

**Bending the arc of public policy to make government a  
partner with communities and faith:  
The vision, advances, and unfinished reforms of the  
faith-based initiative**

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## **Prelude**

The goal of the federal faith-based initiative is not to transfer more government money to churches and religious charities. The goal, instead, is to achieve better—more effective, more fitting, more empowering—social assistance for persons, families, and communities that need it. Services that may be uniquely helpful and trusted are provided every day by civil society organizations—by faith-based providers, houses of worship, and community-based organizations. For government to fulfill well the social assistance responsibilities it has taken on, it is imperative that it partner with, support, and protect those civil society organizations, even as it collaborates with large and secular nonprofits and with businesses to achieve social goals. It is to bring into being that new partnership between government and civil society organizations, for the sake of those who depend on effective social assistance, that the faith-based initiative exists as a suite of transformed church-state rules and government funding practices and a set of new officials and government institutions.

The best way to see why government should support and partner with faith-based and community-based organizations is to experience what they do daily in their works of service. Become acquainted with the outreach of Healing Communities USA as it equips congregations to minister to former prisoners and to people suffering from addiction or domestic violence so that they can contribute to society. See how innovative work by the Woodson Center identifies and empowers local residents to become agents of change, peace, and justice in violent communities. Visit my suburban church, evangelical and conservative, and participate in its twice-weekly service as a hub in a network of food collection and distribution nodes organized by Celestial Manna—join with church members and other volunteers to gather and give essential supplies and to befriend people who may wish for and need more than commodities. Walk down the street to a small Black or Hispanic church to see how extensive and personal are the services they provide despite their limited resources. Find a synagogue, a mosque, a Hindu temple, or a Sikh gurdwara and witness their commitments to serving beyond their respective memberships but in a religiously distinct way. Don't just watch. Become inspired and become involved.

## **Introduction**

*In March 2020, as an increasing number of COVID-19 cases were identified in Oregon and the state's agencies began developing public health messages, rules, and programs to slow the spread of the disease and aid its victims, human services and public health officials discovered a tragic gap: government programs and messages were not reaching some of the state's populations that most needed support during the crisis. African American, African immigrant, Hispanic, and other minority ethnic, racial, and religious communities, along with rural communities, were disconnected from the government's efforts. It wasn't until a group of Black faith leaders spoke out to highlight the disconnect between faith leaders and state officials that this began to change. Oregon, like other states, regularly contracts with religious organizations to deliver various social services, but religion was not in the foreground of the state's policy imagination. Thus, notes a state official, as the pandemic spread, "We didn't say the word 'faith' or 'congregation' or anything in any of our guidance. We treated houses of worship as nothing different than concert venues."*

*However, as the tragic consequences of the disconnect became evident in the spread of the disease and its outsized impact on already-disadvantaged communities, the state dramatically shifted its approach. Officials worked in partnership with faith leaders to begin opening lines of communication and to rebuild trust. Together, as partners in combating the public health crisis, they disseminated essential public health information in communities with low trust in government. Grants were awarded to faith-based and community-based organizations to support outreach and to share information about available services to help individuals protect themselves and their communities. Some organizations chose even to host vaccination clinics in their own trusted spaces.*

*In addition to facilitating the direct delivery of services to the public, the improved relationship between state officials and faith leaders led to a shift in acknowledging the critical role houses of worship play, particularly in minority communities and rural communities. The new program and policy direction has continued although the pandemic has waned. The state has awarded a new round of special grants, not as a crisis-response measure, but as a means of promoting community strength and resiliency by increasing the capacity of faith-based organizations, faith-based networks, and other community organizations to better serve their own members and the neighbors around them. A new high-level office to engage faith-based and community-based organizations has been created. As the Oregon official reflected, “[B]uilding those bridges with faith communities on topics where there is mutual interest and shared priorities has proven to be very effective in better caring for everybody who lives in Oregon.”<sup>1</sup>*

Governments act in many ways to promote uplift, combat inequities, and support community development. As the experience of Oregon illustrates, one essential strategy is to engage with and strengthen the institutions and networks already counted on by families, individuals, and neighborhoods. Civil society organizations, locally rooted and often religious, form an important dimension of many people’s lives and are a helping and connecting presence in their

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<sup>1</sup> My thanks to Maria Waters, the Oregon official who shared with me about the Oregon experience. She is the Faith Community Liaison in the Office of the Director, Oregon Department of Human Services, and serves more broadly in that capacity on request from other Oregon agencies and the Governor’s Office.

communities. These organizations and their programs build personal relationships and strengthen agency; they do not simply deliver services. The vision and strategy of the faith-based or partnership initiative is to transform government policy and practice so that it partners with civil society and religious organizations rather than ignoring them, and so that it draws on their unique strengths and invests in them.

The faith-based initiative is about *no less* than ensuring that faith-based and community-based organizations are able to access government funding to provide services, and yet it is about *much more*. It also encompasses government *recognition* of the unique strengths of these organizations and the indispensable roles they play, *protection* of the freedoms they need to serve in their distinctive ways, *support* for their thriving, e.g., via tax incentives for charitable giving, and a *welcome* for them into the many networks the government supports in order to coordinate services to people and families facing particular challenges.<sup>2</sup> As US presidential candidate Barack Obama said in 2008 in announcing that he would maintain the federal faith-based initiative started by President George W. Bush, “[T]he challenges we face today—from saving our planet to ending poverty—are simply too big for government to solve alone. We need all hands on deck.”<sup>3</sup>

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<sup>2</sup> The goal is not necessarily government funding of faith-based organizations, because faith-based and secular civil society organizations can often best flourish and best serve their communities when not entangled with government rules, however hospitable these have been made to be. And the goal is not necessarily that government regulations acknowledge and appropriately protect faith-based organizations, because faith-based and secular civil society organizations may sometimes best flourish and best serve the common good when left free of government restrictions. However, when the government does regulate and when it does offer funding to private organizations for the provision of services, then faith-based organizations should be equally eligible for the funding and their distinctive characteristics should be carefully protected as far as possible.

<sup>3</sup> “Obama Delivers Speech on Faith in America” (speech text), *New York Times*, July 1, 2008, <https://www.nytimes.com/2008/07/01/us/politics/01obama-text.html>.

“Poverty and inequality cannot be solved by traditional bureaucratic solutions, which entail generalized approaches executed by traditional command-and-control structures to address social ills with simple, linear causes. Instead, poverty and inequality are complex problems with multiple and interlocking causes and effects. . . . In order to effectively combat poverty, the government must not only bring to bear resources, but also serve as a connector and enabler. This requires linking personnel within interconnected local ecosystems, including individuals, faith-based and community organizations, community leaders, service providers on the state and local level, and public institutions, to utilize government-provided resources as seed capital for catalyzing additional social linkages and fortifying non-material assets within communities.”  
— President Obama’s Advisory Council on Faith-Based and Neighborhood Partnerships, *Strengthening Efforts to Increase Opportunity and End Poverty* (2016).<sup>4</sup>

The faith-based initiative is built on and advances twin dramatic reforms to the government’s cross-sector collaboration system of funding private organizations to provide social assistance. The first big step was the enactment in 1996 of the Charitable Choice provision as part of federal welfare reform. Charitable Choice reversed the church-state rules that had governed the collaboration system, replacing a “no aid to religion” requirement with the obligation that government allow religious organizations equal opportunity with secular providers to obtain funding. A new range of organizations with explicitly religious identities and whose activities included religious practices thus became eligible for funding. Of vital importance, this replacement of “no aid” by “no exclusion” was accomplished in a way that makes it possible for beneficiaries—the clients or service recipients—to be assisted without religious discrimination and without religious coercion, in accordance with constitutional requirements.

The second big step was the creation of new institutions in the federal executive branch—in the White House and in major federal agencies—to champion and implement this vision of a new partnership between government and civil society organizations. These “faith-based” or “partnership” offices and officials are charged with ensuring that the Charitable Choice principles are followed; proposing pilot projects that capitalize on the distinctive strengths of civil society organizations; working with grants officials to modify the size, character, and

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<sup>4</sup> President’s Advisory Council on Faith-Based and Neighborhood Partnerships, *Strengthening Efforts to Increase Opportunity and End Poverty: Recommendations of the President’s Advisory Council for Faith-based and Neighborhood Partnerships to Address Poverty and Inequality* (Washington, DC, 2016), 55, 58, [https://obamawhitehouse.archives.gov/sites/default/files/docs/2017\\_advisory\\_council\\_report.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/2017_advisory_council_report.pdf).



requirements of federal grants; and reaching out to welcome into partnership organizations that, despite their vital impact, were once regarded as marginal to the government's work of uplift and development.

But there are puzzles here. Long before Charitable Choice was enacted or the faith-based initiative offices were created, the government was already providing much of its social assistance by funding private service providers—by awarding funds to nonprofit organizations, which in many instances were religious organizations. What, then, was the point of Charitable Choice and the faith-based initiative? And if the point was somehow to invite into partnership a new range of organizations because of the special qualities of their services and their connections, why, nearly three decades later, did the State of Oregon apparently have to rediscover this same vision and practice of partnership?

The vision, goals, rules, practices, and institutions that constitute the faith-based initiative produced fundamental changes to the government's system of collaborating with private organizations to provide social services. The system's default rules and practices were bent, foundationally modified, in order to transform the relationship from command to partnership, from government dictation to cooperation and even co-creation. But government has an inherent bias for the secular, the big, and the uniform and it does not easily change nor readily remain changed. This essay offers an overview of the genesis of the partnership vision and of its implementation by succeeding federal administrations, both Democratic and Republican. And it is an account, too, of the waning of the vision and the rebounding of old practices. I conclude with proposals for how to recover past gains and pioneer new reforms essential for enabling true partnerships in our changing society.

I write as a participant-observer. I helped to develop the initial innovation—the Charitable Choice provision in the 1996 welfare reform law—and was involved with the Clinton administration to help federal and state officials understand and implement the provision. I served on the initial staff of the Bush White House Office of Faith-Based and Community Initiatives in 2001–2002, after working with others to design the Bush initiative. I served as an

expert adviser to the church-state working group of President Obama’s Advisory Council on Faith-Based and Neighborhood Partnerships, and during his administration interacted often with officials about their implementation of the initiative. I provided confidential briefings and advice to officials of the Trump administration who carried out his version of the initiative. I have discussed aspects of the initiative with Biden administration officials, and with state and local partnership officials. For more than three decades, I have consulted with a wide range of faith-based organizations and religious leaders, including Black and Hispanic pastors. I am an advocate to Congress and the executive branch on behalf of the religious freedom that all faith-based organizations need in order to be able to offer to the public their best—their most distinctive—contributions to the common good, as they work to serve their neighbors of any or no faith.

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## **Snapshots of the continuing presence and importance of religion and religious institutions in American society**

### **Barack Obama (2006)**

“[O]ver the long haul, I think we make a mistake when we fail to acknowledge the power of faith in people's lives—in the lives of the American people—and I think it's time that we join a serious debate about how to reconcile faith with our modern, pluralistic democracy. And if we're going to do that then we first need to understand that Americans are a religious people. 90 percent of us believe in God, 70 percent affiliate themselves with an organized religion, 38 percent call themselves committed Christians, and substantially more people in America believe in angels than they do in evolution. This religious tendency is not simply the result of successful marketing by skilled preachers or the draw of popular mega-churches. In fact, it speaks to a hunger that's deeper than that—a hunger that goes beyond any particular issue or cause . . . . And one can envision certain faith-based programs—targeting ex-offenders or substance abusers—that offer a uniquely powerful way of solving problems.”<sup>5</sup>

### **Eboo Patel, Interfaith America (2023)**

“Here’s what worries me: Half the time when I’m giving a public presentation, the first question about religion is a negative question. What do you think about Islam and violence? What do you

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<sup>5</sup> “Transcript: Obama’s 2006 Sojourners/Call to Renewal Address on Faith and Politics [June 26, 2006],” Sojourners, February 12, 2012, <https://sojo.net/articles/transcript-obamas-2006-sojournerscall-renewal-address-faith-and-politics>.

think about the Catholic Church and the pedophilia crisis? Why do so many people of faith hate gay people? Particularly in the areas of America where people have higher levels of education, those are their first questions. It is considered sophisticated and educated to know only the bad stuff about religion. Of course, that's ironic because to only know the bad stuff is to not actually be educated. So that is discouraging.

"I'll tell you what I find encouraging. Catholic sisters just keep on doing what Catholic sisters do, which is taking care of poor people. There are 10,000 migrants in Chicago that leadership recently welcomed into the city. But they had not adequately prepared for where those people would sleep. Well, guess who's taking care of them? Largely, Catholic Charities and other faith-based organizations.

"Our society relies on religious communities to take care of people, to do addiction counseling, to do job training, to do hunger and homelessness work, to do refugee resettlement. We just don't often tell the story of them doing that work. And I think that that's a big problem."<sup>6</sup>

### **The religious landscape**

The religious landscape in 2024 is significantly different than in 1990 or 2000. Yet while the proportion of Americans who are unaffiliated with any religion has greatly increased, religion—one religion or another religion—remains very important for many people, and not least for racial and ethnic minorities and immigrants.

All Americans (PRRI, *2020 Census of American Religion*)<sup>7</sup>

70% of Americans identify as Christian

23% as none (religiously unaffiliated)

5% as non-Christian religious (1% Jewish, 1% Muslim)

Black Americans

63% Protestant (35% evangelical Protestant)

7% Catholic

Hispanic Americans

50% Catholic

24% Protestant (14% evangelical Protestant)

Native Americans

60% Christian (47% Protestant, 11% Catholic)

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<sup>6</sup> Eboo Patel, "Why We Shouldn't Lose Faith in Organized Religion," interview by Trish Harrison Warren, *New York Times*, July 9, 2023, <https://www.nytimes.com/2023/07/09/opinion/patel-eboo-organized-religion.htm>.

<sup>7</sup> For full data, see PRRI, *The 2020 Census of American Religion* (Washington, DC: PRRI, 2020), <https://www.prii.org/wp-content/uploads/2021/07/PRRI-Jul-2021-Religion.pdf>.

Immigrants<sup>8</sup>

68% Christian

20% none (religiously unaffiliated)

58% say religion is “very important” in their life

“Nones” and “Spiritually Involved” Americans (Pew Research Center)

Most “nones” believe in some power or factor beyond themselves.<sup>9</sup> Americans are more likely to gather in a religious congregation than a spiritual meeting; most Americans who are involved in a spiritual community are also involved in a religious community.<sup>10</sup>

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## **The turn toward civil society: Discovering the social good of religion and community**

Before there was any thought of a White House Office of Faith-Based and Neighborhood Partnerships, America’s public social assistance system already featured cross-sector collaboration.<sup>11</sup> During the long period before a significant American public welfare system was created, most of the help for those in particular need had been given by the diverse religious and secular institutions of America’s vigorous civil society.<sup>12</sup> Then, even as the federal, state, and local governments increasingly took on social responsibilities, those civil society initiatives continued,

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<sup>8</sup> For full data, see Pew Research Center, *Religious Landscape Study* (Washington, DC: Pew Research Center, Year), <https://www.pewresearch.org/religion/religious-landscape-study/immigrant-status/>.

<sup>9</sup> “[N]ot all ‘nones’ are nonbelievers. They are far less likely than religiously affiliated Americans to say they believe in God ‘as described in the Bible,’ but most do believe in God or some other higher power. Just 29% reject the notion that there is any higher power or spiritual force in the universe.” Pew Research Center, “Religious ‘Nones’ in America: Who They Are and What They Believe,” January 24, 2024, <https://www.pewresearch.org/religion/2024/01/24/religious-nones-in-america-who-they-are-and-what-they-believe/>.

<sup>10</sup> “Americans are more likely to report gathering in religious communities than meeting in spiritual groups. Fully 39% of U.S. adults say they are involved in a religious community, such as a church or religious congregation, while 14% say they are involved in ‘a spiritual community, such as a group that helps [them] find a connection with something bigger than [themselves], nature or other people.’ Moreover, most people who are involved in a spiritual community are also involved in a religious one: 10% of U.S. adults say they are involved in both kinds of groups, while just 4% of all U.S. adults say they are involved in a spiritual community and not a religious one.” Pew Research Center, “Spirituality Among Americans,” December 7, 2023, <https://www.pewresearch.org/religion/2023/12/07/spirituality-among-americans/>.

<sup>11</sup> For a theoretical overview, see John J. Forrer, James Edwin Kee, and Eric Boyer, *Governing Cross-Sector Collaboration* (San Francisco: Jossey-Bass, 2014). A classic and insightful discussion of such collaboration in US social policy is Lester M. Salamon, *Partners in Public Service: Government-Nonprofit Relations in the Modern Welfare State* (Baltimore: Johns Hopkins University Press, 1995).

<sup>12</sup> An account that was highly influential in the 1990s policy discussions is Marvin Olasky’s *The Tragedy of American Compassion* (Washington, DC: Regnery Gateway, 1992).

and the governments often carried out their enlarged social aims by providing funds to private organizations to deliver welfare services. With the great expansion of social welfare services via President Lyndon Johnson’s mid-1960s Great Society and War on Poverty programs, the collaborative approach—government funding of private providers—became a major strategy. The vast financial resources of government were combined with the flexibility of nonprofit organizations.<sup>13</sup>

But by the late 1980s, criticism of American social assistance as ineffective was growing. In many other countries, officials and citizens were seeking greater involvement by nonprofits as an alternative to government-delivered services that they regarded as inadequate.<sup>14</sup> But here, nonprofits already played a large role, yet their impact seemed lacking. Notably, just three decades after LBJ’s major social assistance programs were launched, a prominent promise of Democrat Bill Clinton in his successful 1992 campaign for the presidency was to “end welfare as we know it.” The main welfare program—Aid to Families with Dependent Children (AFDC)—with its laser focus on precisely determining financial need and then micro-adjusting welfare payments, actively discouraged recipients from earning income because such initiative complicated eligibility assessments.<sup>15</sup> But how could the government’s efforts be redesigned to more effectively address persistent poverty and other social problems?

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<sup>13</sup> Stanley W. Carlson-Thies, “Charitable Choice: Bringing Religion Back Into American Welfare,” in Hugh Heclo and Wilfred M. McClay, eds., *Religion Returns to the Public Square: Faith and Policy in America* (Washington, DC: Woodrow Wilson Center Press, 2003), 269–97; Lew Daly, *God’s Economy: Faith-Based Initiatives and the Caring State* (Chicago: University of Chicago Press, 2009), ch. 1; Salamon, *Partners in Public Service*; Steven Rathgeb Smith and Michael Lipsky, *Nonprofits for Hire: The Welfare State in the Age of Contracting* (Cambridge: Harvard University Press, 1993).

<sup>14</sup> Lester M. Salamon and Helmut K. Anheier, *The Emerging Nonprofit Sector: An Overview* (Manchester: Manchester University Press, 1996); Benjamin Gidron, Ralph M. Kramer, and Lester M. Salamon, eds., *Government and the Third Sector: Emerging Relationships in Welfare States* (San Francisco: Jossey-Bass, 1992); Lester M. Salamon, “The Rise of the Nonprofit Sector,” *Foreign Affairs* 73, no. 4 (July/August 1994): 109–22.

<sup>15</sup> On AFDC’s negative effect, see Mary Jo Bane and David T. Ellwood, *Welfare Realities: From Rhetoric to Reform* (Cambridge: Harvard University Press, 1994), 2–7. See also the noted study of the American welfare system by David T. Ellwood, with its double-edged title: Ellwood, *Poor Support* (New York: Basic, 1988). For assessments from a Christian perspective, see Stanley W. Carlson-Thies and James W. Skillen, eds., *Welfare in America: Christian Perspectives on a Policy in Crisis* (Grand Rapids, MI: William B. Eerdmans Publishing, 1996), and Stanley W. Carlson-Thies, “Transforming American Welfare: An Evangelical Perspective on Welfare Reform,” in David P. Gushee, ed., *Toward a Just and Caring Society: Christian Responses to Poverty in America* (Grand Rapids, MI: Baker Books, 1999), 473–98.

At just this same time, the contributions to the well-being of their neighbors that were being made every day by civil society organizations blasted to the attention of the public, policy scholars, and policymakers. Pressing into attention, through journalistic accounts and scholarly studies, were programs qualitatively different than the top-down, uniform, secular, and categorical ones that characterized the government system of social assistance, though it relied extensively on nonprofit organizations. These other programs, the daily work of civil society organizations, were smaller-scale, relational, often religious, and sometimes notably more effective. One striking success, unfolding over multiple years in Boston, was recounted in the cover story of the June 1, 1998, issue of *Newsweek*. The surprise newsmaker was the Reverend Eugene Rivers, pastor of a Black Pentecostal church in one of the poorest and most violent Boston neighborhoods. The surprise message was the “power of religion” to bring about a marked reduction in violent juvenile crime.<sup>16</sup>

“For decades, liberals and conservatives have argued past each other about the crisis in the inner city. The right was obsessed with crime, out-of-wedlock births and the ‘responsibility’ of the underclass; the left only wanted to talk about poverty, the need for government intervention and the ‘rights’ of the poor. Now both sides are beginning to form an unlikely alliance founded on the idea that the only way to rescue kids from the seductions of the drug and gang cultures is with another, more powerful set of values: a substitute family for young people who almost never have two parents, and may not even have one, at home. And the only institution with the spiritual message and the physical presence to offer those traditional values, these strange bedfellows have concluded, is the church.”  
— John Leland, “Savior of the Streets,” *Newsweek* (June 1, 1998).<sup>17</sup>

Rev. Rivers was a key leader of Boston’s Ten Point Coalition, a network of forty Black churches supported by other churches, synagogues, and nonprofits. Asked why the pull of violence and the drug culture was so strong, a drug dealer had said to Rivers that, when teens were hanging out or were on the way to school or the store, “I’m there, you’re not. I win, you lose. It’s all about being there.” The Ten Point volunteers were committed to maintaining a constant presence. The churches and community groups collaborated with each other and with the police and juvenile

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<sup>16</sup> John Leland, “Savior of the Streets,” *Newsweek*, June 1, 1998, <https://www.maryellenmark.com/bibliography/magazines/article/newsweek/savior-of-the-streets-637520286288994843/N>.

<sup>17</sup> Leland, “Savior of the Streets.”

justice authorities, intercepting teens being drawn toward crime and involvement with the criminal justice system. The pastors and church members pursued deep relationships with the youth and offered a range of supportive services. And they also promised swift action by the police if the path of violence and crime was chosen. The clergy were a voice of “compassion, hope, and honesty” for the youth. They carried moral and communal authority as pastors of Black churches, institutions that through 150 years of brutal racism had stood central in their communities, and because of their visible commitment to the welfare of their communities and to positive outcomes for the youth.<sup>18</sup> The Ten Point Coalition, formed in 1992, was widely credited as the main cause of the “Boston Miracle,” the dramatic decline in homicides in the city. Here, it seemed, was displayed an unexpected “power of religion” for social good, beyond its roles in the spiritual lives of its adherents. Here was a power to achieve important positive social outcomes that government programs and secular social-service nonprofits struggled to reach.

“[M]ore than a few cities, Boston among them, have come to see the churches as the most reliable institutions in poor neighborhoods, and have begun to smudge the line between church and state by quietly funding various church-run programs. ‘For the past four years, we’ve been working very closely with the churches,’ Thomas Menino, the mayor of Boston, says.” — Joe Klein, “In God They Trust” (1997).<sup>19</sup>

John J. DiIulio Jr., Ivy League scholar, Catholic, and later the first director of President George W. Bush’s White House Office of Faith-Based and Community Initiatives, dubbed such accounts “faith-factor” journalism.<sup>20</sup> There were, in fact, two lines of stories and research. One inquired into what is now sometimes called the “prosocial” effects of religion—how religious beliefs and practices and involvement in a religious community appear often (though, sadly, not always) to support mental and even physical health, help people avoid or deal with addictions, guide people

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<sup>18</sup> Jenny Berrien, Omar McRoberts, and Christopher Winship, “Religion and the Boston Miracle: The Effect of Black Ministry on Youth Violence,” in Mary Jo Bane, Brent Coffin, and Ronald Thiemann, eds., *Who Will Provide? The Changing Role of Religion in American Social Welfare* (Boulder, CO: Westview Press, 2000), 266–85. See also Kashea Pegram and Rod K. Brunson, “The Doors of the Church Are Now Open: Black Clergy, Collective Efficacy, and Neighborhood Violence,” *City & Community* 15, no. 3 (September 2016): 289–314.

<sup>19</sup> Joe Klein, “In God They Trust,” *New Yorker*, June 16, 1997, 42.

<sup>20</sup> John J. DiIulio Jr., “Supporting Black Churches: Faith, Outreach, and the Inner-City Poor,” *Brookings Review* (Spring 1999): 43.

to engage constructively with interpersonal conflicts, and encourage adherents to generously give to and volunteer for civic and social causes, secular as well as religious.<sup>21</sup>

The other line of interest and inquiry focused on faith-based programs like the Ten Point Coalition and the organizations that created and supported them. What kinds of institutions were these? How was religion manifest in them? Were their programs and services especially effective, and if so, was that somehow because of the religion?<sup>22</sup> The journalistic accounts sparked a flood of research and commentary about faith-based organizations and faith-filled services, and drew great interest from policymakers. In Washington, DC, the Brookings Institution focused on the topic with conferences and commentary; one notable outcome was a 2001 book, *Sacred Places, Civic Purposes*, which asked in its subtitle, “Should Government Help Faith-Based Charity?”<sup>23</sup> The Heritage Foundation, from the conservative side, created a civil society center to host conferences and produce research and policy advice. In 2000, scholars mostly from Harvard University published an important collection of reflective essays, *Who Will Provide? The Changing Role of Religion in American Social Welfare*.<sup>24</sup> Specialized research programs were founded at the University of Pennsylvania (the Program for Research on Religion and Urban Civil Society), University of Southern California (the Center for Religion and Civic Culture), and

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<sup>21</sup> On the two different “faith factors,” see John J. DiIulio Jr., “Foreword: Reasons for Objective Hope in the Two Faith Factors,” in Byron R. Johnson, with Ralph Brett Tompkins and Derek Webb, *Objective Hope: Assessing the Effectiveness of Faith-Based Organizations; A Review of the Literature* (Philadelphia: Center for Research on Religion and Urban Civil Society, University of Pennsylvania, 2002), and the entire study. Byron Johnson has published multiple additional careful studies of this “prosocial” effect. See, e.g., Byron R. Johnson, *More God, Less Crime: Why Faith Matters and How It Could Matter More* (West Conshohocken, PA: Templeton Press, 2011). Many professional associations, including those for doctors, nurses, counselors, and palliative and hospice care, in the past few decades changed their standards to require attention to patients’ religious experience and connections. See the brief discussion in Stanley W. Carlson-Thies, “The Faith-Based Initiative: Both Cause of Contention and the Solution to an Impasse?” *Journal of Ecumenical Studies* 44, no. 1 (Winter 2009): 70–85, at 75. On religion as a motivator of generous giving and volunteering, see Robert D. Putnam and David E. Campbell, *American Grace: How Religion Divides and Unites Us* (New York: Simon & Schuster, 2010), ch. 13.

