adviser in Bethesda, Maryland. They have four children.



Working Groups on Human Needs and Faith-Based and Community Initiatives – 2003
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