<sup>22</sup> DiIulio notes, in his foreword to Johnson et al., *Objective Hope*, the lack of certainty about the efficaciousness of faith-based services. There are no definitive studies proving that such services are, as a class, better—or worse—than secular social services. It is notoriously difficult to measure the effectiveness of social services and to determine the precise reasons why one program works better than another. I see no reason why either faith-based or secular programs should be as a class better than the other variety. Surely some in both categories are designed and implemented better than others; surely some varieties of a service work better for some people than another variety.

<sup>23</sup> E. J. Dionne Jr. and Ming Hsu Chen, eds., *Sacred Places, Civic Purposes: Should Government Help Faith-Based Charity?* (Washington, DC: Brookings Institution, 2001).

<sup>24</sup> Bane, Coffin, and Thiemann, *Who Will Provide?*



elsewhere. Marvin Olasky won much attention for the argument in his *The Tragedy of American Compassion* (1992) and related books that social assistance could only become more effective if it became less governmental and more religious, relational, and directive.<sup>25</sup>

## **Blessing stations, hiding in plain sight**

It may be difficult to imagine this now, but only a few decades ago, into the 1990s, the existence and social contributions of community-serving religious organizations were hardly recognized. Few in government or academia understood how important faith-based nonprofits and houses of worship are to society. Policy scholars and policymakers had been so focused on the expansion over the previous decades of government spending and action that they had hardly noticed that the government's social assistance system relied extensively on nonprofit organizations to deliver services.<sup>26</sup> And they had paid even less attention to the work of religious organizations, despite the extensive participation of religiously affiliated organizations in the governmental social assistance effort. The positive impact of religion had been masked, it seems, by the distorting lens of modernization theory, which taught that religion becomes privatized as society develops, retreating to family life and the worship spaces inside churches and other houses of worship, losing its social impact.<sup>27</sup>

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<sup>25</sup> Olasky, *Tragedy of American Compassion*; Olasky, *Renewing American Compassion* (New York: Free Press, 1996); Olasky, *Compassionate Conservatism: What It Is, What It Does, and How It Can Transform America* (New York: Free Press, 2000).

<sup>26</sup> Hardly noticed: see, e.g., Salamon, *Partners in Public Service*, who stresses the lack of adequate theories.

<sup>27</sup> The unnoticed social impact of religion: José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994); Ram A. Cnaan, Robert J. Wineburg, and Stephanie C. Boddie, *The Newer Deal: Social Work and Religion in Partnership* (New York: Columbia University Press, 1999); Wolfgang Bielefeld and William Suhs Cleveland, "Defining Faith-Based Organizations and Understanding Them Through Research," *Nonprofit and Voluntary Sector Quarterly* 42, no. 3 (June 2013): 442–67, at 443.

“Despite the magnitude of the religious nonprofit sector, until the mid-1990s research on nonprofit organizations largely ignored it. Indicative of this neglect is the fact that, of the 2,195 works listed in Layton’s *Philanthropy and Voluntarism: An Annotated Bibliography* (1987), only 2.1 percent of citations refer to religious organizations. In the past 10 years, however, religious nonprofits have begun to garner the attention of scholars and policy makers interested in the nonprofit sector, fueled substantially by the Charitable Choice legislation.” — Helen Rose Ebaugh, Janet S. Chavetz, and Paula F. Pipes, “Where’s the Faith in Faith-based Organizations?” (2006).<sup>28</sup>

Yet now it was clear that religion was not only private, and now it was evident that faith-based and community-based organizations were vital in the lives of many people and neighborhoods. They had a special way of working: relational, trusted, on-the-spot, values-oriented. They offered services of various kinds, but also more—personal connections, encouragement, empowerment, hope for change. We might call them “blessing stations,” taking the term used for the small and unsung Black church-related ministries that provide essential assistance in urban neighborhoods, though often they can only be discovered by walking streets and alleys.<sup>29</sup>

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<sup>28</sup> Helen Rose Ebaugh, Janet S. Chafetz, and Paula F. Pipes, “Where’s the Faith in Faith-Based Organizations? Measures and Correlates of Religiosity in Faith-Based Social Service Coalitions,” *Social Forces* 84, no. 4 (June 2006): 2259–72, at 2260.

<sup>29</sup> John J. DiIulio Jr., “The Three Faith Factors,” *Public Interest* (Fall 2002): 50–64, at 61.

How many civil society organizations are there? A 2019 study<sup>30</sup> counted nearly 1.3 million charitable nonprofits in the United States, a number that includes many houses of worship. But that total only includes organizations with IRS 501(c)(3) status and thus leaves out smaller and newer charities and congregations and those that have not registered with the IRS. A fully accurate count of houses of worship, experts say, requires identifying unregistered churches, including a considerable number of worship places that can only be found by looking along every street and into every alley.<sup>31</sup>

Furthermore, there is no official or consensus definition of “community-based organization” and thus no way to be sure what percentage of nonprofits (those with and without 501(c)(3) status) should be counted in that category. And there is no official or consensus definition of “faith-based organization,” either—and the usual classifications divide service providers *either* into some category of service (e.g., housing, addiction treatment) *or* into being religious or secular—and yet faith-based organizations precisely bridge these categories because they are religious social service providers!<sup>32</sup>

To gain some sense of the universe of faith-based organizations, consider three data points:<sup>33</sup>

- In 2019, Catholic Charities provided social services to thirteen million people, more than any entity except the federal government.
- A study of homeless shelters in eleven cities documented that faith-based organizations maintained “nearly 60% of the Emergency Shelter Beds, what many consider the ‘safety net of all safety nets’ for the homeless population.”
- The head of the National Council for Adoptions said in 2010 that if faith-based adoption agencies vanished, “the whole system would collapse on itself.”

Indeed, as the stories and research began to show, much civil society assistance is provided by *houses of worship*. Ram Cnaan, the premier researcher of their social impact, has termed congregations “our hidden safety net” and “the invisible caring hand.”<sup>34</sup> Most churches and other

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<sup>30</sup> National Council of Nonprofits, *Nonprofit Impact Matters: How America’s Charitable Nonprofits Strengthen Communities and Improve Lives* (Washington, DC: National Council of Nonprofits, 2019), <https://www.nonprofitimpactmatters.org/site/assets/files/1/nonprofit-impact-matters-sept-2019-1.pdf>.

<sup>31</sup> Cf. the reporting on religion in New York City by Tony Carnes and his colleagues at the website Journey Through NYC Religions, <https://nycreligion.info>.

<sup>32</sup> The otherwise illuminating article by Ebaugh, Chafetz, and Pipes, “Where’s the Faith in Faith-based Organizations?” includes this sentence: “In terms of total revenues, religious organizations constitute the third largest sector of U.S. nonprofit organizations, behind health and education” (p. 2260)—yet many of those religious organizations deliver health or education services.

<sup>33</sup> These data points are noted in Thomas C. Berg, *Religious Liberty in a Polarized Age* (Grand Rapids, MI: William B. Eerdmans Publishing, 2023), 166–67.

<sup>34</sup> Ram Cnaan, “Our Hidden Safety Net: Social and Community Work by Urban American Religious Congregations,” *Brookings Review* (Spring 1999): 50–53; Ram Cnaan, Stephanie C. Boddie, Femida Handy, Gaynor Yancey, and Richard Schneider, *The Invisible Caring Hand: American Congregations and the Provision of Welfare* (New York: New York University Press, 2002).

houses of worship, the research showed, offer a range of helps, almost always to their neighbors and not only to members.

A range of additional assistance programs are offered by *faith-based organizations*: smaller or larger specialized service nonprofits with a clear religious identity, faith-based internal practices, and services inspired and often shaped by faith. These religious organizations are impelled to service by some particular religion, and whether or not a specific program of social service includes religious activities and teaching, somewhere in the organizations' life there are usually explicit religious practices. And yet they typically serve anyone who needs their help. World Vision USA, the evangelical organization that partners domestically with churches to offer services in addition to conducting extensive religious and development work overseas, says, "We're Christian—as in, we follow Jesus' example to show unconditional love to the poor and oppressed. Serving every child we can—of any faith or none." Catholics say the same thing: We serve people who need our help not because *they* are Catholic but because *we* are Catholic.<sup>35</sup>

"Many Sikh organizations and houses of worship provide charitable services to homeless persons and others, without regard to the homeless person's religion. In exchange, Sikh organizations and houses of worship often require such persons to abide by certain religious traditions of the Sikh faith. Those requirements take several forms: Persons may be asked to remove their shoes while in a house of worship, to cover their head, and to refrain from tobacco and alcohol." — Sikh Coalition Amicus Brief (2010).<sup>36</sup>

Other civil society organizations, *community-based organizations*, are secular, or at least not formally religious. Created in response to particular needs, they draw in volunteers of goodwill, whatever their faith or philosophy. They are smaller and less formal than the professionalized nonprofits in the government social assistance system. Yet, though not dedicated to embodying and being guided by a particular religion, they often have a religious aspect. Robert Woodson, a noted neighborhood social entrepreneur, says, "Many effective grassroots approaches of personal

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<sup>35</sup> World Vision USA, "About Us," <https://www.worldvision.org/about-us>; Kristen Hannum, "Why Social Justice? 'Because We're Catholic,'" U.S. Catholic, July 2012, <https://uscatholic.org/articles/201206/why-social-justice-because-were-catholic/>.

<sup>36</sup> Amicus brief by the Sikh Coalition, presented in *Intermountain Fair Housing Council v. Boise Rescue Mission* (Ninth Circuit, 2010).

and community revitalization are faith-based. Even those that are not rooted in a particular religion have a spiritual component in the tireless, heartfelt commitment of grassroots leaders and their unwavering confidence in the potential of every human being.”<sup>37</sup> Moreover, given that their staff and volunteers and those they help likely belong to one or another religious community, the programs and organizational culture of community-based organizations may well include some religious activities and discussion.

In the marginalized southeastern area of Washington, DC, Apostle Angeloyd Fenrick rejected an offer of more than one million dollars for the apartment building she owned. She had used her retirement savings to purchase it years before, and it was the location for her community-based organization, Columbia Learning International Ministries (CLIM). CLIM’s mission was not yet over. CLIM used the building to assist the neighborhood’s working homeless “in their transition to permanent housing,” helping them “make and sustain changes that lead to balanced, healthy lives” and “encourag[ing] the restoration of family relationships.” Years before, seeing homeless men gather daily around a liquor store, she prayed for God to send someone to their aid. She was a school psychologist at the school across the street from the store. It turned out that *she* was the “someone” called into action.<sup>38</sup>

**Services, plus.** These civil society organizations—faith-based and community-based organizations and houses of worship—characteristically offered not only particular social services but much more: drug treatment *plus* a support group and connections with the ministry’s staff and volunteers and their networks; a safe bed and meals for the unhoused *plus* help to reconnect with family and community life;<sup>39</sup> adoption services *plus* support for the adoptive family and the adoptee from a congregation—in the jargon, “wraparound services.”

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<sup>37</sup> Robert L. Woodson Sr., *The Triumphs of Joseph: How Today’s Community Healers Are Reviving Our Streets and Neighborhoods* (New York: Free Press, 1998), 76. See also the statement on his Woodson Center website’s “About Us” page: “[O]ver the years, the Woodson Center has found that the most effective neighborhood-based organizations are faith-centered, because they are able to transform hearts and lay the groundwork for the successful application of jobs and other economic programs. Grassroots groups in the Woodson Center’s network represent a wide spectrum of religious faiths.” <https://woodsoncenter.org/about-us/faq/>.

<sup>38</sup> Ashley Fisher, “The Role of Faith-Based Organizations in Addressing Homelessness in D.C.” (blog post), Sacred Sector initiative of the Center for Public Justice, republished from the Center’s Shared Justice initiative, March 13, 2018, <https://cpjustice.org/the-role-of-faith-based-organizations-in-addressing-homelessness-in-d-c/>.

<sup>39</sup> The New City Initiative faith-based homeless shelter in Portland, Oregon, says that homelessness is not caused by a lack of money, at least initially; rather, people “become homeless when they run out of relationships.” Thus, a solution “necessarily involves a reestablishment of relationships and community.” Quoted in Byron R. Johnson and William H. Wubbenhorst, *Assessing the Faith-Based Response to Homelessness in America: Findings from Eleven Cities* (Waco, TX: Baylor Institute for Studies of Religion Case Study, 2016), 21.

There was also another *plus* characteristic: a spiritual, or religious, or directional dimension. This might be accountability to “a higher power”; specific religious teachings to guide beneficiaries to good choices<sup>40</sup> and to emphasize the infinite value in God’s sight of even the most beaten-down person; or involvement in religious activities like prayer to connect to transformative power. However, conversion, if proposed, was unlikely to be demanded; instead, people might be encouraged to consider joining the community of faith.<sup>41</sup>

It is not simple to delineate how religion might be present within a social service. “Secular” social services themselves generally are not flatly materialistic and are not all shaped by a single philosophical understanding but may instead include appeals to a higher power, depend on positive human interactions, require changes of values, call for higher aspirations, and count on the support that a client or patient draws from religious teachings. As Stephen Monsma, a close student both of religious social service organizations and of legal and constitutional developments affecting them, notes, “Whether knowledge and theories are, in a formal sense, religiously rooted or secularly rooted, they are rooted in perspectives and presuppositions that have strong subjective elements.”<sup>42</sup> Moreover, faith-based social services, though religious, have a “this-worldly” aim and effect, albeit informed by some religious tradition’s practices and its understanding of needs and resources. There might be in such faith-based services some discussion involving a religious understanding of coping, thriving, and the value of alternative

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<sup>40</sup> Rev. Cheryl Sanders, a Washington, DC, Holiness pastor, says that Black churches, in addition to offering services and leading protests and advocacy initiatives, are able, through their teaching, example, and mentoring, to help “remoralize” members and neighbors whose agency has been undermined by the societal attractions of immediate gratification, hyper-individualism, and loosened family and marriage bonds. Cheryl J. Sanders, *Empowerment Ethics for a Liberated People: A Path to African American Social Transformation* (Minneapolis, MN: Fortress Press, 1995).

<sup>41</sup> On the various ways that religion is present in faith-based organizations and services, see the classic analysis by Ronald J. Sider and Heidi Rolland Unruh, “Typology of Religious Characteristics of Social Service and Educational Organizations and Programs,” *Nonprofit and Voluntary Sector Quarterly* 33, no. 1 (March 2004): 109–34. See also the important analyses of the Faith and Organizations project, discussed in a special issue titled “Faith-Based Organizations in Context” of the *Nonprofit and Voluntary Sector Quarterly*, edited by Jo Anne Schneider, organizer of the project (vol. 42, no. 3 [2013]). This research stresses the significant differences among religious communities in how their respective religious beliefs and practices relate to the religious organizations and social services created by the various religions. For a careful discussion of how a religious organization can, with full respect, encourage a beneficiary to consider conversion—after all, the religious organization is convinced of the truth of its convictions—see Ronald J. Sider, Philip N. Olson, and Heidi Rolland Unruh, *Churches That Make a Difference: Reaching Your Community With Good News and Good Works* (Grand Rapids, MI: Baker Books, 2002).

<sup>42</sup> Stephen V. Monsma, *When Sacred & Secular Mix: Religious Nonprofit Organizations and Public Money* (Lanham, MD: Rowman & Littlefield, 1996), 119.

choices. But that kind of religious presence in a service is quite a distance from core religious activities such as worship, proselytizing, and theological teaching.<sup>43</sup>

“But I ask you, who is more likely to go out onto a street to save some poor, at-risk child than someone from the community, someone who believes in the divinity of every person, who sees God at work in the lives of even the most hopeless and left-behind of our children? And that is why we need to not have a false division or debate about the role of faith-based institutions, we need to just do it and provide the support that is needed on an ongoing basis.” — Senator Hillary Rodham Clinton, speaking to inner-city clergy in Boston (January 19, 2005).<sup>44</sup>

To highlight this “plus” characteristic, social entrepreneur and researcher Amy Sherman wrote of services that are relational rather than “commodity-based,” and community development expert John McKnight described social assistance that aims to develop personal and communal strengths rather than only compensate for deficits. Similarly, Lutheran Services of America, an extensive network of church-related service organizations, speaks of its commitment to “advancing whole-person health, including offering spiritual resources,” and stresses its “asset-based and empowering approach” that embodies the “Lutheran tradition of walking alongside people in authentic partnership.”<sup>45</sup>

Around the same time as the Ten Point Coalition was developing, John Perkins, a Black evangelical pastor and activist, was sparking the creation of the Christian Community Development Association, now more than three decades old, which is dedicated to the “three Rs”: *relocation* to the place of need; *reconciliation* across class, cultural, and racial lines, and with God; and *redistribution*: offering one’s material resources and also skills, time, and connections.<sup>46</sup>

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<sup>43</sup> I have found especially helpful, in addition to the resources listed in fn. 41 above, Monsma, *When Sacred & Secular Mix*, and Ronald J. Sider and Heidi Rolland Unruh, “An (Ana)Baptist Theological Perspective on Church-State Cooperation: Evaluating Charitable Choice,” in Derek Davis and Barry Hankins, eds., *Welfare Reform and Faith-Based Organizations*, (Waco, TX: J. M. Dawson Institute of Church-State Studies, Baylor University, 1999), 89–138.

<sup>44</sup> Quoted in John J. DiIulio Jr., *Godly Republic: A Centrist Blueprint for America’s Faith-Based Future* (Berkeley: University of California Press, 2007), 82–83.

<sup>45</sup> Amy L. Sherman, *Restorers of Hope: Reaching the Poor in Your Community with Church-Based Ministries That Work* (Wheaton, IL: Crossway, 1997); John L. McKnight, *The Careless Society: Community and Its Counterparts* (New York: Basic Books, 1995), esp. “Do No Harm” (pp. 101–40). The Lutheran Services of America (LSA) characterizations are from an LSA background document offered to John J. DiIulio Jr. and me to help us prepare for a videoconference with LSA leaders, December 14, 2023.

<sup>46</sup> John M. Perkins, *Beyond Charity: The Call to Christian Community Development* (Grand Rapids, MI: Baker Books, 1993).

**Mission-driven.** John J. DiIulio Jr. noted early on that civil society organizations are “not organizationally wired to go hunting for federal grants”<sup>47</sup>; instead, when faith-based organizations are awarded government money to provide services, they are likely to add to the government money other funds that they have raised privately. We should generalize DiIulio’s point: whether these organizations are larger or smaller, they are devoted more to serving than to monitoring announcements of funding availability or refining their organizational structures. Their work and the organizations themselves are mission-oriented; they exist because particular people, attentive to local challenges and also local assets, have responded to a call to serve, which they may regard as divine. They operate not because they have heard that a legislative body or human services agency has defined a social problem, designed a standardized response, and announced funding.

“I can say from my time in Minneapolis, the programs that we had that were contracted with the government, the government would pay somewhere between two-thirds and three-fourths of what we needed and we had to make up the rest. So we were subsidizing the government, if you will, by hundreds of thousands of dollars every year. We were happy to do that because it furthered our mission and the mission of the common good.” — Rev. Larry Snyder, then-president of Catholic Charities USA, formerly head of Catholic Charities in Minneapolis, at a Brookings Institution symposium on the faith-based initiative (2010).<sup>48</sup>

All nonprofit organizations are mission-driven and strive for autonomy so that they can fulfill their respective inspirational callings.<sup>49</sup> This determination not to be forced to dance to someone else’s tune is amplified in civil society organizations with their local roots and focus, and even more in faith-based organizations, smaller and larger, because of their conviction of a divine calling to which they are accountable.<sup>50</sup> Thus, it is crucial to faith-based organizations that they be able to count on institutional religious freedom—the freedom to follow the dictates of their

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<sup>47</sup> DiIulio, *Godly Republic*, 163.

<sup>48</sup> Remarks made as a panelist at a symposium organized by the Brookings Institution, “Faith-Based and Neighborhood Partnerships in the Obama Era: Assessing the First Year and Looking Ahead” (uncorrected event transcript), February 18, 2010, <https://www.brookings.edu/events/faith-based-neighborhood-partnerships-in-the-obama-era-assessing-the-first-year-and-looking-ahead/>.

<sup>49</sup> Stuart C. Mendel and Jeffrey L. Brudney, *Partnerships the Nonprofit Way: What Matters, What Doesn’t* (Bloomington: Indiana University Press, 2018).

<sup>50</sup> Stephen V. Monsma stresses the importance of autonomy to faith-based organizations in his *Pluralism and Freedom: Faith-Based Organizations in a Democratic Society* (Lanham, MD: Rowman & Littlefield, 2012).



animating religious convictions even when these conflict with legal requirements. Particularly important is their freedom, established in civil rights law and US Supreme Court decisions, to use religious criteria when selecting staff. The point is not to exclude people who simply happen to have different religious beliefs but rather to constitute a community of employees devoted to a particular faith-shaped mission of compassionate service. Also important to many faith-based organizations are the freedoms to use a religion-based curriculum, to have religious representation on the governing board or even to be sponsored by a denomination or congregation, to have an explicit religious mission, and to display religious signs and symbols.<sup>51</sup>

**Religion is not generic.** The policy and scholarly literature uses the generic term “faith-based organizations,” but religion, of course, is not generic.<sup>52</sup> The religious convictions, moral values, and worship practices of Jewish, Catholic, Muslim, evangelical Protestant, Hindu, and other religious communities differ, sometimes sharply, from each other. Some of these differences are consequential for how particular organizations are structured and their social services are shaped. And there may be sharp differences of belief and moral values also within particular religions: Reform Jews, progressive Muslims, and the Presbyterian Church (USA) celebrate LGBTQ identities and practices; orthodox Jews, conservative Muslims, and the Presbyterian Church in America advocate respect for LGBTQ people but believe that the divine pattern for

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<sup>51</sup> On institutional religious freedom, see Stephen V. Monsma and Stanley Carlson-Thies, *Free to Serve: Protecting the Religious Freedom of Faith-Based Organizations* (Grand Rapids, MI: Brazos Press, 2015), and Stanley Carlson-Thies, “The Common Good Requires Robust Institutional Religious Freedom,” *University of St. Thomas Law Journal* 15, no. 3 (2019): 529–45. For an introduction to the religious staffing freedom, which is protected by the religious organization exemption of Title VII of the 1964 Civil Rights Act, see Carl H. Esbeck, Stanley W. Carlson-Thies, and Ronald J. Sider, *The Freedom of Faith-Based Organizations to Staff on a Religious Basis* (Washington, DC: Center for Public Justice, 2004). Since that book was published, federal courts have acknowledged that the Constitution itself extensively protects the right of religious organizations to choose without government interference their religious leaders and teachers. See the discussion of the “ministerial exception”—upheld by the US Supreme Court in the cases *Hosanna-Tabor* (2012) and *Our Lady of Guadalupe* (2020)—in John Witte Jr., Joel A. Nichols, and Richard W. Garnett, *Religion and the American Constitutional Experiment*, fifth ed. (New York: Oxford University Press, 2022), 327–32. Critics of the religious staffing freedom sometimes recommend in its place the practice of religious nonprofits that avoid formally evaluating candidates according to religious criteria by simply hiring from within their networks—but that is only a different path to the same goal of constituting a staff that is supportive of the organizations’ respective religious missions and convictions.

<sup>52</sup> On this point, I found particularly insightful the remark of Charles Marsh that the civil rights movement and much of the subsequent faith-based community development movement were inspired and directed by specific religious impulses and by particular conceptions of what needed change and how that change can be accomplished. Self-giving acts of service is one way to summarize a main impulse. Marsh, *The Beloved Community: How Faith Shapes Social Justice, From the Civil Rights Movement to Today* (New York: Basic Books, 2006), introduction.

sexuality is profoundly different than the progressive view and they may strongly object to social and legal pressure to affirm LGBTQ sexuality. Progressive Catholics and Protestants accept elective abortion, but the official view of the Catholic Church, a view shared by many conservative Protestants, is pro-life. That official view sets a standard for organizations claiming to be Catholic and at the same time has resulted in alliances regarding some critical health care issues between Catholic organizations and evangelical Protestant organizations, notwithstanding their theological differences.

**Tesserae rather than interchangeable units.** Thus, the civil society programs and organizations uncovered by faith-factor journalism and research were diverse, distinctive, particular, and even sectarian, and with strong impulses to maintain these qualities. We might even say that their comparative advantage over other organizations and services is grounded in their particularity, in their personalized services, in their local focus, in their embodiment of the beliefs and practices of a particular religious tradition. But how could organizations and services that were so particularized contribute to the *common* good, to the nonsectarian and equal good that must be the way of government-sponsored assistance? Could they, and should they, adapt to the uniformity demanded by government, or would they insist on maintaining their specificity, including their religious character?<sup>53</sup> Should the government demands for uniformity be reduced? How could (diverse) beneficiaries be served by (diverse) organizations?

Certainly the religious and secular civil society programs and organizations were not the solution to every problem nor ideal for every person. Yet the journalistic accounts and the research showed that they could have powerful effects and often provided vital help otherwise unavailable. Paul Wellstone (D—Minnesota), then the most liberal member of the Senate, remarked in 1997, “Some of the best antipoverty work I’ve seen has come from faith-based agencies.”<sup>54</sup> William Raspberry, award-winning *Washington Post* writer on race and poverty, mused in a 1997 column

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<sup>53</sup> Insisting on maintaining their specificity: see Monsma and Carlson-Thies, *Free to Serve*; Berg, *Religious Liberty in a Polarized Age*, ch. 5; Peter Greer and Chris Horst, *Mission Drift: The Unspoken Crisis Facing Leaders, Charities, and Churches* (Bloomington, MN: Bethany House, 2014).

<sup>54</sup> Klein, “In God They Trust,” 46. Klein reports that Wellstone voted against the federal welfare reform law but in favor of the Charitable Choice provision embedded in it that was intended to make possible expanded government partnerships with religious organizations.

about very positive life changes he had witnessed, though “seldom,” in his judgment, was a government program the cause. “Spiritual change,” whether or not conventionally religious, he thought, was essential. It was time, he said, to figure out “how to combine the efforts of government with those of faith-based organizations.”<sup>55</sup>

A profile of the Orange County Rescue Mission posted by the California Board of State and Community Corrections recounts the story of Albert Mulligan, heroin-addicted, cycling in and out of jails and prison, and desperate for change as his wife was about to give birth. “In a last-ditch effort to save Mulligan from himself, his probation officer told him about the Orange County Rescue Mission, a faith-based living facility where turning one’s life over to Christ is a central part of rehabilitative programming. Orange County probation officers realize that faith-based programs aren’t for everyone, but could be effective choices for those for whom faith and religion are important.”<sup>56</sup>

## **Transforming collaboration into partnership: Inviting in faith and community**

The many and varied civil society programs and organizations that were now within the view of policymakers and policy scholars were mostly on the outside of the government’s system of collaborating with private organizations to provide social assistance. Inside the system were large secular nonprofits and religious organizations that were required to downplay religion. The newly visible community-based and faith-based organizations were on the outside because they were intensely focused on meeting the needs around them, not on searching for external funding; or they were excluded by the rules and practices of the government funding system; or they stayed away from the government’s system because its requirements were not congenial to the specific ways they served. If these civil society organizations with their distinctive and often particularly effective services were to become partners in the government-funded social assistance effort, the cross-sector collaboration system itself would have to be changed.

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<sup>55</sup> William Raspberry, “Then There is Faith,” *Washington Post*, July 25, 1997. Raspberry, however, was skeptical of what became the faith-based initiative as the way to create the needed partnerships. See the transcript of the conversation hosted by Michael Cromartie with William Raspberry, John J. DiIulio Jr., and reporters, “With Ben Franklin’s Blessings: A Primer on Faith-Based Initiatives,” Faith Angle Forum, May 2005, <https://faithangle.org/session/ben-franklins-blessings-primer-faith-based-initiatives/>.

<sup>56</sup> “OC Rescue Mission Promotes Faith-Based Recovery,” California Board of State and Community Corrections website, <https://bscc.ca.gov/news/oc-rescue-mission-promotes-faith-based-recovery/> (viewed August 26, 2023).

## A system of vendors, not partners

That system has been characterized as “nonprofits for hire.” Service providers were treated as “agents” of government rather than its “partners.”<sup>57</sup> Government officials defined the needs and the desired response and then awarded funding to private organizations willing to deliver the specified services. The system paid little attention to the local knowledge and connections possessed by the nongovernmental organizations. This was a top-down, government-centric system that treated private organizations more as extensions of government than as independent agents with particular capabilities, insights, and connections.<sup>58</sup>

“Of all sectors, nonprofits most often use mission alignment as a criterion for partnership, which means that a public or business-induced partnership can be out of sync with the nonprofit actor’s intents and purposes. In public sector endeavors, the nonprofit actor is often seen as an agent to a government principal, suggesting that these arrangements are not ‘partnerships’ but something else.”

— Stuart Mendel and Jeffrey Brudney, *Partnerships the Nonprofit Way* (2018).<sup>59</sup>

In this style of collaboration, a government agency would announce, in bureaucratic language in some official publication, the availability of funds to pay for particular services to be delivered to specified people or neighborhoods. Usually, a large sum of money would be offered to pay for a large volume of standardized services. A long list of requirements would arrive with the funds. Recipients would have to certify compliance with multiple laws and regulations often listed by their US Code or Code of Federal Regulations reference without detail or explanation. To be

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<sup>57</sup> Smith and Lipsky, *Nonprofits for Hire*. See also Benjamin Gidron, Ralph M. Kramer, and Lester M. Salamon, “Government and the Third Sector in Comparative Perspective: Allies or Adversaries?” in Gidron, Kramer, and Salamon, eds., *Government and the Third Sector*, 1–30, esp. 16–20. The double meaning of the word “collaboration” is cause for sober reflection: it can mean working together to achieve a joint goal or—the opposite—a situation where one party does what is only in the interest of the other, as do “collaborators” in wartime.

<sup>58</sup> Nonprofits scholars note the phenomenon of organizational isomorphism, a process by which one type of organization that engages closely with another type—in this case nonprofits collaborating with government to provide social services—take on the characteristics of that other kind of organization. I suggest that key legal, policy, and practice innovations of the faith-based initiative are designed to forestall isomorphism so that civil society organizations and other private organizations can collaborate with government while retaining their nongovernmental characteristics. This aspect of the promise and pitfalls of collaboration between faith-based organizations and government is stressed in Charles L. Glenn, *The Ambiguous Embrace: Government and Faith-Based Schools and Social Agencies* (Princeton: Princeton University Press, 2000).

<sup>59</sup> Mendel and Brudney, *Partnerships the Nonprofit Way*, 21.

sure, there might be a good reason for every requirement and procedure, but the cumulative effect was to exclude many potential partners. This kind of collaboration system favored large organizations with a staff dedicated to monitoring government publications, skilled in producing proposals attractive to the awarding agency, able to parse the details of legal and operational requirements, ready to generate extensive reports, and with the desire and ability to mass-produce some type of service. But such requirements and procedures surpassed the capacity and focus of many civil society organizations—organizations limited in staff, not lawyered up, and not devoted to compliance with procurement procedures and requirements. Their attention was concentrated on responding to the needs all around them rather than on discovering what government wanted to fund.

### **A system of religiously affiliated, not faith-based, organizations**

Nor was the system hospitable to religion, that key characteristic and motivating force of many civil society organizations. The US Constitution prohibits the government from “establishing” religion, which according to the then-prevailing strict-separationist interpretation entailed “no aid to religion.” The government could collaborate with “religiously affiliated” organizations—organizations connected to a denomination or some other distinctly religious organization—but the religiously affiliated providers were supposed to deliver secular services in a secular setting. With such restrictions, the collaboration would not stray into the prohibited establishment of religion, and the services, required to be secular, were considered suitable for all. By contrast, religious organizations with pronounced religious features and practices, such as a policy of hiring by religion and the presence of religious ideas and activities, were tagged as “pervasively sectarian” and were ineligible for funding. Due to their religious commitments and practices, they were deemed unable to keep religion out of any funded services they might provide.<sup>60</sup>

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<sup>60</sup> On these constitutional and legal interpretive issues, see Stanley W. Carlson-Thies, “Faith-Based Institutions Cooperating With Public Welfare: The Promise of the Charitable Choice Provision,” in Davis and Hankins, eds., *Welfare Reform and Faith-Based Organizations*, 29–60, esp. 35–43; Carl H. Esbeck, “A Constitutional Case for Governmental Cooperation With Faith-Based Social Service Providers,” *Emory Law Journal* 46, no. 1 (Winter 1997): 1–41; Carl H. Esbeck, “Myths, Miscues, and Misconceptions: No-Aid Separationism and the Establishment Clause,” *Notre Dame Journal of Law, Ethics & Public Policy* 13, no. 2 (1999): 285–319; Monsma, *When Sacred & Secular Mix*; and Stephen V. Monsma, *Positive Neutrality: Letting Religious Freedom Ring* (Westport, CT: Greenwood Press,

The exclusion of intensively religious organizations from government funding avoided religious favoritism by government, and it protected people seeking government help from possible religious discrimination and obligatory religious participation. These are important outcomes, and yet if explicitly religious civil society organizations in some instances offered the most efficient or effective services or might be uniquely helpful to many or some, then achieving these outcomes by excluding those organizations undermined the public good.

Moreover, the policy was inconsistent. Stephen Monsma surveyed a range of providers in the early 1990s, before the arrival of Charitable Choice and related church-state innovations. He discovered that many received government funding notwithstanding that they engaged in religious practices that should have placed them in the not-to-be-funded “pervasively sectarian” category. Government officials, he concluded, regarded the services these organizations provided as too valuable to be dismissed by applying precisely the strict “no aid” requirements. But being eligible for funding because of the lax enforcement of requirements or due to some kind of “don’t ask, don’t tell” policy put religious organizations in a legally precarious position.<sup>61</sup> They had not totally erased religion as required by the secular legal box within which they were supposed to be confined. And yet were their practices actually harmful and constitutionally suspect? Asked about organizational practices, Sharon Daly, a Catholic Charities national leader, asserted that local staff would invite clients to express their spiritual concerns and interests and would offer to connect them to Catholic worship and other programs. She added that, of course, the staff would link clients to a mosque or synagogue or other faith community instead, if that was their

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1993). For a current overview of these issues, with a focus on government funds and religious schools, see Nathan S. Chapman and Michael W. McConnell, *Agreeing to Disagree: How the Establishment Clause Protects Religious Diversity and Freedom of Conscience* (New York: Oxford University Press, 2023), esp. ch. 7.

<sup>61</sup> Monsma, *When Sacred & Secular Mix*. Interviews with Catholic Charities and Salvation Army leaders after Charitable Choice was first adopted to provide a more solid legal foundation for government funding of faith-based organizations show how much these organizations were dependent on the loose application of the “no aid” requirement in order to partner with government. See Diane Winston, *Soup, Soap, and Salvation: The Impact of Charitable Choice on the Salvation Army* (Washington, DC: Center for Public Justice, 2000), and Joe Loconte, *The Anxious Samaritan: Charitable Choice and the Mission of Catholic Charities* (Washington, DC: Center for Public Justice, 2000). These are reports from the Charitable Choice Tracking Project of the Center for Public Justice, which I directed.

affiliation. Yet such religion-friendly actions were much too religious if the requirement for accessing federal funding was bare secularism.<sup>62</sup>

“We try first of all to respect the religious beliefs, traditions, and affiliations of our clients. We do not assume because they are poor, that they do not have a relationship with God or a religious home—a church home. In fact, most of our clients are deeply religious, and we try to support and encourage them to find solace and support in their own religious communities. Our agencies rarely ask clients about religious affiliation, but clients often bring up their religious connections in initial interviews or counseling. Of course we reassure them that they are welcome, and that our services are available, regardless of their faith or lack of it. Catholic parishes, on the other hand, are there also—ready to provide spiritual aid, religious education, sacraments for Catholics, and instruction for seekers.”—Sharon Daly, vice president for social policy, Catholic Charities USA (1999).<sup>63</sup>

Inconsistencies abounded. In silly but significant instances, the City of Los Angeles told a St. Vincent de Paul facility that it would become eligible for city funding to support its anti-poverty work if it renamed itself the Mr. Vincent de Paul Center, and a major eastern city told the Salvation Army to become a differently named army so that it could be awarded city funds.<sup>64</sup> Yet the United States collaborated with denominational organizations to carry out its overseas relief and development efforts; the GI Bill funded veterans’ education not only at secular universities but also at religious colleges and even seminaries; and in the 1990 Child Care and Development Block Grant (CCDBG) Act, Congress specifically designed the new federal program to subsidize child care for low-income families such that that “sectarian”—religious—child care providers could participate although their programs included religious teaching and activities and the providers evaluated religious qualifications when deciding whom to hire.<sup>65</sup>

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<sup>62</sup> Sharon Daly, “Common Sense and the Common Good: Helping the Poor and Protecting Religious Liberty,” in Davis and Hankins, *Welfare Reform and Faith-Based Organizations*, 139–51, at 143–45.

<sup>63</sup> Daly, “Common Sense,” 143–44.

<sup>64</sup> Carlson-Thies, “Faith-Based Institutions,” 38.

<sup>65</sup> On religious organizations and US overseas development efforts, see J. Bruce Nichols, *The Uneasy Alliance: Religion, Refugee Work, and U.S. Foreign Policy* (New York: Oxford University Press, 1988); on the eligibility of religious higher education institutions in the GI Bill program, see Elizabeth A. Edmondson, “Without Comment or Controversy: The G.I. Bill and Catholic Colleges,” *Church History* 71, no. 4 (2002): 820–47; on the religion-accommodating design of the 1990 Child Development and Block Grant Act, see Daly, *God’s Economy*, 48–51; Allen D. Hertzke, “An Assessment of the Mainline Churches Since 1945,” in James E. Wood Jr. and Derek Davis, eds., *The Role of Religion in the Making of Public Policy* (Waco, TX: J. M. Dawson Institute of Church-State Studies, Baylor University, 1991), 43–79, at 68–69; William Tobin, *Lessons About Vouchers From Federal Child Care Legislation*,

“Many religious nonprofits that choose to accept state funding have a relationship of convenience with government. Government provides funds and the ministry provides effective services among clientele the government has not been able to reach. Some of these nonprofits report that government officials will ‘look the other way’ when the ministries undertake activities that, technically, may be in violation of church-state separation regulations. This has allowed the ministries to maintain the distinctives of their outreach (namely, Biblical teaching and moral challenge) which make them effective. It is, however, a precarious situation: at some point, a more zealous social worker or government bureaucrat could enforce more rigorously regulations that can quell the religious expression of the ministry.” — Amy Sherman (1995).<sup>66</sup>

Church-state scholar Carl Esbeck in the mid-1990s identified a long list of inappropriate and unconstitutional religion-limiting conditions that accompanied federal, state, and local social services funds.<sup>67</sup> The lines dividing eligible from ineligible organizations and fundable from nonfundable programs were hardly bright, nor were they applied consistently. Inconsistency itself made collaboration with government risky for houses of worship and for faith-based organizations committed to maintaining a robust religious identity and religion-shaped policies. Monsma pointed out that the legal uncertainty made participating religious organizations vulnerable to a “lightning strike”—an unpredictable but costly lawsuit, an adverse administrative decision, or a public outcry.<sup>68</sup> One careful study termed government support for faith-based social service providers and religious schools an “ambiguous embrace”—a valuable resource that would likely be accompanied by detrimental requirements.<sup>69</sup>

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Policy Papers from the Religious Social Sector Project (Washington, DC: Center for Public Justice, 1998); and Stanley Carlson-Thies, *Utilize the Pluralist CCDBG Funding System to Ensure Faith-Based Providers’ Access to Expanded Federal Support for Child Care* (policy brief), Institutional Religious Freedom Alliance, August 4, 2022, <https://cpjustice.org/wp-content/uploads/2023/02/IRFA-Policy-Brief-1.pdf>.

<sup>66</sup> Sherman letter, quoted in Monsma, *When Sacred & Secular Mix*, 149.

<sup>67</sup> His analysis was first printed as Carl H. Esbeck, *The Regulation of Religious Organizations as Recipients of Governmental Assistance* (Washington, DC: Center for Public Justice, 1996). An expanded version was later published as Carl H. Esbeck, “Regulation of Religious Organizations Via Governmental Financial Assistance,” in James A. Serritella, with Thomas C. Berg, W. Cole Durham Jr., Edward McGlynn Gaffney Jr., and Craig B. Mousin, eds., *Religious Organizations in the United States: A Study of Identity, Liberty, and the Law* (Durham, NC: Carolina Academic Press, 2006), 349–407.

<sup>68</sup> Monsma, *When Sacred & Secular Mix*, 106.

<sup>69</sup> Glenn, *The Ambiguous Embrace*. See also Joe Loconte, *Seducing the Samaritan: How Government Contracts Are Reshaping Social Services* (Boston: Pioneer Institute for Public Policy Research, 1997), and William H. Wubbenhorst, with Alfreda Alvarez-Wubbenhorst, *The Pitfalls of Contracts for Funding Social Ministries*, Policy Papers from the Religious Social Sector Project (Washington, DC: Center for Public Justice, 1998). Constitutional law scholar Michael McConnell said that the excessive church-state restrictions turned government funds into “relentless engines of secularization.” Michael W. McConnell, “Equal Treatment and Religious Discrimination,” in Stephen V. Monsma and J. Christopher Soper, eds., *Equal Treatment of Religion in a Pluralistic Society* (Grand Rapids, MI:



“The condition [in the Department of Housing and Urban Development’s regulations for the Stewart B. McKinney Homeless Assistance Act] requiring stripping of religious symbols from shelters, thereby creating a religion-free zone, is particularly objectionable. HUD sought removal of the religious symbols to create the impression that the aid is being delivered by a secular agency. Such an impression is not only false, but especially where adults are involved, is unnecessary if the aim is to prevent religious coercion by mere exposure to these symbols. The establishment clause should not be read as requiring desacralization of a ministry as if religious distinctives are to be handled like toxic waste.” — Carl Esbeck, *Regulation of Religious Organizations as Recipients of Governmental Assistance*, (1996).<sup>70</sup>

Thus, despite the positive journalistic accounts and research, and notwithstanding the experiences of various elected officials and program managers that suggested that the government’s social assistance effort would be improved by more extensively utilizing faith-based and other civil society organizations, exclusion remained the rule. DiIulio writes that federal officials treated Black churches and charities “as either wholly irrelevant” to addressing social problems or, with respect to funding, as “highly radioactive.” Instead of partnering with them, “the government virtually created and lavishly funded national secular nonprofit organizations and community development corporations to deliver social services that indigenous black religious leaders and volunteers were already struggling to provide.”<sup>71</sup>

### **Which direction reform?**

Various efforts to multiply the good works of civil society had been promoted starting already in the 1980s. When President Ronald Reagan cut federal social spending, he justified the cuts in part with the hope that the shrinking of federal programs would result in greater service by nonprofits. However, the cuts instead undermined the nonprofits’ work because so many of them relied on income from collaborating with government.<sup>72</sup> His successor, President George H. W.

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William B. Eerdmans, 1998), 30-54, at 48. This is the edited version of written testimony given on Sept. 29, 1995, to the Senate Judiciary Committee.

<sup>70</sup> Esbeck, *Regulation of Religious Organizations as Recipients of Governmental Assistance*, 13.

<sup>71</sup> DiIulio, *Godly Republic*, 240. Charles Glenn has written of his experiences in Boston in the 1960s when federal efforts to energize people at the grassroots level undermined community-based groups rather than connecting with and supporting them. Glenn, “Free Schools and the Revival of Urban Communities,” in Carlson-Thies and Skillen, *Welfare in America*, 393-425, at 409-11.

<sup>72</sup> Salamon, *Partners in Public Service*, 153-55, 194-97; Bob Wineburg, *A Limited Partnership: The Politics of Religion, Welfare, and Social Service* (New York: Columbia University Press, 2001).

Bush, aimed directly to expand the work of nonprofits and volunteers in serving the needy by championing the private Thousand Points of Light initiative to promote volunteering. Bush also promoted legislation to encourage volunteering that led to the establishment of the Corporation for National Community Service (1993) with its federally supported AmeriCorps volunteers and later the USA Freedom Corps (2002). These volunteerism initiatives, though, did not change the detrimental features of the collaboration system itself.

“Malfunctions and defects in the Social Assistance State [the welfare state] are the result of an inadequate understanding of the tasks proper to the State. Here again *the principle of subsidiarity* must be respected: a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good. . . . [I]t would appear that needs are best understood and satisfied by people who are closest to them and who act as neighbours to those in need. It should be added that certain kinds of demands often call for a response which is not simply material but which is capable of perceiving the deeper human need. One thinks of the condition of refugees, immigrants, the elderly, the sick, and all those in circumstances which call for assistance, such as drug abusers: all these people can be helped effectively only by those who offer them genuine fraternal support, in addition to the necessary care.” — Pope John Paul II, *Centesimus Annus* (1991).<sup>73</sup>

In the mid-1990s, changes closer to the collaboration system were proposed by Senator Dan Coats (R—Indiana) in what he called the “Project for American Renewal.” This was a package of more than a dozen creative legislative proposals intended to invigorate civil society by enlisting government resources and influence.<sup>74</sup> Ideas included a new program of federal medical malpractice insurance to indemnify doctors and nurses who volunteered to help patients unable to pay for care, and federal demonstration grants for school districts that worked with community and faith groups to develop mentoring programs for students.

The centerpiece of the Project was a federal charity tax credit, a dollar-for-dollar reduction in federal income taxes to match donations to charities providing assistance to the poor. The tax

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<sup>73</sup> Pope John Paul II, *Centesimus Annus* (1991), para. 48.

<sup>74</sup> Rep. John Kasich (R-Ohio) joined Sen. Coats when the package was introduced at a press conference. Coats and Kasich, *The Project for American Renewal* (no place, publisher, or date included), [https://commons.wikimedia.org/wiki/File:Project\\_for\\_American\\_Renewal.pdf](https://commons.wikimedia.org/wiki/File:Project_for_American_Renewal.pdf).

credit was a way for the federal government to support civil society organizations, including intensively religious organizations, without enmeshing them in red tape or violating the “no establishment” requirement. The federal government would lose some income—income that could pay for its social assistance programs—but only if taxpayers instead donated that money specifically to poverty-fighting nongovernmental organizations. This was not Reagan’s cut in federal social spending that undermined civil society by reducing the income of nonprofits that collaborated with government. And it was not Bush’s—innovative and effective—combination of the federal bully pulpit and federal expenditures to expand the capacity and the activity of private organizations, regarded as important sources of social good but distinct from the government’s own social assistance system. The Coats poverty tax credit would use the government’s tax system itself to expand the income available to civil society organizations, enabling them to expand their services.

However, for all the good such a targeted tax credit might accomplish, it was not a reform of the government’s own collaboration system. If the distinctive programs of civil society organizations were to become part of the government’s social assistance system, then the practices and rules of the government collaboration system itself needed to be radically changed. Nonprofits scholars Lester Salamon and Helmut Anheier said that the challenge was “to fashion cooperation with the state in a way that protects the nonprofit sector from surrendering its basic autonomy and thus allows it to function as a true partner with the state and not simply as an ‘agent’ or ‘vendor.’”<sup>75</sup> That transformation, the bending of the arc—the default style of government policies and practices—required two tracks of reform. The **policies and practices of the funding system**—the grants system<sup>76</sup>—needed to be changed. Financial awards needed to be smaller, with grantees given more responsibility for how a program would be carried out; the load of requirements and paperwork had to be lightened; funding announcements needed to be made more accessible; and so on. And the **church-state rules** that excluded altogether organizations of pronounced religious character or that hampered their participation needed to be reversed—a fundamental

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<sup>75</sup> Salamon and Anheier, *The Emerging Nonprofit Sector*, 121.

<sup>76</sup> Cf. the concept of the “contracting regime” discussed in Smith and Lipsky, *Nonprofits for Hire*, 43–45.

but challenging reform, given constitutional requirements, including the need to protect the rights of beneficiaries.<sup>77</sup>

In short, in order for civil society organizations, in their distinctiveness, to be able to participate in the government system of paying private organizations to provide social assistance, that system needed to be changed to become hospitable to the qualities and capacities, the modes of operating and ways of serving, of community-based organizations, faith-based organizations, and houses of worship.<sup>78</sup>

For a full partnership between government and civil society, even more innovation is required than such essential changes to the funding rules and practices. Laws and regulations should be reworked, as needed, to better protect the distinctive characteristics and practices of faith-based and community-based organizations; charitable giving should be incentivized, as Senator Coats had proposed; volunteering ought to be encouraged through initiatives such as those of the first

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<sup>77</sup> The necessity of two different types of reform—not only changes in government policies and practices but also in the church-state rules that govern government funding of social services—is an immediate indication that the faith-based initiative was distinct from, although it shared some aspirations and reform goals with, the Clinton administration’s reinventing government initiative, which was headed by Vice President Al Gore. For a brief overview of that latter initiative, see Charles S. Clark, “Reinventing Government—Two Decades Later,” *Government Executive*, April 26, 2013, <https://www.govexec.com/management/2013/04/what-reinvention-wrought/62836/>.

<sup>78</sup> John J. DiIulio Jr. and Lester Salamon, among others, while urging changes in government rules and practices to enable more extensive collaboration between government and nongovernmental organizations in the provision of social assistance, have also noted the dangers of such changes. These include less accountability to the legislators and appropriators who authorized the assistance by those delivering it, and increased managerial challenges on the part of government officials. DiIulio has termed the relationship “government by proxy” and “third-party government” and has issued a call to “bring back the bureaucrats” (John J. DiIulio Jr., *Bring Back the Bureaucrats: Why More Federal Workers Will Lead to Better (and Smaller!) Government* [West Conshohocken, PA: Templeton Press, 2014]). Salamon notes the challenges in his *Partners in Public Service* and many other places. Problems as well as gains that occur when government direction is relaxed in order to accommodate the distinctive practices of faith-based organizations are illuminated in the accounts of social work scholar and practitioner Bob Wineburg in his *A Limited Partnership* and his *Faith-Based Inefficiency: The Follies of Bush’s Initiatives* (Wesport, CT: Praeger 2007). In Lester M. Salamon, ed., *The Tools of Government: A Guide to the New Governance* (New York: Oxford University Press, 2002), Salamon and his colleagues examine in detail such challenges and propose ways that government can continue to play its rightful roles. Why go down this path despite the challenges? Only when government becomes less prescriptive and domineering in collaborating can private organizations make their unique contributions, contributions that are marked by their nongovernmental characteristics such as religion, personalization, localism, rapid innovation, and personal relationships. We can see this dynamic of less government control making it possible for the government to obtain more of what it seeks not only in the faith-based initiative but also in the school choice movement and charter schools, and in efforts in defense procurement and cybersecurity to tap cutting-edge innovations.

President Bush; government resources should be used to strengthen the organizational capacity of civil society organizations; and more. Such changes were made, to varying degrees, over time. But they were no substitute for fundamentally reforming the collaboration system itself.

In their 1977 essay, *To Empower People*, social philosophers Peter Berger and Richard John Neuhaus, noting broad popular support for government social programs combined with disdain for bureaucracy, proposed that government policy should aim to “protect and foster” civil society organizations (“mediating structures”) and, where possible, “utilize [them] for the realization of social purposes.” Revisiting the essay in the mid-1990s, Berger and Neuhaus wrote that metastasizing government regulation, which is especially heavy if government funding is involved, was turning nonprofit organizations that collaborated with government into replicas of government, no longer able to make their distinctive contributions in social assistance. Collaboration could be a positive policy, they said—but only after the implementation of statutory and regulatory reforms that would “create a protective umbrella” over the faith-based and community-based organizations.<sup>79</sup>

Dramatic reform to the system itself, the two tracks, occurred in two phases. The first was the reversal of the church-state requirements in federal funding so that explicitly religious organizations would be eligible for funding. This change was first made with the enactment of the Charitable Choice provision as part of the 1996 federal welfare reform law. The second phase was the modification of grantmaking policies and practices to make them hospitable to civil society organizations, secular and religious. This second phase included the creation of new offices within the White House and in various federal agencies, offices charged with the mission of educating federal officials about the new church-state rules and monitoring compliance with them, proposing pilot projects, pressing reforms to grantmaking, and expanding outreach. This very visible dimension of the faith-based initiative was launched in 2001 soon after the inauguration of President George W. Bush. The first phase—the changes to the church-state rules—began during the Clinton administration, before anyone was talking about a faith-based initiative, with the adoption of the Charitable Choice provision.

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<sup>79</sup> Peter L. Berger and Richard John Neuhaus, *To Empower People: From State to Civil Society*, 2nd edition, ed. Michael Novak (Washington, DC: AEI Press, 1996). The original text is reprinted on pp. 157–208; their later reflections are on pp. 145–54.

Even before Congress enacted Charitable Choice as part of the 1996 welfare reform law, some states were experimenting with how to include religious civil society organizations in their social assistance systems. Mississippi’s “Faith and Families” program and Maryland’s Family Investment Program both partnered government agencies with churches and other social groups that agreed to provide budgeting, networking, and other support services for families seeking help to get off welfare.<sup>80</sup>

## **Transformation 1: Enacting Charitable Choice to bring in religion constitutionally and to deepen American pluralism**

The opportunity for fundamental reform arrived in the mid-1990s when Congress took up President Clinton’s challenge to “end welfare as we know it” by creating a program that stressed services over transfer payments in order to help low-income mothers with children become self-supporting. By this time, the Supreme Court was shifting from its “no aid” interpretation of the First Amendment to a “neutrality” or “equal treatment” interpretation—a momentous change from the requirement that government exclude from its funding organizations regarded as substantially religious to the requirement that no organization be disqualified due to its religious characteristics and practices.<sup>81</sup>

With prophetic attentiveness to the Court’s new inclination, when Carl Esbeck was asked by a former student who now worked in Senator John Ashcroft’s (R—Missouri) office what the senator should propose to make welfare assistance more effective, Esbeck suggested legislative language in line with the Court’s change.<sup>82</sup> His previous research had documented illegitimate

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<sup>80</sup> These are briefly described in Stanley W. Carlson-Thies, “Don’t Look to Us’: The Negative Responses of the Churches to Welfare Reform,” *Notre Dame Journal of Law, Ethics & Public Policy* 11, no. 2 (1997): 667–89, at 673–75.

<sup>81</sup> On the change, see Carl H. Esbeck, “A Constitutional Case”; Monsma, *Positive Neutrality*; Stephen V. Monsma, ed., *Church-State Relations in Crisis: Debating Neutrality* (Lanham, MD: Rowman & Littlefield, 2002); Melissa Rogers, *Faith in American Public Life* (Waco, TX: Baylor University Press, 2019), chs. 6–7; and Chapman and McConnell, *Agreeing to Disagree*. An important transitional Supreme Court decision was *Bowman v. Kendrick* (1988), concerning the Adolescent Family Life Act. Through this law, Congress authorized federal grants to public agencies and to private organizations, including religious organizations, to provide education and services addressing teenage pregnancy and sexuality. The Court upheld the constitutionality of the program, although it directed the lower courts to assess whether constitutional restrictions on funding religion were violated in practice.

<sup>82</sup> For Esbeck’s role, see Daly, *God’s Economy*, 53–56; Amy E. Black, Douglas L. Koopman, and David K. Ryden, *Of Little Faith: The Politics of George W. Bush’s Faith-Based Initiatives* (Washington, DC: Georgetown University Press, 2004), 51–52; and Dave Donaldson and Stanley W. Carlson-Thies, *A Revolution of Compassion: Faith-Based Groups as Full Partners in Fighting America’s Social Problems* (Grand Rapids, MI: Baker Books, 2003), 51–52.

secularizing requirements in funding programs; the language he now proposed, which came to be called Charitable Choice, required the opposite: state and local governments using federal funds to obtain welfare services must neither exclude religious organizations nor require them to diminish their religious character or faith-based practices.

This new church-state requirement of equal access to funding became federal law as part of the new federal welfare program, Temporary Assistance for Needy Families (TANF), when President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) on August 26, 1996. Similar language, promoted by Senators Ted Kennedy (D—Massachusetts) and Dan Coats (R—Indiana), was added in 1998 to the Community Services Block Grant program (CSBG) that funds Community Action Agencies (CAAs) to provide services in low-income neighborhoods. And, in 2000, a similar Charitable Choice provision, advanced by the White House and by congressional Republicans, was added to the substance abuse treatment and prevention programs operated by the Substance Abuse and Mental Health Services Administration (SAMHSA) in the Department of Health and Human Services.<sup>83</sup> Clinton signed into law all of these bills containing Charitable Choice language.

“It seems the churches are the only institutions with any credibility left in some communities,” Bruce Reed, President Clinton’s domestic-policy adviser says. “The family’s broken, the government isn’t trusted. . . . That doesn’t necessarily mean we’ll be seeing religious organizations take over as the main service providers. But if you’re asking whether it’s no longer fashionable to be anti-religion in these matters, the answer is yes.” — Joe Klein, “In God They Trust” (1997).<sup>84</sup>

The programs governed by these laws were all joint federal-state programs, meaning that Charitable Choice became the rule for much state and local funding of social services, as well.

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<sup>83</sup> On these enactments, see Black, Koopman, and Ryden, *Of Little Faith*, 52–62; David M. Ackerman, “Charitable Choice: Constitutional Issues and Developments Through the 106th Congress,” RL 30388, December 27, 2000 (Congressional Research Service, Library of Congress), 4–7; and Julie A. Segal, “A ‘Holy Mistaken Zeal’: The Legislative History and Future of Charitable Choice,” in Davis and Hankins, *Welfare Reform and Faith-Based Organizations*, 9–27. An insightful overview of the constitutional and policy changes and their significance is Melissa Rogers and E. J. Dionne Jr., *Serving People in Need, Safeguarding Religious Freedom: Recommendations for the New Administration on Partnerships with Faith-Based Organizations* (Washington, DC: Governance Studies at the Brookings Institution, 2008).

<sup>84</sup> Klein, “In God They Trust,” 45.

Moreover, the administrations after Clinton—Presidents George W. Bush, Barack Obama, Donald Trump, and Joseph Biden—all would embrace essentially the same principles and apply them to social services funding across federal agencies in the form of regulations termed “equal treatment” or “equal opportunity” rules. In many of these programs, too, the federal funds, carrying these regulations with them, are awarded to state or local agencies, making up a significant proportion of the budgets that they use to support private organizations in providing social services.

Charitable Choice was a radical, even a shocking, change. Notice the reversal: officials had been obligated to ensure that “too religious” organizations were excluded from funding but now were required to allow them to compete. Before, the government prescribed rules about how religious an organization was allowed to be if it was going to be accepted as a collaborator in providing social services; now the government was not permitted to set and guard a threshold of religiosity. It was required instead to allow the wide range of faith-based organizations to compete for funding while protecting their religious character. The government’s power to control its collaborators was significantly undermined; it was up to civil society organizations themselves—even if they were thoroughly religious—to decide whether to collaborate with the government’s social assistance system. This was one fundamental way to convert collaboration into partnership.

## **The Charitable Choice and Equal Treatment principles**

To the great concern of church-state sentinels, Senator Ashcroft and others who championed Charitable Choice often stressed the positive value of including faith-based services in the government’s social assistance network and their expectation that people facing various kinds of challenges would be particularly helped by the inclusion of religion. However, the Charitable Choice statutory provisions and the later Equal Treatment regulations created not a new theocratic safety net but rather a more pluralistic one, one that protects the religious freedom of both faith-based providers and people seeking assistance. The text of Charitable Choice in the new TANF program announced exactly that, saying that its various provisions would enable



religious organizations to compete for and receive federal funding “on the same basis as any other nongovernmental provider[,] without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries” of the assistance.<sup>85</sup>

Charitable Choice’s new church-state rules embodied several key features. First, the previous bias against religious organizations was replaced not by a preference for religion but instead by equal opportunity for both religious and secular applicants to secure funding. Second, the rules distinguished between the character and practices of religious organizations, on the one hand, which were specifically protected, and the character of the services the government supports, on the other, which could be required to be “this-worldly,” without explicit religious content. While a faith-based organization could not be barred from funding for being “pervasively sectarian,” it had to follow specific rules about how religion is related to its government-funded services. Third, Charitable Choice stressed voluntariness in religion—not because religion is unimportant but rather because it is so important that no one should be forced into religious practices.<sup>86</sup>

Here are the key Charitable Choice and Equal Treatment principles, which, in broad outline, have been maintained now for nearly three decades:

*1. Equal eligibility.* Faith-based organizations, however religious or pervasively sectarian they may be, are eligible for federal funding equally with secular and religiously affiliated organizations. Officials must be religiously neutral in deciding which applicant will receive funding, being biased neither against nor for faith-based organizations, choosing between applicants without regard to their religious or secular character.

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<sup>85</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, sec. 104, subsection (b), codified at 42 US Code §604a, subsection (b).

<sup>86</sup> Voluntariness does not mean that followers of a religion regard the religion not to be obligatory, but only—and vitally—that it is not to be imposed on others by government force. On the importance of voluntariness in religious exercise in America’s church-state design, see Carl H. Esbeck, “Governance and the Religion Question: Voluntaryism, Disestablishment, and America’s Church-State Proposition,” *Journal of Church and State* 48 (2006): 303–26; Witte Jr., Nichols, and Garnett, *Religion and the American Constitutional Experiment*, esp. ch. 3; and Kevin Seamus Hasson, *The Right to be Wrong: Ending the Culture War Over Religion in America* (San Francisco: Encounter Books, 2005).

2. *Protected religious character.* To be eligible for funding, and after receiving funding, faith-based providers need not suppress their religious identity. To the contrary, the new rules specifically protect various elements of religious character such as a religious mission, a religious name, the presence of religious icons or symbols, and clergy participation on the governing board. In addition, in recognition of the importance of religious staffing to many faith-based organizations, the rules stress that the organizations do not waive that important right by accepting government funds. (Some federal programs prohibit employment discrimination by grantees, including religious discrimination, but this prohibition may be set aside for faith-based organizations because of overriding religious freedom protections, as discussed later.) Importantly, while the rules accompanying the most common type of funding require that the funded services not include inherently religious activities (see principle 4a below), faith-based providers nevertheless may offer religious activities and teaching on a voluntary basis, inviting beneficiaries—the people coming for assistance—to participate if they so desire. Recall that, previously, an organization that hired based on religion and that offered religious teachings and practices among its activities thereby revealed itself to be “pervasively sectarian” and thus presumptively ineligible for government funds.<sup>87</sup> That presumption now was specifically overturned.

3. *Beneficiary protections.* A person eligible for a funded service may not be turned away by faith-based or secular providers because of the person’s religion or lack of religion. And beneficiaries may not be compelled to participate in inherently religious activities or teaching that may be offered by a provider. Moreover, some versions of the rules specify that a beneficiary who objects to the religious character of a provider must be offered an alternative provider that is not religiously objectionable (this other provider might be faith-based). We can call this a “super” beneficiary protection because unwanted participation in explicitly religious activities is already prohibited by the rules: when a program is grant-funded, such activities and teaching are excluded from the funded program, and if the funding is via voucher, the beneficiary is able to choose a suitable program to begin with (see more on this directly below). Few if any

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<sup>87</sup> See Monsma, *When Sacred & Secular Mix*, 149ff and passim.

beneficiaries have ever requested a referral;<sup>88</sup> the point is to fully protect the religious exercise right—which includes the right not to be involved in religious activities—of people who rely on the government to receive needed assistance.

4. *Explicit religion in social services may be funded or not, depending on whether beneficiaries have a full choice of services.* As noted above, some faith-based organizations include explicit religious teaching and elements within the services they offer and others do not. Monsma, in his study of government-funded welfare-to-work programs, termed the former services “faith-based, integrated programs” and the latter “faith-based, segmented programs.”<sup>89</sup> The “segmented” service programs, although inspired by religion, do not include significant specifically religious elements, although a faith-based organization may offer such religious teaching and activities separately from the social service. In such service programs, a beneficiary can receive the service without participating in an inherently religious activity such as prayer or religious discussion. In the “integrated” programs, religious elements are woven into the service; for instance, a program that includes instruction about the value of maintaining a job and of being respectful to one’s employer and fellow employees might include specific teachings from a sacred text. Here a beneficiary has to participate in the religious elements in order to receive the service at all.

4a. *No “direct” funding of explicit religion: appropriate for “faith-based, segmented” programs.* For church-state purposes, government funding of services by the award of a grant or contract to a provider is termed “direct” funding: the government itself selects which organization to support and then provides the funds. The selected organization is often the only service provider for a particular area and thus the only option available to a beneficiary. This is the way social services

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<sup>88</sup> See, e.g., the Department of Health and Human Services Notice of Proposed Rulemaking to amend its Equal Treatment regulations, 80 Fed. Reg. 47272 (August 6, 2015), at 47277, <https://www.govinfo.gov/content/pkg/FR-2015-08-06/pdf/2015-18256.pdf>, and the eventual Consolidated Final Rule, 81 Fed. Reg. 19355 (April 4, 2016), at 19366, <https://www.govinfo.gov/content/pkg/FR-2016-04-04/pdf/2016-07339.pdf>. See also Rogers, *Faith in American Public Life*, 110.

<sup>89</sup> Stephen V. Monsma, *Putting Faith in Partnerships: Welfare-to-Work in Four Cities* (Ann Arbor: University of Michigan Press, 2004), 44–45.

are usually funded by government.<sup>90</sup> Charitable Choice specified that such direct funds may not be used to pay for “inherently” or “explicitly” religious activities, such as prayer, religious instruction, and proselytization.<sup>91</sup> Nor may direct funds be used to pay for religious texts or religious curricula. Similarly, if a church’s youth pastor is employed part-time to teach in the church’s government-funded job-training program, then the pastor’s timecard and the church’s accounting record must reflect that the federal money supported only the jobs program and not the pastoral activity. These rules do not bar a faith-based organization from offering religious activities and inviting beneficiaries to participate in them, but the inherently religious activities must be separated “in time or location” from the government-supported service.

These “direct” funding rules protect beneficiaries from being compelled to participate in explicit religion in order to receive the available service, and they ensure that the government, in selecting a provider, is not, in effect, choosing to fund theological instruction and worship. However, note the consequence that “direct” funding, this most prevalent form of government aid, excludes from government partnerships those providers whose services integrate elements of religious instruction and religious activities, however effective their services may be and however much some beneficiaries may desire those services. This collateral exclusionary effect of the required restriction of explicit religion that governs most government funding (because the majority of the funding is “direct”) has been from the start strongly criticized by some advocates of faith-based social services and some religious freedom scholars. As we will see, the Equal Treatment regulations over the years have been modified in part to make them more hospitable to the broad range of faith-based organizations while preserving beneficiary protections.

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<sup>90</sup> At the federal level, social services are generally funded by grants (or the similar cooperative agreements), although sometimes by contracts, which involve greater government control. State and local governments often receive federal grant funding—e.g., federal block grants—and then award the support to private organizations in the form of contracts, but such federal funds remain subject to the federal grant rules.

<sup>91</sup> To identify religious content that government may not directly fund, Charitable Choice statutory provisions, Equal Treatment regulations, executive orders, and guidance documents use the phrase “inherently [or explicitly] religious activities, such as worship, religious instruction, and proselytization.” See the discussion in President’s Advisory Council on Faith-Based and Neighborhood Partnerships, *Strengthening Efforts to Increase Opportunity and End Poverty*, 129–30.

4b. *If choice, then explicit religion can be incorporated: appropriate for “faith-based, integrated programs.”* Charitable Choice in the welfare reform law also specifically authorized “indirect” or voucher funding of welfare services. The rules for this alternative, less frequently used, way of funding services are specified in the Equal Treatment regulations, although with significant changes in detail over time. Here the government authorizes a beneficiary to obtain some service and awards the beneficiary a scholarship, voucher, child care certificate, or other financial instrument. The beneficiary chooses a provider from a list of qualified organizations and then gives the voucher to the provider in order to obtain the service; the provider turns the voucher over to the government and then is paid for services rendered. In indirect funding, therefore, a provider only receives government funds due to the decision of a beneficiary and not because of a government official’s choice. In these circumstances, the US Supreme Court has ruled, the services that can be chosen—and that therefore will be funded by government—can include services that incorporate explicitly religious teaching and religious activities.<sup>92</sup> In an indirect-funding system, when a “faith-based, integrated program” is supported by federal dollars, this is the result of a beneficiary’s religious exercise and not because an official unconstitutionally decided to “establish” religion.

Amy Sherman, who is both a scholar and trainer of faith-based social service providers, advises providers to assess whether they offer “salad” or “brownie” programs when considering applying for government funding. In “salad” programs, explicitly religious activities and teachings are interspersed among secular activities and can be set aside from them; the provider can accept “direct” funding to support the secular services while inviting beneficiaries to participate in the separate religious activities if they desire to. In a “brownie” program, the religious and secular elements are baked together; if the religious parts are extracted, the program loses its coherence and its effectiveness. The requirements of “direct” funding conflict with such religion-inclusive services. The provider thus should see whether voucher (“indirect”) funding is available instead.<sup>93</sup>

The use of the “indirect” funding method by government makes it possible for providers that offer “faith-based, integrated” programs to partner with government, for they can receive government aid to serve beneficiaries without first stripping out explicitly religious elements

<sup>92</sup> See, in particular, the Supreme Court decision *Zelman v. Simmons-Harris* (2002).

<sup>93</sup> Amy L. Sherman, *The Charitable Choice Handbook for Ministry Leaders* (Annapolis, MD: Center for Public Justice, 2001).

from the services they offer. Such indirect funding is equally hospitable to providers offering strictly secular services and for those offering “faith-based, segmented” services. A network of providers funded indirectly thus can include both religious and secular programs and serve well both beneficiaries who desire a religious aspect to a service and those who object to religion. We can say that “indirect” funding protects beneficiaries’ religious freedom rights both negatively and positively: no beneficiary is compelled to use a service that includes religion, and yet a beneficiary who favors such a service is able to choose it. Thus, services funded in this way embody a valuable deepening of American public policy pluralism, enabling the array of government-supported social services to better match the diversity of those needing assistance.<sup>94</sup>

However, it is easier for government simply to award grants to one or two providers in a locale than to create and administer a system of multiple diverse providers, to maintain an information system about the available choices, and to fund the services by providing vouchers to beneficiaries. Indirect funding can be difficult for providers, too, for they must create or expand and then deliver services before funding is received. Nor can a provider be certain how often beneficiaries will choose its services rather than turn to another provider. Yet, as noted earlier, ever since the CCDGB program was created in 1990, before Charitable Choice was first adopted, federal support for child care for low-income families has routinely and predominantly used the indirect funding method in which eligible families are offered child care certificates to pay for secular or faith-based child care as they wish.

In addition, as we will see later, the Bush administration’s Department of Labor created a pilot program to put into practice “beneficiary-choice contracting”—a form of contracting, not vouchers, that allows beneficiaries to choose among providers, some offering secular services and others services that include religious elements. This kind of indirect funding does not require the complete redesign of social services funding and administration. Moreover, without being

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<sup>94</sup> Voucher funding differs from “direct” funding in multiple ways beyond the church-state differences stressed here and may be selected by policymakers because of these other characteristics. For enlightening analyses of voucher funding and other kinds of government support, see C. Eugene Steuerle, Van Doorn Ooms, George Peterson, and Robert D. Reischauer, eds., *Vouchers and the Provision of Public Services* (Washington, DC: Brookings Institution Press, Committee for Economic Development, and Urban Institute Press, 2000), and Salamon, ed., *Tools of Government*.

identified as doing so, a significant number of social service, health, and education programs fulfill the requirements for indirect funding: informed choice by beneficiaries and payment to the provider only because a beneficiary has chosen it. Government agencies with such programs should ensure that beneficiaries do have diverse choices, including the option of a secular service, and then specifically invite providers offering faith-integrated programs to be among the choices available to beneficiaries. Ensuring multiple choices by including both secular and faith-based services may require additional government effort but has the great benefit of better serving the people the government programs are intended to assist.

The administrations that have followed Clinton’s—Bush, Obama, Trump, and Biden—have maintained Equal Treatment regulations modeled on Charitable Choice, albeit with somewhat different interpretations of the church-state requirements, but no administration has pressed toward a theocratic model that would support only faith-based, or only Christian, social service providers, and no administration has pressed to exclude faith-based organizations or even houses of worship as if only secular providers and secular services can achieve public purposes or the common good. The first enactment of Charitable Choice was a turning point, decisively changing American social policy from a secular to a pluralist model.

### **Faithful to the Constitution while expanding our political pluralism**

The Charitable Choice or Equal Treatment revolution in government funding has been validated by a series of US Supreme Court decisions. *Mitchell v. Helms* (2000) ruled that “pervasively sectarian” schools are eligible for direct government aid but the aid cannot be spent on inherently religious activities. *Zelman v. Simmons-Harris* (2002) approved a school voucher program in which parents could choose either private schools offering religious education or secular public or private schools. *Trinity Lutheran Church v. Comer* (2017) ruled that even churches are eligible for government support of their non-worship activities (in this case, playground resurfacing). In *Espinoza v. Montana Department of Revenue* (2020) and *Carson v. Makin* (2022), the Court determined that when a state operates a school funding program that allows parents to choose a private school, it cannot exclude religious private schools, even if the education they provide is

thoroughly religious. None of these decisions are about funding social services as such, but the principle is clear: when the government offers funds to private organizations to provide some service, it is not permitted categorically to exclude faith-based providers, even if they offer “faith-based, integrated” programs.

This trajectory of decisions can be interpreted as the movement of the Court from a prime commitment to “no establishment,” via the “no aid to religion” requirement, to a prime commitment to the “free exercise” of religion, requiring the elimination of every restriction on access to funding by faith-based organizations. In my view, this change in the Court’s stance would be a troubling development if it entailed government officials taking no care for the rights of people who are supposed to be able to receive services that the government has funded—for example, if officials may award a grant to provide some kind of service to a single provider that delivers services infused with the teachings and activities of a religion without at the same time arranging for a secular or otherwise religiously acceptable alternative for beneficiaries needing a different choice. I think it is more accurate, however, to understand the string of Court decisions as the development of funding principles that require equal treatment of secular and religious competitors for funding while simultaneously protecting beneficiaries from compelled religious observance.<sup>95</sup> That is, (1) no kind of organization can be excluded from funding; (2) when beneficiaries have a choice, services that incorporate inherently religious elements can be offered; (3) but when there is no such choice, beneficiaries cannot be required to participate in religion but in fact must have a way to receive a needed service without such participation.

Note that the previous “no aid to religion” rule in government funding also protected beneficiaries from religious compulsion. However, that positive result was purchased at the cost of excluding effective faith-based providers and reducing choice for the beneficiaries. Charitable Choice provides a better way to avoid compulsion and to respect the “no establishment”

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<sup>95</sup> Note that in the school funding cases—*Zelman*, *Espinoza*, and *Carson*—parents always had, in addition to the choice of a religious school, the option of a government-supported secular school, either a secular private school or a public school. The *Trinity Lutheran Church* decision authorized government support to improve a church’s playground, but children in general can have no a reasonable expectation to be able to use that particular playground.



requirement while simultaneously protecting the free exercise of both beneficiaries and faith-based providers. In this framework of principles and practices, faith-based organizations participate *as* faith-based organizations that offer religious activities and teaching, but without compulsion. If the funding is “direct,” the religious activities and teaching are available separately from the government-supported services; if the funding is “indirect,” then religion can be incorporated into a service, while beneficiaries are able to choose such a service or else a secular service.

Thus, Charitable Choice not only ended the exclusion from funding of organizations thought to be too religious but created a constitutional way to include them in their sectarian diversity—to include them if they could provide services effectively, *despite their religion* (the requirement of no bias against or for them), *with their religion intact* (the various protections for their religious character and activities), and even *because of their religion* (when they would be one of several choices).

“[T]he founding fathers arrived at a faithful consensus that America should be a godly republic rather than either a secular state or a Christian nation.” — John J. DiIulio Jr., *Godly Republic* (2007).<sup>96</sup>

I propose that a social assistance system that incorporates religion in this way fulfills better than does a secular system the constitutional requirements, basic American principles, and the full public good. It implements a more robust American public policy pluralism. American society is heterogeneous, comprised of people with diverse religious, philosophical, and moral convictions and practices—convictions and practices that can be important for the effectiveness and desirability of the social services supported by government. Diverse social services providers and social services are a better match for American society than uniform secularity. But the religion of service providers cannot be dictated by government and it cannot be made obligatory for beneficiaries as the price of receiving a needed service. The Charitable Choice and Equal Treatment rules enable the government social assistance system to better serve beneficiaries.

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<sup>96</sup> DiIulio, *Godly Republic*, 33.

These rules enable religious organizations as well as secular organizations, in all of their distinctiveness—their “sectarian” diversity—to operate as “partners in public service”<sup>97</sup>—interpreting “public” here as the diverse reality that it is.

“Since they are co-responsible for ministering to the poor, faith-based charities ought to be willing to engage the state with the confidence that they are equal partners in this enterprise, not just government contractors. Subsidiarity works both ways, and religious charities provide an immense help to the state by providing social services in ways that the state itself simply cannot provide. This should instill in the organizations that make up the religious social sector a deep sense of the importance and uniqueness of their contribution to the general welfare. It should also strengthen their determination, as they cooperate with various levels of government in pursuit of common ends, to guard jealously their religious identity, knowing that it is precisely because of it that they contribute to the common good.” — Luis Lugo, *Equal Partners: The Welfare Responsibility of Governments and Churches* (1998).<sup>98</sup>

These religion-inclusive but pluralist principles are rooted in Catholic and neo-Calvinist social teaching traditions that stress both governmental responsibility and the calling of citizens, through civil society organizations, to express love of neighbor. But this interjection of religion into American social policy discussions and action has the aim and effect not of prompting a religious takeover of society but of fostering a more thorough pluralism in the government’s social assistance system to match the pluralism of providers and the diversity of convictions and practices of families, individuals, and communities needing assistance.<sup>99</sup>

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<sup>97</sup> I am borrowing the title of Salamon, *Partners in Public Service*, without suggesting we share the same understanding.

<sup>98</sup> Luis E. Lugo, *Equal Partners: The Welfare Responsibility of Governments and Churches* (Washington, DC: Center for Public Justice, 1998), 18–19.

<sup>99</sup> On the Catholic subsidiarity framework and the neo-Calvinist sphere sovereignty principle as inspiration for the faith-based initiative, see, esp., Daly, *God’s Economy*; James W. Skillen, “*E Pluribus Unum* and Faith-Based Welfare Reform,” in Skillen, *Pursuit of Justice: Christian Democratic Explorations* (Lanham, MD: Rowman & Littlefield, 2004), 59–75; Stanley W. Carlson-Thies, “Why Should Washington, DC, Listen to Rome and Geneva About Public Policy for Civil Society?” in Jeanne Heffernan Schindler, ed., *Christianity and Civil Society: Catholic and Neo-Calvinist Perspectives* (Lanham, MD: Lexington Books, 2008), 165–87; and John Chandler, *Faith-Based Policy: A Litmus Test for Understanding Contemporary America* (Lanham, MD: Lexington Books, 2014). Stephen Monsma, in his *Pluralism and Freedom*, shows how these Catholic and neo-Calvinist social principles also reflect American constitutional principles. William A. Galston’s *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (Cambridge: Cambridge University Press, 2002) explains, explores, and defends a similar social pluralism for public policy.

“The civic life of a free and pluralistic nation can never be dominated by a particular faith, nor can it be stripped of faith.” — E. J. Dionne Jr. and Ming Hsu Chen, *Sacred Places, Civic Purposes* (2001).<sup>100</sup>

## A broad consensus forms

Public polling by the centrist Democratic Leadership Council a few years after Charitable Choice was first enacted in 1996 showed that very large majorities of Democrats, Republicans, and independents agreed that social problems in the United States could be better solved by “closer collaboration” between government and religious and other charitable organizations than by either government by itself or by civil society organizations acting alone.<sup>101</sup> However, such closer collaboration, of course, worried church-state separationists, concerned about possible religious coercion and violation of the Establishment Clause, and civil rights advocates, also concerned about coercion and additionally opposed to religious staffing decisions being made by faith-based organizations supported by government funds. These and other issues would continue to be vigorously debated.

Yet acceptance of the Charitable Choice principles was broad. As Charitable Choice was being added to several federal programs, leaders of a diverse group of religious and secular organizations met in Washington, DC, for a series of “In Good Faith” discussions about this significant change in church-state rules. Separationists and partnership advocates could not come to full agreement, yet there was significant consensus. Religious organizations should not simply be banned from government funding programs. Government funds are not to be used to promote religion rather than social services. People needing help from government programs must not be forced into religious activities. Religious organizations must be counted as among the valuable providers of services to people and neighborhoods in need.<sup>102</sup>

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<sup>100</sup> Dionne and Chen, “Introduction,” in Dionne and Chen, *Sacred Places, Civic Purposes*, 15.

<sup>101</sup> Mark Penn, “The Community Consensus,” *Blueprint: Ideas for a New Century* (Spring 1999): 52–53.

<sup>102</sup> “In Good Faith: A Dialogue on Government Funding of Faith-Based Social Services” was the product of discussions convened by the American Jewish Committee and the Feinberg Center for American Jewish History at Temple University and issued May 2001. This report is reprinted in Dionne and Chen, *Sacred Places, Civic Purposes*, 305–20. I was a participant in this project, as was Melissa Rogers, who has been a director of the White House faith-based office under Presidents Obama and Biden. Similarly broad though incomplete agreement is reflected in the

To be sure, religious leaders and organizations were not automatically supporters of Charitable Choice. After President Bush inaugurated the White House Office of Faith-Based and Community Initiatives, its first director, John J. DiIulio Jr., felt compelled to deliver a fiery speech chastising some evangelical Protestants who regarded the initiative as a way to get the federal government to fund the “right religion”—theirs. And earlier, when Charitable Choice was being discussed in Congress, some prominent evangelical Protestants spoke in opposition, claiming that welfare is the responsibility of churches, not government, while some mainline Protestant leaders opposed it because welfare is the responsibility of government and not churches! And the leaders of some religiously affiliated providers that were already working with government warned of changing the rules, fearful that the pragmatic arrangements that they had worked out with government officials might be overturned.<sup>103</sup>

In 1999, as dueling candidates to replace President Bill Clinton, first Al Gore, a Democrat and the sitting vice president, and then George W. Bush, his Republican challenger, gave major speeches calling for the expansion of the Charitable Choice principles and expanded federal partnerships with faith-based organizations. Gore proposed the expansion first, urging that “the solutions that faith-based organizations are pioneering” should be “at the very heart of our national strategy for building a better, more just nation.” Accordingly, he proposed extending Charitable Choice, “this carefully tailored approach,” to additional “vital services where faith-based organizations can play a role—such as drug treatment, homelessness, and youth violence prevention.”<sup>104</sup> Bush, in

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final statement issued by another diverse group of leaders, *Finding Common Ground: 29 Recommendations of the Working Group on Human Needs and Faith-Based and Community Initiatives* (Washington, DC: Search for Common Ground of Washington, January 2002). See also Davis and Hankins, eds., *Welfare Reform and Faith-Based Organizations*, an early collection of substantial arguments favoring and questioning Charitable Choice; and Carl H. Esbeck and Stanley Carlson-Thies, “Happy Birthday Charitable Choice, 20 Years of Success: Two Decades of Bipartisan Cooperation on Government Funding and Religion” (blog post), Institutional Religious Freedom Alliance, August 22, 2016, <https://cpjustice.org/happy-birthday-charitable-choice-20-years-of-success/>. Black, Koopman, and Ryden, *Of Little Faith*, discusses throughout areas of agreement and disagreement.

<sup>103</sup> DiIulio’s speech, “Compassion ‘In Truth and Action’: How Sacred and Secular Places Serve Civic Purposes, and What Washington Should—and Should Not—Do to Help,” was delivered to the National Association of Evangelicals meeting in Dallas, TX, on March 7, 2001, <https://georgewhitehouse.archives.gov/news/releases/2001/03/text/20010307-11.html>. For the divergent views of various Protestant leaders, see Carlson-Thies, “Don’t Look to Us’.”

<sup>104</sup> Speech on the role of faith-based organizations to the Salvation Army, Atlanta, GA, May 24, 1999. See Ceci Connolly, “Gore Urges Role for ‘Faith-Based’ Groups,” *Washington Post*, May 25, 1999, <https://www.washingtonpost.com/wp-srv/politics/campaigns/wh2000/stories/gore052599.htm>.

his “Duty of Hope” speech a few months later, vowed, “In every instance where my administration sees a responsibility to help people, we will look first to faith-based organizations, charities and community groups that have shown their ability to save and change lives.” He said his administration would “change the laws and regulations that hamper the cooperation of government and private institutions” and promised, “We will allow private and religious groups to compete to provide services in every federal, state and local social program.”<sup>105</sup>

### **Additional change needed**

The Gore and Bush, Democratic and Republican, commitments to changing federal policies were important indicators of broad support for the new Charitable Choice church-state rules and for a different relationship between government and civil society. But principles and even laws are not self-executing. The new rules had to be communicated to the relevant officials—federal, state, and local—and be transformed into changed practices. For instance, announcements of the availability of funds and also grant documents needed now to include new provisions defining the eligibility of faith-based organizations and specifying their institutional religious protections and also stressing safeguards for beneficiaries. And to overcome the many other obstacles to the inclusion of civil society organizations in the government-funded social assistance system, additional changes were needed to the grants system. Among other reforms, new types of outreach were required in order to gain the attention of organizations sharply focused on fulfilling their missions, who paid little attention to funding announcements, and various assistance programs needed redesign so that beneficiaries could benefit from the strengths of locally trusted organizations.

The Clinton administration itself was a lukewarm supporter of Charitable Choice and expanded partnerships. Despite signing into law the bills that included Charitable Choice, President Clinton pressed for the continued exclusion from federal funding of “pervasively sectarian”

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<sup>105</sup> The speech is reprinted in Hilary Sorin, “Today in Texas History: GW Bush delivers first presidential speech,” *Texas on the Potomac* (blog), July 22, 2010, <https://blog.chron.com/txpotomac/2010/07/today-in-texas-history-gw-bush-delivers-first-presidential-campaign-speech/>.

organizations.<sup>106</sup> His administration did not issue Charitable Choice regulations to guide states,<sup>107</sup> although his Department of Health and Human Services did organize a national conference on Charitable Choice in the revised welfare law, bringing together federal and state officials and faith-based organizations.<sup>108</sup> Both Clinton's first Secretary of Housing and Urban Development (HUD), Henry Cisneros, and his second, Andrew Cuomo, promoted greater interaction between HUD and religious organizations, including congregations active in community development and low-income housing. And Cuomo created the first federal partnership office, the HUD Center for Community and Interfaith Partnerships. But Charitable Choice did not apply to HUD programs, and the Cisneros and Cuomo efforts were hampered by the limitations inherent in the traditional cross-sector collaboration system.<sup>109</sup>

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<sup>106</sup> Black, Koopman, and Ryden, *In Good Faith*, 59, 61, 62; Rogers and Dionne, *Serving People in Need*, 19–20; Ackerman, “Charitable Choice,” 7, 9, 14–15, 16.

<sup>107</sup> To help fill the gap, the Center for Public Justice, where I worked, issued two guidance booklets: *A Guide to Charitable Choice: The Rules of Section 104 of the 1996 Federal Welfare Law Governing State Cooperation With Faith-Based Social-Service Providers* (Washington, DC: Center for Public Justice, 1997), and Stanley W. Carlson-Thies, *Charitable Choice for Welfare & Community Services: An Implementation Guide for State, Local, and Federal Officials* (Washington, DC: Center for Public Justice, 2000).

<sup>108</sup> The conference, with the theme “Building New Partnerships,” was organized by the Administration for Children and Families in the Department of Health and Human Services and was held in New Orleans, LA, on November 16–17, 1999. I have in my collection a canvas briefcase from the conference that is emblazoned with the conference theme and sponsor.

<sup>109</sup> By my observation, the HUD Center did not regard the introduction of Charitable Choice into its own program laws to be necessary. Later, as the Bush White House Office of Faith-Based and Community Initiatives in its early weeks in 2001 began to explore the legal and process barriers in federal rules and programs that impeded partnerships with faith-based and community-based organizations, officials connected with the original HUD Center unveiled the results of its own survey of barriers. The ultimate Bush White House report, *Unlevel Playing Field*, discussed later, would identify fifteen legal and process barriers. The HUD officials' survey said that respondents identified only one barrier: neither difficulties in the federal rules nor in program design but simply not enough funds for grantees. Yet this outcome was hardly surprising: the HUD Center had surveyed its contacts and all of them were current or former grantees. These were all, by definition, organizations that had figured out how to negotiate any barriers successfully. They simply sought additional resources.

“Soon after I came to HUD, I established the Religious Organizations Initiative . . . . The mission of this initiative is to provide extensive outreach to the faith community and to engage religious institutions as partners in forwarding the priorities we have established for HUD. My colleagues who oversee this initiative have talked with, and made themselves accessible to, hundreds of religious leaders across the country, visiting conferences and conventions, listening to questions and ideas, and exploring ways that HUD’s programs can further their community-building efforts.

“I believe this initiative is paying off—not only by the concrete assistance we have been able to offer but also by simply providing a voice, a face, someone religious leaders feel they can reach out to in government. Government clearly benefits as well, because we have learned from their experiences.”

— HUD Secretary Henry G. Cisneros, “Higher Ground: Faith Communities and Community Building” (1996).<sup>110</sup>

Some states were more eager than the Clinton administration to put the partnership vision into practice. Complying with Charitable Choice was a requirement that accompanied the federal funds they received from the new welfare program and via the Community Development Block Grant and SAMHSA drug prevention and treatment programs. Even before a White House faith-based office was created, five states, both blue and red, had each created a faith-based office or designated a faith-based official—California, New Jersey, Oklahoma, South Carolina, and Texas.<sup>111</sup> Texas Governor George W. Bush paid particular attention to the new Charitable Choice rules, convening advisory and working groups to evaluate and modify state policies and practices.<sup>112</sup>

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<sup>110</sup> Reprinted in Henry G. Cisneros, *City Scope: A Collection of Essays* (Washington, DC: US Department of Housing and Urban Development, December 1996), 78.

<sup>111</sup> Rebecca Sager, *Faith, Politics, & Power: The Politics of Faith-Based Initiatives* (Oxford: Oxford University Press, 2010), appendix C. See also Pamela Winston, Ann E. Person, and Elizabeth Clary, *The Role of State Faith Community Liaisons in Charitable Choice Implementation: Final Report* (Washington, DC: Mathematica Policy Research, 2008). During the Bush administration, more than thirty states had faith-based offices or designated faith-based liaison officials and a very large number of municipalities also designated faith-based liaisons. White House Office of Faith-Based and Community Initiatives, *The Quiet Revolution: The President’s Faith-Based and Community Initiative: A Seven-Year Progress Report* (2008), ch. 5, “Taking Root Across America,” [https://georgewbush-whitehouse.archives.gov/government/fbci/fs\\_takingroot.html](https://georgewbush-whitehouse.archives.gov/government/fbci/fs_takingroot.html).

<sup>112</sup> Governor’s Advisory Task Force on Faith-Based and Community Service Groups, *Faith in Action: A New Vision for Church-State Cooperation in Texas, Full Report* (1996); *Implementing “Charitable Choice” Provisions of Welfare Reform: Report of the Texas Department of Human Services’ “Charitable Choice” Workgroup* (Austin: Texas Department of Human Services, 1997).

## **Transformation 2: The federal faith-based and neighborhood partnership initiative**

Converting the government social services system from collaboration to partnership required not only reversing the church-state rules—that was Track 1, the Charitable Choice innovation—but also transforming the grants system: modifying how funding is announced, changing the size of grants and the bureaucratic requirements that accompany them, giving social service providers the opportunity to be co-responsible for program design rather than only following government directives, and breaking through conventional practices to get resources to small faith-based and community-oriented organizations much more focused on providing vital services in their neighborhoods than to looking for government funding. To promote such changes, and to ensure that the new Charitable Choice principles would be implemented and not ignored, a second line of reform action was established: Track 2, the federal faith-based initiative, sometimes called the partnership initiative. A vital step was the creation of new federal offices with distinctive visionary, leadership, and practical responsibilities.

Executive orders issued by George W. Bush soon after he was inaugurated created new federal institutions: a White House Office of Faith-Based and Community Initiatives in the Executive Office of the President and Centers for Faith-Based and Community Initiatives in major federal agencies that operate social services funding programs. A third Bush executive order, issued the next year, endorsed the Charitable Choice principles as the church-state rules that must guide all federal social services spending, not just in those programs with this statutory language. This third executive order sparked the writing of Equal Treatment regulations across key federal agencies to ensure that religious organizations—whether religiously inspired, religiously affiliated, faith-based with a pronounced religious identity and various religious practices, or even houses of worship that operate programs that serve their neighbors—are able to compete fairly for federal social services funding.

There was solid grounding for these executive orders: the congressional adoption of Charitable Choice multiple times, the Supreme Court's interpretive turn, the broad consensus that had



developed in support of Charitable Choice and the partnership vision. Yet these foundational Bush executive orders also demonstrated a deep, specifically presidential, commitment to transforming the official social assistance system and way government interacts with civil society. These were executive actions in line with but not dictated by statutes or Court rulings. And it is even more notable that succeeding presidents of both parties—Democrat Barack Obama, Republican Donald Trump, and now Democrat Joe Biden—by their own official actions, including their own executive orders, accepted and made their own this federal faith-based initiative: these new institutions, the partnership vision, and the reversed church-state principles.

“I think we have seen about the most dramatic administrative change that is possible for those inside the Beltway to conceive . . . the idea that you go from a government that was in form as well as practice quite hostile to many kinds of religious organizations participating in government funding programs to one that has now institutionalized an expectation—it’s not always practiced, but an expectation of equal treatment. I mean, that’s a remarkable change and that’s a change that didn’t happen because of Charitable Choice although the groundwork was there. It’s happened because of the Faith-Based and Community Initiative.” — Robert Tuttle, George Washington University Law School (2007).<sup>113</sup>

I will summarize each president’s commitment to the initiative, his administration’s actions regarding the initiative’s institutions and the new church-state rules, and notable innovations to the grants system and to federal programs. Then, in the next section, I will propose substantial new reforms in three policy areas: creating a federal policy that simultaneously secures LGBTQ rights and the protections needed by morally conservative faith-based organizations so that they can remain partners with government; devising ways that the federal government can support historic urban congregations and thereby the many positive civil society programs and organizations they support; and further changing the grants system so that houses of worship and related faith-based organizations in marginalized communities can obtain the government resources they need to support their indispensable work as the pillars of their neighborhoods. In the final section I will assess the declining transformative energy of the initiative over time and recommend how to renew that indispensable transformative drive.

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<sup>113</sup> Robert Tuttle, statement at the 2007 annual conference of the Roundtable on Religion and Social Welfare, quoted in Jay F. Hein, *The Quiet Revolution: An Active Faith That Transforms Lives and Communities* (Waterfall Press, 2014), 194.

“[T]here is nothing new about faith-based organizations delivering social services . . . . What is new is the effort by mayors, governors and the President himself to encourage and enable faith-based organizations to access government programs to help those in need. This effort represents a substantial shift in approach from two previous polarizing approaches. One of these approaches assumed that government’s responsibility needed to be discharged by government employees operating inside tight rules. The other approach assumed that if government merely got smaller, [then] faith-based organizations and other players in the nonprofit sector would take over important services. Today, however, pragmatic mayors intentionally create partnerships with FBOs to more effectively deliver public goods.” — Stephen Goldsmith, Chris Pineda, and William B. Eimicke (2005).<sup>114</sup>

## Presidential commitments

**George W. Bush.** Bush’s creation of the faith-based initiative was not a great surprise. As Texas governor, he was open about how religion had saved him from alcoholism, routinely praised the work of civil society organizations, and pressed state agencies to follow the Charitable Choice rules when spending federal money from those programs. Among his informal advisers were Marvin Olasky and John J. DiIulio Jr., very different in their politics but united in their understanding of the vital work of faith-based organizations. Bush publicly chastised Texas agencies and officials that hampered the work of faith-based and community-based organizations. Running for president, he promised a new federal “Office of Faith-Based Action.” And soon after his inauguration, he announced that one of his chief priorities was to “rally[] the Armies of Compassion.” Barriers preventing faith-based organizations from accessing federal funds must go; the federal government must expand its partnerships with civil society organizations and expand also its support for the good they accomplish separately from government. But this was no call to privilege Bush’s own religion or religion as such, nor to diminish the federal government’s own responsibilities. The government, he said, should partner with whichever organization is best, “whether run by Methodists, Muslims, Mormons, or good

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<sup>114</sup> Stephen Goldsmith, Chris Pineda, and William B. Eimicke, *How City Hall Can Invigorate the Faith Community Around a Citywide Housing Agenda*, Ash Institute for Democratic Governance and Innovation, John F. Kennedy School of Government, Harvard University, fall 2005, <https://ash.harvard.edu/files/ash/files/11119.pdf?m=1632422817>.

people of no faith at all.” And while government should “welcome [charities] as partners,” its work could not be replaced by them.<sup>115</sup>

“The paramount goal must be compassionate results, not compassionate intentions. Federal policy should reject the failed formula of towering, distant bureaucracies that too often prize process over performance. We must be outcome-based, insisting on success and steering resources to the effective and to the inspired. Also, we must always value the bedrock principles of pluralism, nondiscrimination, evenhandedness and neutrality. Private and charitable groups, including religious ones, should have the fullest opportunity permitted by law to compete on a level playing field, so long as they achieve valid public purposes, like curbing crime, conquering addiction, strengthening families, and overcoming poverty.”— President George W. Bush, *Rallying the Armies of Compassion* (2001).<sup>116</sup>

**Barack Obama.** Obama’s commitment to the initiative, in sharp contrast, was a surprise to many and a deep disappointment to not a few. The initiative was identified with Bush and had received much criticism from Democrats. Yet on July 1, 2008, on the campaign trail, Obama said he would continue the initiative, although he said that some of its principles and policies had to be revised to make them constitutional.<sup>117</sup> And once elected, his administration made sure to evaluate those principles and policies, introduce institutional innovations, and update the funding regulations to better protect beneficiaries of services.

Obama was an adult convert to Christianity and, early in his career, had worked for a Catholic community-organizing initiative. Campaigning for president, he said that the work of faith-based and other civil society organizations is vital and that the government’s efforts would be strengthened by expanding partnerships with them. “[M]illions of Americans,” he said, due to their religion, “feel they have an obligation to help others.” The organizations they formed, while often faith-based, were “usually working to help people of all faiths or of no faith at all.” And the help they offered was much needed:

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<sup>115</sup> Bush, *Rallying the Armies of Compassion* (White House, January 2001), foreword, <https://georgewbush-whitehouse.archives.gov/news/reports/faithbased.html>.

<sup>116</sup> Bush, *Rallying the Armies of Compassion*, foreword.

<sup>117</sup> “Obama Delivers Speech on Faith in America”; Obama ’08 (presidential campaign), “Partnering with Communities of Faith.”

As I've said many times, I believe that change comes not from the top-down, but from the bottom-up, and few are closer to the people than our churches, synagogues, temples, and mosques. That's why Washington needs to draw on them. The fact is, the challenges we face today—from saving our planet to ending poverty—are simply too big for government to solve alone. We need all hands on deck.<sup>118</sup>

Obama, like Bush, spoke of a needed extra factor without denigrating the government's own important role: “[N]o matter how much money we invest or how sensibly we design our policies, the change that Americans are looking for will not come from government alone. There is a force for good greater than government. It is an expression of faith, this yearning to give back, this hungering for a purpose larger than our own, that reveals itself not simply in places of worship, but in senior centers and shelters, schools and hospitals, and any place an American decides.”<sup>119</sup>

“Instead of driving us apart, our varied beliefs can bring us together to feed the hungry and comfort the afflicted; to make peace where there is strife and rebuild what has broken; to lift up those who have fallen on hard times. This is not only our call as people of faith, but our duty as citizens of America, and it will be the purpose of the White House Office of Faith-Based and Neighborhood Partnerships that I’m announcing later today.

“The goal of this office will not be to favor one religious group over another – or even religious groups over secular groups. It will simply be to work on behalf of those organizations that want to work on behalf of our communities, and to do so without blurring the line that our founders wisely drew between church and state. This work is important, because whether it’s a secular group advising families facing foreclosure or faith-based groups providing job-training to those who need work, few are closer to what’s happening on our streets and in our neighborhoods than these organizations. People trust them. Communities rely on them. And we will help them.” — President Barack Obama, National Prayer Breakfast (February 5, 2009).<sup>120</sup>

**Donald Trump.** Trump’s commitment to the initiative is difficult to define. He had no obvious history of involvement with faith-based or community-based organizations, no warm personal witness to religious faith. Both as candidate and president, however, he did proclaim a strong

<sup>118</sup> “Obama Delivers Speech on Faith in America.”

<sup>119</sup> White House Briefing Room, “Obama Announces White House Office of Faith-based and Neighborhood Partnerships,” February 5, 2009.

<sup>120</sup> “Remarks of President Barack Obama, National Prayer Breakfast, Thursday, February 5th, 2009,” <https://obamawhitehouse.archives.gov/blog/2009/02/05/my-hope-my-prayer>.

commitment to religious freedom, to the government’s protection of religious exercise—a vital foundational principle of the initiative. While Trump’s actions against Muslim-majority countries and in favor of conservative Christians cast doubt on his sincerity, he undertook major actions to promote religious freedom, as in his nominees for the Supreme Court and other federal courts, an executive order, “Promoting Free Speech and Religious Liberty,” which led to an extensive Department of Justice memorandum setting out principles on how the federal government must protect individual and institutional religious freedom, and Department of State initiatives.<sup>121</sup>

“As a general matter, the federal government may not condition receipt of a federal grant or contract on the effective relinquishment of a religious organization’s hiring exemptions or attributes of its religious character.

“Religious organizations are entitled to compete on equal footing for federal financial assistance used to support government programs. Such organizations generally may not be required to alter their religious character to participate in a government program, nor to cease engaging in explicitly religious activities outside the program, nor effectively to relinquish their federal statutory protections for religious hiring decisions.” — Attorney General’s Memorandum, “Federal Law Protections for Religious Liberty” (October 6, 2017).<sup>122</sup>

Yet despite Trump’s promotion of religious freedom and the importance to evangelical Protestants—prominent in his political base—of their expansive universe of faith-based organizations, he did not take official public notice of the faith-based initiative until some fifteen months into his presidency. Then, he issued an executive order, “Establishment of a White House Faith and Opportunity Initiative,” through which he created the position of a White House faith-based adviser in place of a renewed White House faith-based office.<sup>123</sup> However, the executive order sounded the same notes as Bush’s and Obama’s had: faith-based and community-based organizations provide invaluable services that are different than the help

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<sup>121</sup> Executive Order 13798, May 4, 2017, “Promoting Free Speech and Religious Liberty,” 82 Fed. Reg. 21675 (May 9, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-05-09/pdf/2017-09574.pdf>; Department of Justice Notice, “Federal Law Protections for Religious Liberty,” 82 Fed. Reg. 49668 (October 26, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-10-26/pdf/2017-23269.pdf>; Department of State Ministerials to Advance Religious Freedom, <https://2017-2021.state.gov/2019-ministerial-to-advance-religious-freedom/>.

<sup>122</sup> Department of Justice Notice, “Federal Law Protections for Religious Liberty.”

<sup>123</sup> Executive Order 13831, May 3, 2018, “Establishment of a White House Faith and Opportunity Initiative,” 83 Fed. Reg. 20715 (May 8, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-05-08/pdf/2018-09895.pdf>.

government can offer; the government should partner with such organizations; government funding programs and requirements should do nothing to block the organizations' access to federal support. There was nothing suggesting that the government's own action should wither away or that only religious organizations, or only the "right" religious organizations, should be supported. And although the White House advisory position was only created after a long delay, Trump had not closed the faith-based Centers in the various agencies and his administration maintained, though with important changes, the Equal Treatment regulations so important to the initiative.

"Faith-based and community organizations have tremendous ability to serve individuals, families, and communities through means that are different from those of government and with capacity that often exceeds that of government. These organizations lift people up, keep families strong, and solve problems at the local level. The executive branch wants faith-based and community organizations, to the fullest opportunity permitted by law, to compete on a level playing field for grants, contracts, programs, and other Federal funding opportunities. The efforts of faith-based and community organizations are essential to revitalizing communities, and the Federal Government welcomes opportunities to partner with such organizations through innovative, measurable, and outcome-driven initiatives." — President Donald Trump, Executive Order 13831, "Establishment of a White House Faith and Opportunity Initiative" (May 3, 2018).<sup>124</sup>

**Joe Biden.** The Biden administration from the start has been deeply and broadly committed to action by the federal government—to new programs, expanded spending, and new rules designed to end the COVID-19 emergency, to revive the economy, to redress the nation's deeply rooted racial inequities and income inequality, to vigorously combat climate change, to overcome the marginalization of minority racial, ethnic, and religious communities, and much more. Yet, within a month of taking office, President Biden issued an executive order recreating the White House faith-based office in order to promote government partnerships with civil society organizations.<sup>125</sup>

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<sup>124</sup> Executive Order 13831, "Establishment of a White House Faith and Opportunity Initiative."

<sup>125</sup> Some observers regard the Biden administration's commitment to extensive government action to be a sharp reversal of President Bill Clinton's 1996 announcement that "the era of big government is over." See, e.g., Jim Tankersley and Jason DeParle, "Two Decades After the 'End of Welfare,' Democrats are Changing Direction," *New York Times*, March 16, 2021. If so, what might be the consequences for the faith-based initiative? A willingness in the mid-1990s to reconsider the extent of government action and spending, it seems clear, helped to create support for

That executive order used nearly the same words as Bush’s executive order, specifying that the reestablished White House faith-based office would lead “the Federal Government’s comprehensive effort to enlist, equip, empower, and expand the work of community-serving organizations, both faith-based and secular.” An accompanying fact sheet stressed that this partnership work was not separate from but would advance the administration’s central aims to “address the COVID-19 pandemic and boost economic recovery; combat systemic racism; increase opportunity and mobility for historically disadvantaged communities; and strengthen pluralism.”<sup>126</sup>

In other words, in the view of our second Catholic president, a man well-acquainted with religious organizations and with community-based programs, achieving crucial government aims—public goods—requires not only government spending and action, not only vigorous “community-serving organizations” acting on their own, but expanded partnerships between government and such organizations, both religious and secular. And as with previous administrations, the Biden administration conceives of this expanded collaboration with and support for religious civil society organizations as pluralistic: partnerships must be made “while preserving our fundamental constitutional commitments guaranteeing the equal protection of the laws and the free exercise of religion and forbidding the establishment of religion.”<sup>127</sup>

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the faith-based initiative—for efforts to engage civil society organizations to deliver services differently than the government does; for the Compassion Capital Fund that helped civil society organizations to improve their effectiveness whether or not they intended to partner with government; and for legislative efforts to incentivize more charitable giving so that civil society organizations are better resourced apart from any government funds they are awarded. Considered from this perspective, the move to “bigger government” now, it seems, must undermine the faith-based initiative. But the reality is more complicated. If the government does more via partnerships, then enlarged government does not mean less civil society—assuming that the rules for funding protect the distinctive characteristics and practices of religious and secular civil society organizations. Still, maintaining ample opportunities for civil society organizations to flourish without government funding and without its rules is important. Privately funded organizations can create services—small volume, specialized, very religious—that do not very well fit government specifications.

<sup>126</sup> Executive Order 14015, February 14, 2021, “Establishment of the White House Office of Faith-Based and Neighborhood Partnerships,” 86 Fed. Reg. 10007 (February 18, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-02-18/pdf/2021-03424.pdf>; White House, “Fact Sheet: President Biden Reestablishes the White House Office of Faith-Based and Neighborhood Partnerships,” February 14, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/14/fact-sheet-president-biden-reestablishes-the-white-house-office-of-faith-based-and-neighborhood-partnerships/>.

<sup>127</sup> Executive Order 14015, “Establishment of the White House Office of Faith-Based and Neighborhood Partnerships.”

“Faith-based and other community-serving organizations are vital to our Nation’s ability to address the needs of, and lift up, low-income and other underserved persons and communities, notably including persons of color. The American people are key drivers of fundamental change in our country, and few institutions are closer to the people than our faith-based and other community organizations. It is important that the Federal Government strengthen the ability of such organizations and other nonprofit providers in our communities to deliver services effectively in partnership with Federal, State, and local governments and with other private organizations, while preserving our fundamental constitutional commitments guaranteeing the equal protection of the laws and the free exercise of religion and forbidding the establishment of religion. The Federal Government can preserve these fundamental commitments while empowering faith-based and secular organizations to assist in the delivery of vital services in our neighborhoods. These partnerships are also vital for the success and effectiveness of the United States’ diplomatic, international development, and humanitarian work around the world.”  
— President Joe Biden, Executive Order 14015, “Establishment of the White House Office of Faith-Based and Neighborhood Partnerships” (February 14, 2021).<sup>128</sup>

## **The new federal partnership institutions—at the White House**

The high-profile institutional innovation was the creation of a White House faith-based office: the Office of Faith-Based and Community Initiatives in the Executive Office of the President. Bush’s executive order creating it gave it a large role in a broadly conceived new federal partnership orientation. The Office was to lead the executive branch in “establish[ing] policies, priorities, and objectives for the Federal Government’s comprehensive effort to enlist, equip, enable, empower, and expand the work of faith-based and other community organizations.” The Office would cast the partnership vision widely inside and outside of the government, press for real changes in federal policies and practices, and coordinate federal actions to support civil society organizations and partnerships with them.<sup>129</sup>

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<sup>128</sup> Executive Order 14015, “Establishment of the White House Office of Faith-Based and Neighborhood Partnerships.”

<sup>129</sup> Executive Order 13199, January 29, 2001, “Establishment of White House Office of Faith-Based and Community Initiatives,” 66 Fed. Reg. 8499 (January 31, 2001), <https://www.gpo.gov/fdsys/pkg/FR-2001-01-31/pdf/01-2852.pdf>. On the creation and significance of this new White House unit, see Black, Koopman, and Ryden, *Of Little Faith*, 190–98, 202–4; and Kathryn Dunn Tenpas, *Can an Office Change a Country? The White House Office of Faith-Based and Community Initiatives, A Year in Review*, Pew Forum on Religion and Public Life, July 2002, updated October 2002. A very personal account is offered by David Kuo, *Tempting Faith: An Inside Story of Political Seduction* (New York: Free Press, 2006), ch. 9.



This broad vision has been maintained despite significant changes in the White House unit.<sup>130</sup> Obama renamed it the White House Office of Faith-Based and Neighborhood Partnerships and created an Advisory Council of nonprofit and religious leaders and experts to advise on federal policy and especially on partnership issues. As noted, Trump decided on a White House faith-based adviser rather than office and renamed the work the Faith and Opportunity Initiative, yet the adviser was supported by legal and policy colleagues and Trump retained the general idea of a broad federal commitment to strengthening civil society and to expanding partnerships. Biden’s executive order was silent about Trump’s changes except to revoke his executive order and return to a White House Office of Faith-Based and Neighborhood Partnerships. Its director, Melissa Rogers, who previously served in the Obama White House faith-based office, has the additional responsibility of advising the White House’s Domestic Policy Council about church-state issues.

“The faith-based office exists because of a clear-eyed recognition of the power and centrality of faith in the spiritual and practical lives of many Americans and their communities. Faith-based organizations do not need the government; the government—if it seeks to serve the people, particularly the vulnerable—needs to partner with faith communities in order to get that work done.” — Michael Wear, an official in the Obama White House Office of Faith-Based and Neighborhood Partnerships, in *Reclaiming Hope* (2017).<sup>131</sup>

### **The new federal partnership institutions—in major agencies**

The other institutional innovation was less noticed but perhaps more important: the creation of faith-based Centers for Faith-Based and Community Initiatives (hereafter “Centers”) in federal agencies that administer programs through which government collaborates with private organizations to address social problems. It is in these agencies, and not the White House, where programs are designed, grant requirements are specified, and regulations are proposed, finalized, and enforced. It is here that the partnership vision is—or is not—transformed into changed

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<sup>130</sup> One significant change over time, with great consequences for the initiative is this: while each succeeding administration has staffed the faith-based offices, the number of partnership officials generally has declined.

<sup>131</sup> Michael Wear, *Reclaiming Hope: Lessons Learned in the Obama White House About the Future of Faith in America* (Nashville, TN: Nelson Books, 2017), 63.

federal practices.<sup>132</sup> The initial Centers were in the Departments of Health and Human Services (HHS); Labor (DOL); Housing and Urban Development (HUD); Justice (DOJ); and Education (ED).<sup>133</sup> The Bush administration later added Centers in the US Agency for International Development (USAID); Veterans Administration (VA); Department of Commerce (DOC); Department of Agriculture (USDA); Small Business Administration (SBA); and Department of Homeland Security (DHS), in its Federal Emergency Management Agency (FEMA). A team was created in the Corporation for National and Community Service, which operates the AmeriCorps and VISTA volunteering programs, to make sure religious organizations could fully participate in its programs.<sup>134</sup> Obama later created a Center in the Environmental Protection Agency (EPA).

“President Bush wisely understood—perhaps the benefit of having a president for a father—that without institutional footholds across the federal government, the [White House] office would not have a chance to significantly impact the way government functions.” —Michael Wear, in *Reclaiming Hope* (2017).<sup>135</sup>

The Centers are charged with conducting “audits”—evaluating agency rules, policies, and practices for barriers to partnerships—and proposing reforms, working with agency staff to develop innovative programs that engage civil society organizations, and pushing out information about agency grants and policies to organizations that might be interested. The

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<sup>132</sup> On the creation and significance of these innovative Centers, see Dunn Tenpas, *Can an Office Change a Country?*; Black, Koopman, and Ryden, *Of Little Faith*, 198–201; and Anne Farris, Richard P. Nathan, and David J. Wright, *The Expanding Administrative Presidency: George W. Bush and the Faith-Based Initiative*, Roundtable on Religion and Social Welfare Policy (Albany, NY: Nelson A. Rockefeller Institute of Government, 2004).

<sup>133</sup> Executive Order 13198, January 29, 2001, “Agency Responsibilities with Respect to Faith-Based and Community Initiatives,” 66 Fed. Reg. 8497 (January 31, 2001), <https://www.gpo.gov/fdsys/pkg/FR-2001-01-31/pdf/01-2851.pdf>.

<sup>134</sup> Executive Order 13280, December 12, 2002, “Responsibilities of the Department of Agriculture and the Agency for International Development With Respect to Faith-Based and Community Initiatives,” 67 Fed. Reg. 77145 (December 16, 2002), <https://www.gpo.gov/fdsys/pkg/FR-2002-12-16/pdf/02-31832.pdf>; Executive Order 13342, June 1, 2004, “Responsibilities of the Departments of Commerce and Veterans Affairs and the Small Business Administration With Respect to Faith-Based and Community Initiatives,” 69 Fed. Reg. 31509 (June 3, 2004), <https://www.gpo.gov/fdsys/pkg/FR-2004-06-03/pdf/04-12745.pdf>; Executive Order 13397, March 7, 2006, “Responsibilities of the Department of Homeland Security With Respect to Faith-Based and Community Initiatives,” 71 Fed. Reg. 12275 (March 9, 2006), <https://www.gpo.gov/fdsys/pkg/FR-2006-03-09/pdf/06-2362.pdf>. Via Executive Order 13331, February 27, 2004, “National and Community Service Programs,” 69 Fed. Reg. 9911 (March 3, 2004), <https://www.govinfo.gov/content/pkg/FR-2004-03-03/pdf/04-4884.pdf>, President Bush directed that the Corporation for National and Community Service “should expand opportunities for involvement of faith-based and other community organizations.”

<sup>135</sup> Wear, *Reclaiming Hope*, 61–62.

White House Office and the president can promote the partnership vision and highlight the vital roles of civil society organizations, but organizations contemplating federal funding need to see that the relevant agency welcomes their participation, with its Center offering clear explanations of the church-state rules, help in navigating requirements, and a ready willingness to fill the ombuds role: intervening when officials try to obstruct faith-based involvement, or ignore the religious freedoms embedded in the regulations, or refuse to entertain more effective ways to provide services. Centers are beacons, entry points, and advocates.

Center directors are chosen by the president, but even when a president is inattentive to the initiative, as Trump initially was, the Centers exist, staffed by civil servants even if no political appointee has been named, just as the Equal Treatment regulations remain the rule for agency funding decisions whether or not an agency's officials are enthusiastic about partnerships. But it is when Centers are backed by the authority and support of the president via the White House Office and also by their respective agencies' chief executives that they can be change agents, pushing against the government's inherent preference for awarding funds again and again to the same nonprofits, positive results or not; its bias for big grants and high volumes of services; its comfort with uniformity in programs rather than local adaptability; its passion for secularism over religion.

Note that the White House Office and the agency Centers are policy, communications, and troubleshooting offices and do not award grants or contracts. Their task is to ensure that those officials who *do* make funding decisions respect the level playing-field rules and incorporate in their programs, as appropriate, unconventional partners and not simply the usual nonprofits and businesses. No faith-based official has been authorized to dole out federal funds to favored houses of worship; a running joke among the initial staffers in the Bush White House Office of Faith-Based and Community Initiatives was that, while journalists spent fruitless hours trying to track down those imagined grants to churches, the Office actually had so little budget authority that its director, John J. DiIulio Jr., had to open his own wallet if visitors were to be served soft drinks!

## Audits to uncover barriers

The initial five Centers looked deeply into their respective agencies' regulations, policies, and practices and identified a series of "barriers"—obstacles that "facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations" in their programs.<sup>136</sup> Their reports were summarized in an overview released by the Bush White House in August 2001 titled *Unlevel Playing Field: Barriers to Participation by Faith-Based and Community Organizations in Federal Social Service Programs*.<sup>137</sup> Six of the fifteen barriers created problems specifically for religious organizations; the rest were difficulties encountered primarily by smaller organizations, whether secular or religious, except for one barrier identified as the occasional "questionable favoritism for faith-based organizations" that discouraged secular applicants.

From *Unlevel Playing Field: Barriers to Participation by Faith-Based and Community Organizations in Federal Social Service Programs* (August 2001).

### **Barriers to Faith-Based Organizations Seeking Federal Support**

1. A pervasive suspicion about faith-based organizations
2. Faith-based organizations excluded from funding
3. Excessive restrictions on religious activities
4. Inappropriate expansion of religious restrictions to new programs
5. Denial of faith-based organizations' established right to take religion into account in employment decisions
6. Thwarting Charitable Choice—Congress's new provision for supporting faith-based organizations

### **Barriers to Community-Based Organizations and Other Small and Newcomer Organizations**

7. The limited accessibility of federal grants information
8. The heavy weight of regulations and other requirements
9. Requirements to meet before applying for support
10. The complexity of grant applications and grant agreements
11. Questionable favoritism for faith-based organizations
12. An improper bias in favor of previous grantees
13. An inappropriate requirement to apply in collaboration with likely competitors
14. Requiring federal 501(c)(3) status without statutory authority
15. Inadequate attention to faith-based and community organizations in the federal grants streamlining process

<sup>136</sup> Executive Order 13198, "Agency Responsibilities with Respect to Faith-Based and Community Initiatives."

<sup>137</sup> White House, *Unlevel Playing Field: Barriers to Participation by Faith-Based and Community Organizations in Federal Social Service Programs*, August 2001), <https://georgewbush-whitehouse.archives.gov/news/releases/2001/08/unlevelfield1.html>.

The audit results guided reform efforts, including making grant announcements more accessible, clarifying that faith-based organizations do not lose their right to consider religion when hiring simply because they accept federal funds, and the promulgation of new regulations to guide federal funding in programs lacking Charitable Choice statutory language—the Equal Treatment regulations modeled on Charitable Choice. No similar wide-ranging and in-depth audits have been subsequently carried out. But the HHS Center in Trump’s administration conducted a limited examination of continuing barriers, and USAID, during the Trump and Biden administrations, has examined obstacles to the involvement of community-based and faith-based organizations in its international relief and development programs and adopted a significant reform agenda to overcome those problems. Both of these instances will be discussed later.

## **Extending and refining the new level playing-field church-state rules**

**Bush administration.** When Bush created the federal faith-based initiative by establishing the White House Office and the agency Centers, the revised—reversed—church-state rules applied only to the several programs with governing laws that included Charitable Choice language. An attempt by House Republicans, with muted White House support, to extend the principles to additional programs via H.R. 7, a bill with bipartisan sponsors but that met extensive opposition as being one-sidedly pro-religious, was unsuccessful. Although the House adopted the bill, it went nowhere in the Senate. Even an alternative bill, the CARE Act, which featured charitable giving incentives in place of the extension of Charitable Choice rules, did not pass.<sup>138</sup>

Yet the Charitable Choice principles reflected the Court’s revised interpretation. After the principles were extended via the regulatory process to cover the other federal funding programs, church-state expert Ira Lupu proposed that the Bush initiative could be best regarded as an effort to make federal practice catch up with Supreme Court requirements.<sup>139</sup> Indeed, the few federal

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<sup>138</sup> See, Black, Koopman, and Ryden, *Of Little Faith*, chs. 3–4, and DiIulio, *Godly Republic*, 128–37.

<sup>139</sup> See the transcript of his comments, “Opening Remarks and Plenary Session: State of the Law 2004, 2004 Annual Conference, December 9, 2004, Wyndham Washington Hotel, Washington, DC, ‘2005 and Beyond: Next Steps for Faith-Based Social Services,’” Roundtable on Religion and Social Welfare Policy (Albany, NY: Nelson A. Rockefeller Institute of Government, 2004), 5.

court challenges to the new rules validated them: in these cases, either government officials or faith-based organizations were alleged to have violated the new rules, and the court decisions required compliance, not a return to the previous church-state rules.<sup>140</sup>

Bush set out what he believed to be the appropriate level playing-field rules for all federal funding programs in a December 2002 Executive Order, “Equal Protection of the Laws for Faith-Based and Community Organizations.”<sup>141</sup> The next year, the administration issued Charitable Choice regulations<sup>142</sup> and began the process of proposing, soliciting public comment on, and then promulgating regulations for federal funding programs lacking Charitable Choice—new regulations variously termed “Equal Treatment” or “Equal Opportunity” rules.<sup>143</sup> In this way, the principles of Charitable Choice, first enacted into law in 1996, within a decade had come to be implemented as the regulatory requirements governing all federal spending for social services—the regulatory requirements that apply when a federal agency awards funding to private organizations and that also apply to the federal funds sent to state and local governments, which often award the funding to private organizations. The “no aid to religion” era was past. The new principle was “equal treatment,” or a level playing field, in federal funding. Subsequent administrations have introduced modifications to this framework, sometimes in response to developing Supreme Court doctrine, that are intended to ensure greater participation by faith-based organizations or greater protection for the rights of beneficiaries.

**Obama administration.** When Obama on the campaign trail promised to maintain the faith-based initiative, he also said that he would tighten the Bush rules on religious expression in federally funded programs to avoid what he contended might be unconstitutional government

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<sup>140</sup> *Freedom From Religion Foundation v. McCallum* (FaithWorks Milwaukee case; Seventh Circuit, 2003); *ACLU of Massachusetts v. Leavitt* (Silver Ring Thing case; settlement, 2006); *Americans United v. Prison Fellowship Ministries* (InnerChange Freedom Initiative in Iowa case; Eighth Circuit, 2007). A challenge to the whole faith-based initiative (*Hein v. Freedom From Religion Foundation*) was dismissed by the US Supreme Court in 2007 for lack of taxpayer standing.

<sup>141</sup> Executive Order 13279, December 12, 2002, “Equal Protection of the Laws for Faith-Based and Community Organizations,” 67 Fed. Reg. 77141 (December 16, 2002), <https://www.gpo.gov/fdsys/pkg/FR-2002-12-16/pdf/02-31831.pdf>.

<sup>142</sup> E.g., the TANF Charitable Choice regulations are located at 45 CFR 260.34.

<sup>143</sup> For the Equal Treatment regulations that apply to Department of Health and Human Services funding programs, as an example, see 45 CFR 87.

support for religion.<sup>144</sup> As president, he charged his Advisory Council on Faith-Based and Neighborhood Partnerships to assess the Bush rules and to recommend changes. He put Melissa Rogers, a widely respected liberal church-state expert, in charge of the Council and of this crucial church-state review, which was conducted over a year and a half of discussions and consultations by a religiously and ideologically diverse task force of Council members and outside experts.<sup>145</sup> The task force determined that the Equal Treatment rules were constitutional but could be improved to better protect beneficiaries.<sup>146</sup> In November 2010, Obama issued an executive order affirming the Equal Treatment rules while making two important changes recommended by the Council.<sup>147</sup> The result in 2016 was a revised set of Equal Treatment regulations.<sup>148</sup>

One change expanded to all funding programs the requirement in some versions of Charitable Choice that a beneficiary who objects to the religious character of a federally funded provider be offered a referral to a religiously acceptable alternative and that providers give beneficiaries notice of this and other rights. This was a “super” religious freedom protection, as noted before, for when funding is “direct,” explicitly religious activities and teachings may not be included in the government-funded services nor may beneficiaries be required to attend separate religious activities, and when funding is “indirect,” beneficiaries may choose among different kinds of services. And recall that there was no evidence that beneficiaries had asked for referrals in programs in which they were able to do so. But broadened protection might be good for some beneficiaries, and it encouraged broad support of the Equal Treatment rules, including by the diverse Advisory Council.<sup>149</sup> So the administration revised the regulations to provide for a universal right of referral and notice of rights.

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<sup>144</sup> “Obama Delivers Speech”; Obama ’08, “Partnering with Communities of Faith.”

<sup>145</sup> Rogers, *Faith in American Public Life*, 103–4, 110–11. I served as one of the outside experts.

<sup>146</sup> President’s Advisory Council on Faith-Based and Neighborhood Partnerships, *A New Era of Partnerships: Report of Recommendations to the President* (Washington, DC: White House Office of Faith-Based and Neighborhood Partnerships, 2010), sec. F, <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ofbnp-council-final-report.pdf>.

<sup>147</sup> Executive Order 13559, November 17, 2010, “Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations,” 75 Fed. Reg. 71317 (November 22, 2010), <https://www.gpo.gov/fdsys/pkg/FR-2010-11-22/pdf/2010-29579.pdf>.

<sup>148</sup> Consolidated Final Rule, 81 Fed. Reg. 19355 (April 4, 2016).

<sup>149</sup> Rogers, *Faith in American Public Life*, 110–11.

The other change clarified what is required if funding is to be considered “indirect” such that providers can offer religion-infused services funded by government. At a minimum, beneficiaries had to have a choice of provider, but neither the TANF Charitable Choice provision, which had authorized both direct and indirect funding, nor the corresponding regulations, had specified that at least one choice must be secular. Yet it cannot be right to force a beneficiary into a service that includes obligatory inherently religious activities. This omission was not so serious at the creation of the TANF program in 1996, when government-funded services for decades had been mandated to be strictly secular due to the “no aid” requirement. Now, however, a broader range of religious organizations were participating in government funding.<sup>150</sup> And in 2002 the Supreme Court had issued its *Zelman* decision—the definitive “indirect” funding ruling—which approved as constitutional a school choice program in which it was important that the parents not only could choose among religious schools but also had a secular choice.<sup>151</sup> The revised Obama Equal Treatment regulations, accordingly, said that for funding to be considered to be “indirect,” beneficiaries needed not only choice as such but also the option of a secular service.

**Trump administration.** The two Obama administration changes were reversed by the Trump administration, which argued that they hampered participation by faith-based organizations in federal funding. Trump did not issue a separate executive order setting out new church-state funding principles, but his 2018 executive order creating the White House faith-based adviser position struck down the Obama requirement of a universal right of referral and notice of rights.<sup>152</sup> In expanding the referral right, the Obama administration had displaced the duty to carry out a requested referral from government to providers, and it had laid both the referral

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<sup>150</sup> A broader range of organizations is eligible for funding, but the legacy of the “no aid to religion” principle is strong. The Beneficiary-Choice Contracting pilot project, described later in the text, was designed specifically as an “indirect” funding program so that providers with religion-infused programs could participate, and their freedom to incorporate religious teachings and activities was stressed. But grantees found it challenging to draw into participation faith-based organizations that offered faith-integrated services. See Jeanne Bellotti, Michelle Derr, Jillian Berk, and Nora Paxton, *Examining a New Model for Prisoner Re-Entry Services: The Evaluation of Beneficiary Choice. Final Report* (Princeton, NJ: Mathematica Policy Research, March 16, 2011), 16–17, <https://www.mathematica.org/publications/examining-a-new-model-for-prisoner-reentry-services-the-evaluation-of-beneficiary-choice>.

<sup>151</sup> Rogers, *Faith in American Public Life*, 112, 141–43. On the importance of a secular choice in the logic of the *Zelman* decision, see also Thomas C. Berg, *The State and Religion in a Nutshell*, 2nd ed. (St. Paul, MN: West, 2004), 240–43.

<sup>152</sup> Executive Order 13831, “Establishment of a White House Faith and Opportunity Initiative,” sec. 2(b).



duty and notice of rights duty only on faith-based providers, not also on their secular counterparts. The Trump administration said that this was an unequal burden on religion no longer countenanced by the Supreme Court. Moreover, the requirement that faith-based providers, not government, carry out referrals could violate the Court's heightened protection of religious organizations' right to operate in accordance with their religious convictions. Under the Obama regulations, a faith-based provider might have no option but to guide a beneficiary to an organization with policies and convictions diametrically opposed to its own. Faced with such a possibility, some faith-based providers might avoid working with government.<sup>153</sup>

These are real problems, but their resolution ought to protect beneficiaries as well as providers. The administration could have proposed to return the duty to carry out referrals to government officials, who, after all, know the available options and have greater resources for administering changes, and to make secular providers, too, bear the burden of offering referrals and giving notice of rights. This solution would have preserved the enhanced rights of beneficiaries (the universal right of referral and notice of rights) while strengthening the rights of faith-based organizations (ending the unequal burden and the risk of complicity).<sup>154</sup> Instead, the administration kept its proposed unbalanced changes while admitting that they were required neither by law nor the Constitution.<sup>155</sup>

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<sup>153</sup> See, e.g., the Health and Human Services Notice of Proposed Rulemaking, "Ensuring Equal Treatment of Faith-Based Organizations," 85 Fed. Reg. 2974 (January 17, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-01-17/pdf/2019-26923.pdf>. One story is that the Obama administration decided to assign the referral obligation to the faith-based organizations, albeit while authorizing them to ask government officials for assistance as needed, because, in the interagency discussions about modifying the Bush Equal Treatment regulations, federal officials complained that the referral obligation would put too heavy a burden on government. But, of course, compared to grantees, the federal government has enormous resources!

<sup>154</sup> My organization, the Institutional Religious Freedom Alliance, along with the Christian Legal Society, the National Association of Evangelicals, and the Christian Alliance for Orphans, proposed these alternatives via a public comment submitted on February 18, 2020, in response to the HHS Notice of Proposed Rulemaking, <https://www.regulations.gov/comment/HHS-OS-2020-0001-21174>. Others suggested like changes: see, e.g., the Final Rule, 85 Fed. Reg. 82037 (December 17, 2020), at 82069, <https://www.govinfo.gov/content/pkg/FR-2020-12-17/pdf/2020-27084.pdf>, and Melissa Rogers, "Comments on Notice of Proposed Rulemaking 'Ensuring Equal Treatment of Faith-Based Organizations,' RIN 0991-AC13" (February 18, 2020), 10, <https://www.regulations.gov/document/HHS-OS-2020-0001-22690>. The TANF Charitable Choice provision placed the referral obligation on government. The SAMHSA Charitable Choice provision required providers to make the referral, but in the SAMHSA-funded drug treatment programs, it is common for a state agency to provide public lists of funded programs, and federal regulations require officials to assist in making requested referrals.

<sup>155</sup> Final Rule, 85 Fed. Reg. 82070 (December 17, 2020).

The Trump administration also eliminated the Obama administration’s requirement of a secular option if funding is to be considered “indirect.” When the funding is indirect, then providers whose services include inherently religious activities are supposed to be able to participate, yet with the secular-choice requirement, they would remain excluded if no secular organization also participated, as the Trump administration pointed out. Simply having some choice among providers should be sufficient for funding to be “indirect,” the administration argued.<sup>156</sup>

At the same time, it advanced a related change, positive on its own but deeply troubling if there might be no secular choice. The Equal Treatment regulations had always specified that beneficiaries have the right not to participate in religion. With “direct” funding, this means that they cannot be compelled to participate in any explicitly religious activities or teaching offered separately from the government-funded service. The requirement is counterproductive, though, I believe, when the funding is “indirect.” Here, beneficiaries can choose secular providers and services and avoid religion. If, instead, they choose a faith-integrated service offered by a faith-based organization, how can it make sense that they are free to decline to participate in significant parts of the service? The Trump administration proposed eliminating the nonparticipation right when funding is “indirect.”<sup>157</sup> On its own, this was a positive change. But it became negative when the guarantee of a secular choice was also eliminated. Put the two changes together and beneficiaries opposed to religion might well be able to avoid it only by declining a service they are supposed to be able to receive.

The Trump administration denied the dilemma was serious, claiming that if someone needed a service, surely it was a net positive that the federal government paid to make it available, even if the service included religious elements not wanted by a particular beneficiary.<sup>158</sup> But this, I think, is unjustifiable. Beneficiaries have the constitutional right to the free exercise of religion, which

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<sup>156</sup> Final Rule, 85 Fed. Reg. 82072ff (December 17, 2020). Various commentators argued that the administration had misinterpreted the *Zelman* decision in coming to its view that a secular choice need not be present. The administration’s response in the Final Rule is wholly unpersuasive.

<sup>157</sup> Final Rule, 85 Fed. Reg. 82075-76 (December 17, 2020).

<sup>158</sup> Final Rule, 85 Fed. Reg. 82075 (December 17, 2020).

includes the right not to be involved with religion. Beneficiaries ought to be able to receive a service intended for them without having to engage in undesired religious activities.

Still, the Trump administration was wrestling with a real problem that, as noted before, has been present since Charitable Choice was first enacted to create equal opportunity for faith-based organizations to compete for federal funding. Most funding is and will remain “direct” funding because shifting to an “indirect” or voucher system requires major changes not only by government but also by providers and beneficiaries. However, maintaining the classic requirements for grant or “direct” funding does entail the exclusion of some significant proportion of faith-based providers, no matter how effective their services nor how desirable those services are to particular beneficiaries. The bifurcation into two dramatically different funding and delivery arrangements needs to be reevaluated; a good place to start is with the “beneficiary-choice contracting” pilot project of the Bush administration, described in the innovations section below. However, it is essential that future changes implement a fuller, not a narrower, public policy pluralism. Private organizations, whether their services incorporate religion or not, should be able to participate without hindrance, and beneficiaries, whether they value religion or not, should be able to find a service provider appropriate for themselves.

“Maintaining a secular option is also important for the sake of faith-based organizations . . . . [F]aith-based providers, knowing that some or many beneficiaries who arrive will have significant objections to participating in the explicitly religious activities that are incorporated into their [Department of Health and Human Services]-funded services, will be under significant moral and practical pressure to water down or eliminate those religious activities. The providers will not want to violate the religious freedom of beneficiaries nor to serve beneficiaries who are reluctant to fully participate in the services as designed. Given such concerns, faith-based providers will consider themselves to be less free to offer a robustly religious version of a service under the changed indirect funding rules than when they could be confident that the beneficiaries who arrived for their services had had, after all, the option of selecting a different service that did not include explicitly religious elements.” — Comment submitted by the Institutional Religious Freedom Alliance, Christian Legal Society, National Association of Evangelicals, and the Christian Alliance for Orphans (2020).<sup>159</sup>

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<sup>159</sup> Comment submitted on February 18, 2020, in response to the HHS Notice of Proposed Rulemaking.

**Biden administration.** The Trump changes only became effective the day before the start of the Biden administration, which quickly expressed its opposition and began to work to reverse them. Biden, like Trump, has not issued a church-state executive order. Instead, he used his Executive Order 14015 that reestablished the White House Office of Faith-Based and Neighborhood Partnerships to revoke Trump’s order, with its requirement to eliminate the guaranteed referral and the notice of rights. However, a simple return to the Obama regulations was not possible, given the recent Supreme Court decisions strongly stressing that, once government has decided to offer funding to private organizations, it may not maintain requirements that exclude faith-based organizations, whether because they are religious or because they do religious things.

In January 2023, the Biden administration proposed for public comment significant reversals of the Trump changes, and in March 2024, after making some changes, issued a revised set of Equal Treatment regulations to govern funding practices in nine federal agencies.<sup>160</sup> Providers once again must give notice of rights, and beneficiaries again can request a referral—but now secular as well as faith-based grantees are subject to these duties and it is the government, not the grantee, that has to carry out the referrals. However, referrals and notice are not required in all programs. In addition, for funding to be “indirect,” it is important again that there be a secular choice; however, if there is no secular provider, faith-based providers with services that include religion will not be disqualified—but, on a case—by-case basis, the government will either arrange for secular services whenever needed or require that the faith-based providers remove the religious elements from their government-funded services. The Biden administration thus has strengthened beneficiary rights while also strengthening the rights of faith-based organizations. Yet, I propose, it cannot be right that a faith-based provider whose services incorporate religion can be awarded funding said to be “indirect” but then, because no secular provider also has been funded, be required to strip religious teachings and activities from its program. Nor is it right for regulations to be vague about how else government officials can

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<sup>160</sup> Consolidated Notice of Proposed Rulemaking, Partnerships with Faith-Based and Neighborhood Organizations, 88 Fed. Reg. 2395 (January 13, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-01-13/pdf/2022-28376.pdf> Final Rule, Partnerships with Faith-Based and Neighborhood Organizations, 89 Fed. Reg. 15671 (March 4, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-03-04/pdf/2024-03869.pdf>.

ensure that beneficiaries can access services that do not include religion.<sup>161</sup> I suggest that a real solution requires going further in the pluralist direction, arranging for multiple choices wherever practicable so that both beneficiaries seeking services that include religion and those seeking religion-less services can find a suitable provider. Where only a faith-based option is available, officials ought to be prepared in advance to offer an alternative, perhaps by arranging transportation to a suitable out-of-area provider or by arranging a one-off contract with a local professional.

### **Confirming the religious staffing rights of faith-based organizations**

Federal civil rights law prohibiting employment discrimination has always included an exemption allowing religious organizations to make hiring and firing decisions based on their religious convictions (1964 Civil Rights Act, Title VII), as noted earlier. But it was long the common presumption, shared by many faith-based organizations, that this right was forfeited if government funds were accepted.<sup>162</sup> This presumption may have grown because the dominant “no aid to religion” interpretation excluded from funding “pervasively sectarian” organizations, and surely an insistence on using religious criteria when assessing employees is a mark of sectarianism. To counter the mistaken presumption, Charitable Choice specifically noted that religious organizations do not give up their religious staffing exemption simply by accepting government funding. This assurance encouraged greater participation by faith-based organizations in federal funding governed by Charitable Choice.

The Equal Treatment regulations, from their origins in the Bush administration, have included similar language—no forfeit of the exemption simply by accepting government funds—while

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<sup>161</sup> See Stanley Carlson-Thies, “Proposed Changes to the Equal Treatment Regulations on Funding Faith-Based Organizations; Opportunity to Comment” (blog post), Institutional Religious Freedom Alliance, February 28, 2023, <https://cpjustice.org/proposed-changes-to-the-equal-treatment-regulations-on-funding-faith-based-organizations-opportunity-to-comment/>; and the comment submitted in response to the consolidated Notice of Proposed Rulemaking by the Institutional Religious Freedom Alliance, the Christian Alliance for Orphans, and World Vision, Inc., on March 14, 2023, <https://www.regulations.gov/comment/HHS-OS-2023-0005-0006>.

<sup>162</sup> However, Title VII itself says nothing about government funding, and Title VI, which does specify nondiscrimination obligations when an organization accepts federal funds, bars only discrimination based on race, color, and national origin, and does not cover employment practices (except in the specific instance where a program is funded in order to provide apprenticeships).

noting that some funding programs do prohibit employment discrimination, thus banning religious staffing. The Bush administration took three actions to confirm the important religious staffing freedom for faith-based organizations. In 2003 it published a booklet setting out the constitutional and statutory reasons that religious organizations are free to hire by religion despite receiving government funding, except in specific programs that have employment nondiscrimination statutory language.<sup>163</sup> Four years later, a memorandum from the Office of Legal Counsel (OLC) in the Department of Justice determined that, due to the Religious Freedom Restoration Act, signed into law by President Bill Clinton in 1993, faith-based providers may be able to retain their religious staffing practices even in those funding programs with a statutory ban on employment discrimination.<sup>164</sup> The third action was to add a religious exemption like the one in Title VII to the regulations for federal contracting, which have their own prohibitions of various kinds of employment discrimination.<sup>165</sup>

Candidate Obama, as noted, had promised to end religious hiring by the government's faith-based partners, and his administration was constantly pressured to fulfill this promise. Instead, his administration accepted the legality of the practice and maintained the existing rules. Notably, it did not overrule the OLC memo protecting religious staffing. Rather, after Congress added to the Violence Against Women Act an express prohibition of religious and other employment discrimination, the administration specifically announced that, as the OLC memo stated, faith-based grantees could appeal to the Religious Freedom Restoration Act to continue to

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<sup>163</sup> White House Office of Faith-Based and Community Initiatives, *Protecting the Civil Rights and Religious Liberty of Faith-Based Organizations: Why Religious Hiring Rights Must Be Preserved*, June 23, 2003, <https://georgewbush-whitehouse.archives.gov/government/fbcir/religious-hiring-booklet-2005.pdf>.

<sup>164</sup> Office of Legal Counsel, "Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act," US Department of Justice, June 29, 2007, <https://www.justice.gov/file/494856/dl?inline>.

<sup>165</sup> Executive Order 13279, "Equal Protection of the Laws for Faith-Based and Community Organizations" (December 12, 2002), sec. 4. Federally supported social services are mainly funded by grants or vouchers, not contracts; however, the Bureau of Prisons funds some social services via contracts, and the Department of Defense uses contracts to pay entities that supply religious workers (e.g., Christian youth workers to lead religious youth groups on military bases) or that supply religious goods (e.g., sacred items needed by chaplains conducting religious rites such as the Eucharist). Moreover, some religious universities contract to conduct federally funded research, and some faith-based organizations, such as the Center for Public Justice, have been subcontractors to provide, for example, training and technical assistance (TTA) on behalf of the federal government—in one instance, TTA to ensure that a state and its faith-based providers understood the Charitable Choice rules that apply to their partnership.

staff on a religious basis while accepting the funding.<sup>166</sup> The Trump administration also affirmed the religious staffing freedom, for example, in the Department of Justice’s memo setting out the major protections for religious freedom in federal law and in a revision of the “religious discrimination” section of the Equal Employment Opportunity Commission’s compliance manual.<sup>167</sup> The Biden administration has maintained these positions. However, as will be discussed later, new prohibitions of employment discrimination on the bases of sexual orientation and gender identity have complicated the religious staffing freedom and have been treated differently by the Obama, Trump, and Biden administrations.

## **Innovations in government interactions with civil society**

The successive federal administrations’ commitment to the partnership vision, now stronger, now less focused, has resulted in various constructive changes in the default government ways of operating, though these are generally not well-documented and not all have persisted. A few are summarized below. I have highlighted several programs that I call “pilot programs” because they were specifically designed to utilize the particular strengths of civil society organizations. Section 1 notes several reforms in the government’s system of collaborating with private organizations to deliver government-funded services. Section 2 notes a few broader changes in how the federal government interacts with civil society organizations.

### ***1. Reforming the collaboration system.***

There have been innumerable small but important pro-civil society modifications to the grants system, such as making some grants more accessible by making them smaller (smaller volume, fewer dollars) or introducing tiers (a small organization can compete for a large grant against large organizations or try instead for a small grant); pushing out information about the

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<sup>166</sup> Office for Civil Rights, Office of Justice Programs, *Frequently Asked Questions, April 9, 2014, Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013*, US Department of Justice. See Q&A 5 and 6, [https://www.justice.gov/d9/ovw/legacy/2014/06/20/faqs-ngc-vawa\\_0.pdf](https://www.justice.gov/d9/ovw/legacy/2014/06/20/faqs-ngc-vawa_0.pdf).

<sup>167</sup> Department of Justice Notice, “Federal Law Protections for Religious Liberty,” p. 49670. Equal Employment Opportunity Commission compliance manual, sec. 12, “Religious Discrimination,” dated January 15, 2021, near the end of the Trump administration, <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>.

availability of funding by providing notice through civil society networks as well as official government channels; and specifically naming faith-based and community-based organizations as eligible for the funding. Another important change has been to decomplexify (a bit) grant announcements and grant documents while providing additional information so that newcomer and smaller organizations, and faith-based organizations particularly concerned whether they will be able to retain their freedom of religious exercise, can better assess whether to apply.

***Making the grants process more hospitable for civil society organizations—Trump administration.*** During the Trump administration, USAID and its faith-based Center worked extensively to reform its processes and rules in order to expand its partnerships with unconventional partners—faith-based organizations, smaller nonprofits, locally rooted religious organizations overseas, and organizations new to working with government. As USAID Administrator Mark Green said in 2018, “In order for us as an agency to be able to accomplish our core purposes, our core mission, whether it be in development assistance or in humanitarian relief, we need to reach corners in communities where governments cannot effectively go or where they have chosen not to go.”<sup>168</sup> Among the extensive reforms made by this USAID New Partnerships Initiative, which has been maintained by the Biden administration, are making smaller awards, which are more manageable for smaller organizations; more often asking potential partners to define the needs and propose solutions rather than prescribing what is to be done; eliminating reporting and other requirements that are not essential; creating a special website to guide newcomers through the complex grant-application process; and providing information and training to agency staff on their obligation not to exclude faith-based providers from consideration.<sup>169</sup>

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<sup>168</sup> USAID, “U.S. Agency for International Development Administrator Mark Green’s Remarks at the Ministerial to Advance Religious Freedom,” July 26, 2018, <https://2017-2020.usaid.gov/news-information/press-releases/jul-26-2018-usaid-administrator-mark-green-remarks-ministerial-advance-religious-freedom>.

<sup>169</sup> See, e.g., USAID, “Effective Partnering and Procurement Reform: External Listening Tour Summary Report,” November 7, 2018, <https://www.usaid.gov/documents/1868/report-effective-partnering-and-procurement-reform-external-listening-tour-summary>; USAID, *Acquisition and Assistance Strategy*, December 2018, <https://www.usaid.gov/sites/default/files/2022-05/AA-Strategy-02-04-19.pdf>; USAID, “New Partnerships Initiative (NPI)” 2019; James M. Roberts and Max Primorac, eds., *USAID 2017–2021: The Journey to Self-Reliance*, Special Report 249, November 18, 2021 (Washington, DC: Heritage Foundation Douglas and Sarah Allison Center for Foreign Policy), <https://www.heritage.org/sites/default/files/2021-11/SR249.pdf>. The website is [www.workwithusaid.gov](http://www.workwithusaid.gov).



***Modifying grant requirements to accommodate faith-based organizations’ religious parameters—Obama administration.*** Both USAID and the Administration for Children and Families (ACF) in the Department of Health and Human Services amended their funding requirements so that faith-based organizations could participate in providing services even when, for religious reasons, they could not carry out every specified service. The ACF policy spelled out three ways to accommodate such a faith-based organization: (1) it could serve as a subgrantee, with the grantee ensuring that beneficiaries can access all services; (2) it could be part of a consortium of providers that would divide up service responsibilities such that the organization could participate; or (3) the organization could be the grantee and then notify the government to step in to arrange the provision of a service the organization could not in good conscience supply. The USAID policy similarly required the government to arrange for an alternative provider when a faith-based organization could not supply some part of a service, rather than either excluding the organization from funding or pressing it to violate its convictions.<sup>170</sup>

***Pilot program. President’s Emergency Plan for AIDS Relief: Engaging faith-based organizations to reach further and deeper.*** The President’s Emergency Plan for AIDS Relief (PEPFAR) was designed by the Bush administration to utilize grassroots groups, particularly faith-based organizations, to deliver AIDS prevention and treatment services. In an early statement, the State Department noted that “[i]n many focus countries, more than eighty percent of citizens participate in religious institutions. In certain nations, upwards of fifty percent of health services are provided through faith-based institutions, making them crucial delivery points for HIV/AIDS information and services.” Moreover, once trained, faith-based grassroots groups “often design the most culturally appropriate and responsive interventions and have the legitimacy and authority to implement successful programs that deal with normally sensitive subjects.”<sup>171</sup> More recently, the program dedicated one hundred million dollars of its funding to expand the participation of faith-based and community-based organizations, saying that “a

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<sup>170</sup> See the discussion of the accommodative HHS and USAID rules in Stanley Carlson-Thies, “Must the Government Enforce Uniformity?” (blog post), Institutional Religious Freedom Alliance, September 25, 2013, <https://cpjustice.org/must-the-government-enforce-uniformity/>. For the HHS policy, see also Rogers, *Faith in American Public Life*, 116–18.

<sup>171</sup> Office of the US Global AIDS Coordinator, “The President’s Emergency Plan for AIDS Relief: Community and Faith-Based Organizations,” 2005, 2, 1.

trusted messenger with access to those most in need of care is an essential prerequisite to effective delivery of life-saving messages about HIV prevention, care, and treatment as well as to preventing sexual violence and securing justice for children.”<sup>172</sup> PEPFAR, still in operation, is often termed one of the most successful global health programs ever, saving twenty-five million people’s lives and additionally preventing many millions of deadly infections.<sup>173</sup>

***Pilot program. Access to Recovery: Using vouchers for drug treatment to add types of services and service providers.*** Recall that Charitable Choice was added during the Clinton administration to the main federal substance abuse treatment program, which is operated by SAMHSA in the Department of Health and Human Services. SAMHSA funding is used by states and tribes to award grants or contracts to service providers, and the addition of Charitable Choice language was intended to ensure the eligibility of faith-based providers. However, because this SAMHSA funding is “direct,” the treatment services may not include religious content. The Access to Recovery (ATR) program adopted a different approach, using “indirect” funding—vouchers—to maximize options for beneficiaries, including services that incorporate religious teaching and activities.<sup>174</sup> Rather than funding only medically based treatment, ATR funded a range of services to support recovery; as the director of the Connecticut Department of Mental Health and Addiction Services described that state’s ATR program in 2006, this broader range of services aimed to “assist people in establishing an environment supportive of recovery and in gaining the skills and resources needed to initiate and maintain recovery.”<sup>175</sup> For some, religious or spiritual resources, and services rooted in their religiously influenced local community, are

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<sup>172</sup> PEPFAR, Faith and Community Initiative (FCI) Fact Sheet, 2020, <https://www.state.gov/wp-content/uploads/2020/12/PEPFAR-Faith-and-Community-Initiative-Fact-Sheet-1.pdf>.

<sup>173</sup> Tom Daschle and Bill Frist, *PEPFAR: 20 Years of Progress, Partnership, and Impact* (Washington, DC: Bipartisan Policy Center, June 2023), 3. See also KFF, “The U.S. President’s Emergency Plan for AIDS Relief (PEPFAR),” July 26, 2023, <https://www.kff.org/global-health-policy/fact-sheet/the-u-s-presidents-emergency-plan-for-aids-relief-pepfar/>.

<sup>174</sup> For brief discussions of the ATR program, see Carlson-Thies, “Faith-Based Initiative 2.0,” 940–41; David J. Wright, *Taking Stock: The Bush Faith-Based Initiative and What Lies Ahead*, Roundtable on Religion and Social Welfare Policy (Albany, NY: Nelson A. Rockefeller Institute of Government, [2009?]), 63–66; White House Office of Faith-Based and Community Initiatives, *Innovations in Compassion: The Faith-Based and Community Initiative: A Final Report to the Armies of Compassion*, December 2008, 4–5, <https://georgewbush-whitehouse.archives.gov/government/fbci/pdf/innovation-in-compassion.pdf>.

<sup>175</sup> Thomas A. Kirk Jr., “Connecticut Access to Recovery” (slideshow), Federal Substance Abuse and Mental Health Service Administration National Advisory Council meeting, June 2006, <https://portal.ct.gov/-/media/DMHAS/Presentations/SAMHSA06pdf.pdf>.

particularly valued and effective helps. The ATR program developed by the Montana-Wyoming Tribal Leaders Council, which won a grant in 2010, provided, beyond chemical dependency treatment, support for “firewood for sweat lodges, sober housing, transportation, child care, job training and faith-based spiritual support.” The director of the program emphasized the importance of “faith-based and traditional spiritual support” in promoting personal strength and as a key element of the local community that clients rely on for recovery.<sup>176</sup>

Notably, as opioid deaths spiraled upward, the Trump administration encouraged states to utilize vouchers when expending SAMHSA funding designated for opioid addiction treatment. With “indirect” funding, beneficiaries could be offered a greater range of treatment and recovery options. “Faith is a central element of treatment and recovery for many individuals,” SAMHSA reminded states, telling them that they could “use indirect funding in order to enhance the ability of new providers to participate.”<sup>177</sup>

***Pilot program. Mentoring Children of Prisoners: Using intermediaries to facilitate partnerships with churches and other civil society organizations.*** The use of intermediaries is an important way to enable big government to connect effectively with and support small, locally focused community-based and faith-based organizations, including houses of worship. Intermediaries are experienced high-capacity organizations that are expert in handling government funds, understanding and following government rules, managing programs, delivering services, compiling reports, providing training to others, assessing outcomes, and coordinating the work of other organizations. Some of them have extensive connections with community-based and faith-based organizations. Their role is to implement a large grant by awarding subgrants to small community organizations that are each able to deliver some portion of the overall total of services, and then training the subgrantees and helping them to manage the funds, generate outcomes data, follow program requirements, and deliver and improve the

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<sup>176</sup> Adrian Jawort, “Access to Recovery Promotes Native-style Community Treatment,” ICT News, December 7, 2010, updated September 13, 2018, <https://ictnews.org/archive/access-to-recovery-promotes-native-style-community-treatment>.

<sup>177</sup> See the letter from Shannon Royce, director, HHS Center for Faith and Opportunity Initiatives, to state health officers, August 3, 2018, and the accompanying document, Substance Abuse and Mental Health Services Administration (SAMHSA), “State Opioid Response (SOR) Frequently Asked Questions (FAQs),” questions 7 and 8.

services. A program utilizing intermediaries combines the managerial strength of a large organization with the local rootedness and connections of smaller community-based and faith-based organizations.<sup>178</sup>

This intermediary design was at the heart of the Mentoring Children of Prisoners (MCP) program that operated from 2003 to 2010. MCP's model and inspiration was the Amachi program, which offered mentoring by trusted and trained adults to children with one or both parents behind bars. Amachi was created in 1999 by W. Wilson Goode Sr., formerly the Black Democratic mayor of Philadelphia, with the help of John J. DiIulio Jr., Big Brothers Big Sisters, and Public/Private Ventures, a social policy and program management organization. Amachi recruited mentors particularly from city congregations; Goode noted that a city church was often the one thriving institution in a neighborhood and that city churches have a tradition of mobilizing volunteers and other resources to offer multiple services for the good of their neighbors.<sup>179</sup>

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<sup>178</sup> White House Office of Faith-Based and Community Initiatives, *Breakthrough Performance: Ten Emerging Practices of Leading Intermediaries*, 2008?, [http://www.socialworx.org/wp-content/uploads/2018/05/breakthrough\\_guide-for-intermediaries.pdf](http://www.socialworx.org/wp-content/uploads/2018/05/breakthrough_guide-for-intermediaries.pdf), and Amy L. Sherman, "Strengthening the Street Saints: Intermediaries Providing Capacity-Building Assistance to Faith-Based Organizations," in Roland V. Anglin, ed., *Building Organizations That Build Communities: Strengthening the Capacity of Faith- and Community-Based Organizations* (Washington, DC: US Department of Housing and Urban Development, Office of Policy Development and Research, 2004).

<sup>179</sup> W. Wilson Goode Sr., "Amachi: Mentoring the Children of Prisoners," in W. Wilson Goode Sr., Charles E. Lewis Jr., and Harold Dean Trulear, eds., *Ministry with Prisoners & Families: The Way Forward* (Valley Forge, PA: Judson Press, 2011), 66–73.

“In a spiritual sense, I have felt an obligation to work on behalf of this invisible population: the children of inmates. And I believe the route of my earlier journey—in public service as chairman of the Public Utility Commission, managing director of the City of Philadelphia and then a two-term mayor—prepared me to lead Amachi to success.

“This journey has also been like a dream. I know it happened, but I can’t quite explain how it was done. I did not start out to create a national program; I just wanted to help a few thousand children over a few years to stay out of jail. I wanted to demonstrate that parents in prison for the most part loved their children and wanted the best for them. I wanted to prove that if one adult mentored one child, for one hour, once a week for at least one year, we could change the outcome for that child. I wanted to demonstrate that people of faith could add value to the lives of these children.”

— W. Wilson Goode Sr., afterword to Thomas J. Smith’s *The Least of These* (2012).<sup>180</sup>

Amachi’s success inspired the Bush administration to create in 2003 the similar federal MCP program. In MCP, funding was provided to grantees that, like Amachi, were able to design and operate a program to recruit and assess potential mentors, make and monitor matches with interested children, and provide training. The mentor organizations worked with congregations and other civil society organizations that did not have the desire or capability to compete for federal funding and perform to federal standards but that could participate by encouraging volunteers to come forward, promoting the program, and encouraging children to ask for a mentor. In its final years, MCP was made even more hospitable to unconventional partners when a voucher-funding component was added. The grant-funded part of MCP had to insist that mentoring would not include religious activities; the voucher-funded part did not carry that restriction, easing the involvement of faith-based and community-based organizations and houses of worship.<sup>181</sup>

***Pilot program. Beneficiary-Choice Contracting: Modifying direct funding to accommodate faith-infused services.*** Beneficiary-Choice Contracting (BCC) was a pilot program designed in 2007 by the Department of Labor to offer diverse varieties of job training services to people returning to their communities after incarceration. In order to expand choices, the requirements

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<sup>180</sup> Thomas J. Smith, *The Least of These: Amachi and the Children of Prisoners* (Philadelphia: Public/Private Ventures, [2012]), afterword by W. Wilson Goode Sr., <https://search.issuefab.org/resources/14138/14138.pdf>.

<sup>181</sup> Wright, *Taking Stock*, 62–63.

for “indirect” funding were followed—but in the form of a revised version of conventional government contracting for services. Grants and contracts are the usual way that government pays for services provided by others; by modifying a familiar “direct” funding mechanism, expanded choice, including services incorporating religion, could be offered without the need to create a wholly new voucher system. As part of the pilot’s design, a manual was produced that explains the unique church-state design in order to facilitate changes in other programs.<sup>182</sup>

The inspiration and parameters for this unusual but promising modification of “direct” funding to fit the church-state specifications of “indirect” funding came from a federal court case in Milwaukee, Wisconsin. The state had offered job training services when people were released from prison. One of the contractors was FaithWorks, whose services included religious teaching and activities. The contract was challenged as violating the direct-funding requirement that explicit religion be kept separate from the government-supported service. But on appeal, the federal judge upheld the state’s program and the inclusion of FaithWorks because the beneficiaries were offered a choice of provider after being informed about their varied choices, secular options were available, and any provider was paid only when a beneficiary had decided to utilize its services.<sup>183</sup>

In the BCC program, the Department of Labor awarded grants to service coordinator organizations which each then contracted with faith-based and community-based providers to create a network of varied service providers. Ironically and unfortunately, the message that government funding must not be used to pay for religion has been so strongly internalized not only by government officials but also by civil society organizations, including faith-based

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<sup>182</sup> Stanley Carlson-Thies, Stephen Lazarus, Bernard Antkowiak, and James Callahan, *Beneficiary-Choice Contracting Implementation Guide* (US Department of Labor, Contract DOLJ061A20365, Task Order #18, 2009).

<sup>183</sup> *Freedom from Religion Foundation, Inc. v. McCallum*, 179 F. Supp. 2d 950; *Freedom from Religion Foundation, Inc. v. McCallum and Faith Works, Milwaukee, Inc.*, 324 F. 3d 880 (Seventh Circuit, 2003). For an analysis, see Ira C. Lupu and Robert W. Tuttle, “Zelman’s Future: Vouchers, Sectarian Providers, and the Next Round of Constitutional Battles,” *Notre Dame Law Review* 78 (May 2003): 917–94. The Obama administration stated that funding would be considered “indirect,” even without the use of vouchers or scholarships or the like, if the federal government chose “to pay the provider directly after asking the beneficiary to indicate his or her choice,” citing the McCallum decision. See the HHS Notice of Proposed Rulemaking to amend the department’s Equal Treatment regulations, 80 Fed. Reg. 47272 (August 6, 2015), at 47274.

organizations, that the service coordinators had great difficulty finding faith-based organizations operating faith-infused programs that were willing to participate in a social service program funded with federal dollars.<sup>184</sup> This experience is a reminder that substantive transformation of the government system requires not only constitutional reinterpretation and the rewriting of regulations and program parameters but also the extensive and creative training of both officials and civil society organizations to counteract church-state presuppositions that, while no longer valid, are nonetheless firmly held.

## ***2. Supporting civil society organizations other than through the collaboration system.***

### ***Strengthening civil society organizations: The Compassion Capital Fund—Bush***

***administration.*** The Compassion Capital Fund (CCF) was a program of support for civil society organizations, designed to help them improve their capacity to manage, fund, and offer services. The program awarded grants to a range of organizations, both secular and faith-based, that in turn designed and provided training and technical assistance to smaller and newer organizations, sometimes also awarding mini-grants that the civil society organizations could use to purchase computers, software, or other needed items. By funding a diverse set of training organizations, the federal government improved the chances that a grassroots organization seeking help could find a training provider that it trusted and that could provide the specific aid it needed.<sup>185</sup>

Whether or not a CCF recipient ever partnered with government, its increased effectiveness was a gain for the good of society. Similarly, the Obama administration created the Strengthening Communities Fund (SCF) to provide help to small organizations whose viability was undermined by the Great Recession of the late aughts.<sup>186</sup>

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<sup>184</sup> For the difficulty, see Bellotti et al., *Examining a New Model for Prisoner Re-Entry Services*, 16–17. For careful and illuminating analyses of job training programs that include explicitly religious elements, see Monsma, *Putting Faith in Partnerships*, and Stephen V. Monsma and J. Christopher Soper, *Faith, Hope, and Jobs: Welfare-to-Work in Los Angeles* (Washington, DC: Georgetown University Press, 2006).

<sup>185</sup> Abt Associates, *Improving Capacity Among Nonprofits—Impact Study of the Compassion Capital Fund Demonstration Program*, prepared for the Office of Community Services, Administration for Children and Families, US Department of Health and Human Services, 2010, and White House Office of Faith-Based and Community Initiatives, *Innovations in Compassion*, 35.

<sup>186</sup> Carol J. De Vita et al., *Final Report: An Assessment of the Strengthening Communities Fund Capacity-Building Program*, Urban Institute, July 2, 2013. Some states, too, provide capacity-building technical assistance and grants to

***Supporting the functioning of faith-based organizations—multiple administrations.*** Actions by several administrations have removed the “no aid”-era restrictions on federal aid for faith-based organizations, including houses of worship, that have been damaged by natural disasters or are threatened by hate crimes or terrorist attacks. We can consider all of these to be varieties of level playing-field reforms, though here not having to do with eligibility to receive federal funds to provide social services. For example, the Bush administration’s Department of Justice issued a ruling that the Establishment Clause does not prevent historic preservation grants from being awarded to historic religious buildings that continue to be used as houses of worship, such as Boston’s Old North Church.<sup>187</sup> Since 2005, synagogues and other houses of worship have been eligible to receive Nonprofit Security grants to improve their defenses against terrorism and hate crimes.<sup>188</sup> The Biden administration has been particularly vigorous in informing congregations about these grants, providing training about how to secure facilities, and expanding funding for the grants. In 2018, in response to a court ruling, the Trump administration swiftly changed FEMA policy to make houses of worship eligible for the FEMA program of disaster assistance for “community centers.”<sup>189</sup>

***Partnering with civil society organizations outside of funding—Obama administration.*** The Obama administration added to the faith-based initiative’s commitment to invite civil society organizations into funding programs a strong parallel commitment to what it termed “nonfinancial” partnerships. These are formal partnerships “in which no money passes hands from the government to the religious organization, but the two parties nonetheless work together toward a common goal.”<sup>190</sup> However vigorous the reforms, federal dollars are accompanied by

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faith-based and community-based organizations. See, e.g., the 2020 annual report of the Ohio Governor’s Office of Faith-Based Community Initiatives, <https://governor.ohio.gov/priorities/faith-based-initiatives/news-and-events/2020-annual-report>, and the New Jersey Department of State’s Office of Faith-Based Initiatives’ Project Atlas capacity-building grants program, <https://www.nj.gov/state/assets/pdf/ofbi/fy23-project-ATLAS-grant-guidelines.pdf>.

<sup>187</sup> Office of Legal Counsel, “Authority of the Department of the Interior to Provide Historic Preservation Grants to Historic Religious Properties Such as the Old North Church,” US Department of Justice, April 30, 2003, <https://www.justice.gov/file/18941/download>.

<sup>188</sup> See, e.g., Orthodox Union Advocacy Center, “IPA Memo on Department of Homeland Security Funding,” December 8, 2004, <https://advocacy.ou.org/ipa-memo-on-department-of-homeland-security-funding/>.

<sup>189</sup> Federal Emergency Management Agency, “Public Assistance: Private Nonprofit Houses of Worship” (fact sheet), January 26, 2018.

<sup>190</sup> Rogers, *Faith in American Public Life*, 104.



multiple restrictions; removing the dollars and the many accompanying requirements and restrictions made possible additional new partnerships. Joshua DuBois, the Obama administration’s first White House faith-based director, and Melissa Rogers, the second, noted that this change opened the door to collaboration for smaller organizations, religious organizations disinclined to sharply set apart religious activities from their services, and organizations not tolerant of the requirements that accompany government funds.<sup>191</sup>

The White House Office and the various Centers created a wide range of such common-cause arrangements through which the convening and coordinating power of the federal government assisted civil society organizations to accomplish social good. For instance, the Department of Labor’s Center for Faith-Based and Neighborhood Partnerships, acknowledging the reality that the unemployed often need assistance beyond information about job openings and training in job searching, developed a “jobs club” program through which more than a thousand congregations organized volunteers to provide networking, counseling, and other help. In another initiative, congregations and other neighborhood organizations served as summer meal sites for impoverished children who during the school year participated in the federally funded school breakfast and lunch programs.<sup>192</sup>

“By serving as a convener, by sharing critical information, by building organizational capacity, by catalyzing private support, and still – where appropriate – informing organizations of grants they may apply for, we seek to be a nimble, creative and flexible supporter of faith-based and secular nonprofit organizations around the country. It’s no longer about just dollars and cents. Instead, it’s about impacts on individuals, families and communities.” —Joshua DuBois, director, White House Office of Faith-Based and Neighborhood Partnerships, “A Vision for Faith-Based and Neighborhood Partnerships” (2010).<sup>193</sup>

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<sup>191</sup> Joshua DuBois, “A Vision for Faith-Based and Neighborhood Partnerships: Speech to the Brookings Institute [sic]” (blog post), White House, February 18, 2010, <https://obamawhitehouse.archives.gov/blog/2010/02/18/a-vision-faith-based-and-neighborhood-partnerships>; Rogers, *Faith in American Public Life*, 118.

<sup>192</sup> On various nonfinancial partnerships, see Rogers, *Faith in American Public Life*, 105–6; Melissa Rogers and Dana Mayber, “The Power of Partnerships” (blog post), White House, November 29, 2016, <https://obamawhitehouse.archives.gov/blog/2016/11/29/power-partnerships>; and Wear, *Reclaiming Hope*, 64–65.

<sup>193</sup> DuBois, “Vision for Faith-Based and Neighborhood Partnerships.”

## **New creativity is required to engage “all hands”**

It takes “all hands on deck” if society and government are successfully to respond to unmet needs and new challenges, to use the terminology of presidential candidate Obama when he promised to maintain the faith-based initiative.<sup>194</sup> However, despite the many innovations of the initiative, three major sets of “hands” are on the margins today: faith-based organizations rooted in religious communities that maintain traditional views about human sexuality and sexual identities; historic urban houses of worship with properties costly to maintain and with declining memberships and resources but that extensively serve their communities both directly and indirectly; and small urban houses of worship in minority communities that are resource-poor yet play outsized roles in serving their neighbors as well as their members. I will briefly discuss these challenges and suggest ways to enlarge the welcome.

### **Enable morally conservative faith-based organizations to remain partners as LGBTQ rights are expanded**

The most fundamental reform of the faith-based initiative was to reverse the church-state funding rules from “no aid” to “no exclusion.” In parallel with the rolling reinterpretation of the First Amendment’s religion clauses, federal statutory provisions, regulatory requirements, and programs and practices have been extensively revised so that even “pervasively sectarian” organizations may partner with government to provide social services while beneficiaries are able to access services without being pressured into unwanted religious teaching and activities. Yet some proportion of faith-based organizations are being excluded from partnerships due not to conventional church-state restrictions but because of requirements coming from another angle: the enactment of new LGBTQ equality rights.<sup>195</sup>

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<sup>194</sup> “Obama Delivers Speech on Faith in America.”

<sup>195</sup> I should note another area of concern for some faith-based organizations: regulations and government programs that prioritize reproductive freedom—elective abortions. One prime example was the Obama administration’s requirement, stemming from the Affordable Care Act, that employer health care plans must cover all contraceptives, some of which act as abortifacients, with only a minimal accommodation for religious organizations. This requirement set off a long series of court challenges brought by religious colleges, faith-based organizations such as the Sisters of Charity, and secular employers with religion-based claims. The court cases resulted in multiple

Those LGBTQ rights usually are being conceived within a simple discrimination framework that seemingly has nothing to do with religion.<sup>196</sup> Yet the practices of the faith-based providers that cause their exclusion from partnerships are religiously grounded—they are rooted in the organizations’ religion-based moral convictions and practices. What is needed so that they can continue to contribute to the government-funded social service effort is a fresh exercise of creativity, a commitment to an enlarged public policy pluralism. To keep “all hands on deck,” a new policy is needed, a new “both-and” policy. Such a policy would enlarge LGBTQ civil rights protections in a way that enables continued government partnerships with faith-based organizations and houses of worship that are rooted in religious communities committed to upholding religion-based morally conservative teachings on sexual ethics. Some of these communities and organizations are of minority race, ethnicity, or religion. Of course, not only the congregations and charities hold to these views and values but also many or most of the families and individuals in these communities.

“Sexual minorities and religious minorities make essentially parallel claims on the larger society. . . [B]oth same-sex couples and committed religious believers argue that some aspects of human identity are so fundamental that they should be left to each individual, free of all nonessential regulations, even when manifested in conduct. . . . [N]o person who wants to enter a same-sex marriage can change his sexual orientation by any act of will, and no religious believer can change his understanding of divine command by any act of will.” — Douglas Laycock, “Liberty and Justice for All” (2019).<sup>197</sup>

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government defeats and changes to the requirements. The difficulties were due in part to the administration’s initially very narrow definition of “religious organization.” See Stanley Carlson-Thies, “Which Religious Organizations Count as Religious? The Religious Employer Exemption of the Health Insurance Law’s Contraceptives Mandate,” *Engage* (Federalist Society) 13, no. 2 (2012): 58–64, <https://fedsoc.org/fedsoc-review/which-religious-organizations-count-as-religious-the-religious-employer-exemption-of-the-health-insurance-law-s-contraceptives-mandate>.

<sup>196</sup> For the inaccuracies and inadequacies of the simple discrimination framework, see Jonathan Rauch, “Nondiscrimination for All,” *National Affairs*, summer 2017, <https://www.nationalaffairs.com/publications/detail/nondiscrimination-for-all>, and Richard W. Garnett, “Religious Freedom and the Nondiscrimination Norm,” in Austin Sarat, ed., *Legal Responses to Religious Practices in the United States: Accommodation and Its Limits* (Cambridge: Cambridge University Press, 2012), 194–227.

<sup>197</sup> Douglas Laycock, “Liberty and Justice for All,” in William Eskridge Jr. and Robin Fretwell Wilson, eds., *Religious Freedom, LGBT Rights, and the Prospects for Common Ground* (Cambridge: Cambridge University Press, 2019), 24–37, at 26.

Particularly concerning is the addition by the executive branch of a requirement of LGBTQ employment nondiscrimination in federally funded programs without the simultaneous addition of an adequate religious accommodation. This problem emerged first in federal contracting, a type of funding sometimes used to pay for services offered by faith-based organizations.<sup>198</sup> Federal contracting has its own set of employment nondiscrimination rules, and, as noted before, to ensure the eligibility of faith-based providers, President Bush in 2002 added the Title VII religious organization exemption to the contracting rules. As (somewhat inconsistent) court rulings have held, this exemption protects not only religious employers' right to evaluate applicants' and employees' religious convictions but also their right to maintain religion-based conduct standards.<sup>199</sup> When President Obama in 2014 prohibited LGBTQ employment discrimination in federal contracting, he left the religious organization exemption intact. But his administration interpreted the exemption narrowly, making it doubtful that, say, a religious research university remained eligible for federal research grants if it did not hire a job applicant because the person was in a same-sex marriage in violation of the religion's moral standards.<sup>200</sup> The Trump administration issued a regulation strengthening the position of religious employers, but this has been reversed by the Biden administration.<sup>201</sup>

In the meantime, in *Bostock v. Clayton County* (2020), the Supreme Court ruled that the sex nondiscrimination in employment required by Title VII entails also LGBTQ nondiscrimination. The Court stressed that its ruling only concerned employment and only applied to secular

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<sup>198</sup> See the discussion in fn. 165, above.

<sup>199</sup> Carl H. Esbeck, "Federal Contractors, Title VII, and LGBT Employment Discrimination: Can Religious Organizations Continue to Staff on a Religious Basis?" *Oxford Journal of Law and Religion*, no. 4 (2015): 368–97. See also the discussion of the religious exemption in Title VII in EEOC, sec. 12, "Religious Discrimination." I note that other experts, and the Biden administration, argue that the weight of court decisions, instead, is to narrowly limit the scope of the religious staffing right.

<sup>200</sup> Executive Order 13672, July 21, 2014, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," 79 Fed. Reg. 42971 (July 23, 2014), <https://www.gpo.gov/fdsys/pkg/FR-2014-07-23/pdf/2014-17522.pdf>. The uncertainty is discussed in Office of Federal Contract Compliance Programs, Department of Labor, "Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption," Notice of Proposed Rulemaking, 84 Fed. Reg. 41677 (August 15, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-08-15/pdf/2019-17472.pdf>.

<sup>201</sup> For the Biden administration's reversal, which also discusses the Trump administration's approach, see the Department of Labor Final Rule, Rescission of Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption Rule, 88 Fed. Reg. 12842 (March 1, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-03-01/pdf/2023-04150.pdf>.

employers, while noting that religious employers have a range of legal protections, including the Title VII exemption, the Religious Freedom Restoration Act, and the court-created “ministerial exception” that protects religious organizations’ employment decisions about religious leaders and teachers. Further, in other decisions, such as *Fulton v. City of Philadelphia* (2021) and *Masterpiece Cakeshop* (2018), the Court has emphasized that, while governments must protect LGBTQ people from discrimination, governments are required also to protect religious exercise.

However, the Biden administration, which on day one issued an executive order on “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,”<sup>202</sup> has asserted that *Bostock* entails the prohibition of LGBTQ discrimination everywhere a law prohibits sex discrimination, not only where Title VII applies and not only with regard to employment, while it has simultaneously de-emphasized the religious freedom of faith-based organizations. Accordingly, it has asserted in multiple places via regulatory action a requirement for nondiscrimination on the bases of sexual orientation and gender identity in the provision of federally funded services, with minimal attention to religious accommodations.<sup>203</sup> These actions are broadly concerning to morally conservative religious organizations because they threaten

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<sup>202</sup> Executive Order 13988, January 20, 2021, 86 Fed. Reg. 7023 (January 25, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>.

<sup>203</sup> See, for example, the HHS Notice of Proposed Rulemaking concerning the department’s general grants regulation, 88 Fed. Reg. 44750 (July 13, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14600.pdf>; the Office of Management and Budget (OMB) Notice of Proposed Rulemaking concerning the OMB Guidance for Grants and Agreements, 88 Fed. Reg. 69390 (October 5, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-10-05/pdf/2023-21078.pdf>; and the Department of State Notice of Proposed Rulemaking Concerning Nondiscrimination in Foreign Assistance, 89 Fed. Reg. 3583 (January 19, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-01-19/pdf/2024-01059.pdf>. In response to comments submitted by the Institutional Religious Freedom Alliance and other religious freedom advocates, the religious protections in both the HHS grants regulation and the OMB grants guidance regulation were notably, if incompletely, improved. See the HHS Final Rule, 89 Fed. Reg. 36684 (May 3, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-05-03/pdf/2024-08880.pdf>, and my assessment of it: Stanley Carlson-Thies, “New HHS Grants Regulation: Redefining Sex Discrimination and Protections for Faith-Based Organizations,” blog post (June 25, 2024), <https://cpjustice.org/new-hhs-grants-regulation-redefining-sex-discrimination-and-protections-for-faith-based-organizations/>, and the OMB Final Rule, 89 Fed. Reg. 30046 (April 22, 2024), at 30074ff, <https://www.govinfo.gov/content/pkg/FR-2024-04-22/pdf/2024-07496.pdf>. As of this writing, a Final Rule for the proposed Department of State changes has not been released.

their eligibility for grants if their employment or service practices do not conform to contemporary views of sexuality.<sup>204</sup>

A congressional bill, the Fairness for All Act,<sup>205</sup> has proposed in detail a better way forward: adding to federal civil rights law comprehensive LGBTQ protections while strengthening corresponding protections for religious organizations to enable them to maintain their religion-based convictions and practices concerning human sexuality, including if they provide federally funded social services. In the specific case of marriage equality, in 2022 Congress passed, with full Democratic support, and President Biden signed, the Respect for Marriage Act that in the same way pairs statutory protection for same-sex marriage with strong protections for religious organizations committed to traditional marriage.<sup>206</sup>

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<sup>204</sup> Morally conservative faith-based providers generally are not opposed to LGBTQ rights for beneficiaries (everyone entitled to a service should receive it) but rather are concerned when such rights would interfere with their internal operations, in particular their employment practices. However, faith-based residential and family-oriented service organizations such as faith-based schools, colleges, adoption and foster-care agencies, and emergency shelters need the freedom to offer services that reflect their morally conservative views about sexuality, in the context of multiple options for LGBTQ people seeking services. Similarly, religious congregations with sex-segregated ministerial roles and worship seating need to, and fortunately can, access FEMA disaster-recovery support and Nonprofit Security grants without changing their religion-based practices. With respect to foster care services, see the US Supreme Court’s 2021 decision in *Fulton v. City of Philadelphia*, vindicating a Catholic foster-care agency’s insistence on maintaining its faith-based policy not to place children other than with married opposite-sex couples against the LGBT nondiscrimination requirement in Philadelphia’s foster-care contracts. The Court noted the multiple options available and spoke of religious freedom as an essential element of American pluralism.

<sup>205</sup> See H.B. 5331, the Fairness for All Act of 2019. For an analysis of the bill, see Chris Stewart and Gene Schaerr, “Why Conservative Religious Organizations and Believers Should Support the Fairness for All Act,” *Journal of Legislation* 46, no. 2 (2020): 134–206, and the materials at the Fairness for All website, <https://fairnessforall.org>. For a comparison of this approach with the better-known Equality Act, which minimally protects religious freedom, see Stanley Carlson-Thies, “Fairness for All is a Better Way than the Equality Act,” Institutional Religious Freedom Alliance, March 23, 2021, <https://cpjustice.org/fairness-for-all-a-better-way-than-the-equality-act/>. For extensive discussions about how the two sets of rights can be protected at the same time, see the essays in Eskridge and Fretwell Wilson, *Religious Freedom, LGBT Rights, and the Prospects for Common Ground*.

<sup>206</sup> H.R. 8404, Respect for Marriage Act. For a detailed explanation of the act’s religious freedom protections, see Douglas Laycock, Thomas C. Berg, Carl H. Esbeck, and Robin Fretwell Wilson, “The Respect for Marriage Act: Living Together Despite Our Deepest Differences,” *University of Illinois Law Review* (March 2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4394618](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4394618).

“The [Respect for Marriage ] Act is a model for pluralistic approaches that protect both sides in the culture wars. State legislatures have passed many gay-rights bills with protections for religious liberty. But neither side has been able to pass gay-rights bills without such protections, or absolute religious liberty bills with no allowance for gay and lesbian rights. The Respect for Marriage Act is an encouraging return to the practice of protecting liberty for all Americans—both the LGBTQ community and the conservative religious community.” — Douglas Laycock, Thomas Berg, Carl Esbeck, and Robin Fretwell Wilson (2024).<sup>207</sup>

The drive of LGBTQ persons to live consistently with their convictions and identity is fundamental and strong—as is the drive of religious people to live consistently with their convictions and identity. And, notably, some people are both religious and LGBTQ in convictions and identity. Charitable Choice legislative provisions and the parallel Equal Treatment regulations, and the faith-based initiative broadly, have created ways for religious as well as secular organizations to participate in the delivery of federally funded services while protecting access to services by all beneficiaries. These changes have improved the government’s social assistance system by increasing the opportunity for it to engage the best providers and by expanding the types or styles of services available to beneficiaries, many of whom value services delivered by faith-based organizations and even services that incorporate religious elements. Further modifying the federal rules and practices so that morally conservative as well as morally progressive organizations can participate, while ensuring that all beneficiaries, whatever their sexual orientation or identity, have access to services, would protect the “all hands” and pluralistic character of the collaboration system as LGBTQ rights become comprehensively protected in federal law.<sup>208</sup>

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<sup>207</sup> Laycock et al., “The Respect for Marriage Act,” italics deleted.

<sup>208</sup> Cf. Stanley Carlson-Thies, “Broad Freedom for Faith-Based Organizations is the Way to Balance LGBTQ Rights and the Freedom of Religious Exercise,” *Human Rights Magazine* (American Bar Association) 47, no. 3/4 (2022), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/intersection-of-lgbtq-rights-and-religious-freedom/broad-freedom-for-faith-based-organizations/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/intersection-of-lgbtq-rights-and-religious-freedom/broad-freedom-for-faith-based-organizations/); Stanley Carlson-Thies, “The Common Good Requires Robust Institutional Religious Freedom.”

## **Provide specialized support to historic and to unsung core religious organizations to uphold the social good they provide**

I noted above that when journalists and researchers in the early 1990s turned their attention to civil society, they discovered that people needing help very often count on assistance provided by houses of worship—churches, synagogues, mosques, temples, gurdwaras, and the like. Brian Grim and Melissa Grim, assessing a wide range of studies, estimated in 2016 that religious congregations mobilized some 7.5 million volunteers to offer to their members and neighbors 1.5 million social programs.<sup>209</sup> Yet congregations, though they may offer well-run, quality programs, are not specialized service providers. They serve in response to a divine call and not because of the availability of external funding, but, of course, their services, staff, and facilities require funding, which is typically in short supply.

The gap between available resources and the volume of social good provided seems the most acute at the upper and lower ends of congregational size and organizational complexity. In urban downtowns there are often historic houses of worship with shrinking congregations and declining giving by members but with buildings that are large and expensive to operate and maintain. The congregations themselves offer formal and informal services to their neighborhoods and make an additional major contribution by providing space in their facilities for multiple other service organizations and programs, often at low or no cost: child care providers, Head Start, marriage counseling, English as a second language (ESL) programs, youth clubs, Alcoholics Anonymous and Narcotics Anonymous recovery groups, food distribution, neighborhood meetings, advocacy organizations, and others.

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<sup>209</sup> Brian J. Grim and Melissa E. Grim, “The Socio-Economic Contribution of Religion to American Society: An Empirical Analysis,” *Interdisciplinary Journal of Research on Religion*, 12 (2016): article no. 3, pp. 1–31.



A 2016 study of ninety historic congregations in Chicago, Philadelphia, and Fort Worth found that, on average, they each generated more than \$1.7 million in economic benefits. Some of this is conventional economic value attributable to the congregations: salaries, utility payments, and the purchase of supplies, and attributable to those who come to the building for worship or other activities: purchases at gas stations, local shops, and restaurants. But much of the value is unique to these sacred places. It is generated by the operations of daycare centers and Head Start and private preschool or elementary school programs often subsidized by the congregations and by the events and activities of the community organizations assisted by the low-cost or free space provided by the congregations. And there are thousands of volunteer hours donated by members of the congregations and by the many people recruited by them or by the multiple programs and organizations they host. In the 2016 study, nearly 90 percent of the visits to the locations were not for worship and nearly 90 percent of the beneficiaries of the services and events did not belong to the respective congregations.<sup>210</sup>

At the other end of the spectrum of size and formality are urban, often inner-city, houses of worship: Hispanic and Black churches, Islamic centers and mosques, Asian American congregations, Sikh gurdwaras, and diverse other religious congregations, sometimes in storefront facilities or sharing space with a more established congregation. They offer not only worship and religious teaching but also moral and spiritual leadership. And they offer a wide range of human services, despite typically fragile finances and sometimes bi-vocational clergy stressed for time. A recent study of Hispanic Protestant congregations showed that more than 90 percent of them offer a range of social services to their neighbors, “from short-term relief programs involving Healthcare and Food Security, to longer term programs (Child and Youth Development, Adult Programming), and community development initiatives (Immigration-Related, Homelessness, Individuals affected by the justice system—i.e., incarcerated or formerly incarcerated [persons]).”<sup>211</sup> A 2011 study of mosques notes that, beyond worship activities and religious education, many engage in community-supporting activities such as affordable housing, anti-drug programs, health fairs and health clinics, tutoring and literacy programs, job training,

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<sup>210</sup> Partners for Sacred Places, “The Economic Halo Effect of Historic Sacred Places,” *Sacred Places: The Magazine of Partners for Sacred Places*, November 2016, <https://sacredplaces.org/uploads/files/16879092466251061-economic-halo-effect-of-historic-sacred-places.pdf>.

<sup>211</sup> Robert Chao Romero and Fernando Villegas Rivera, *How Latino Congregations Are Transforming Communities: A Survey Report by the Brown Church Institute, Fuller Centro Latino, and Urban Strategies* (Washington, DC: Urban Strategies, 2022), 5. See also the earlier study by Amy L. Sherman, *The Community Serving Activities of Hispanic Protestant Congregations* (Hudson Institute’s Faith in Communities Initiative and the Center for the Study of Latino Religion, Notre Dame University, December 2003).

and more.<sup>212</sup> Black churches in urban neighborhoods are disproportionately involved in neighbor-serving programs, doing more with less.<sup>213</sup> Interviewed about his own multiracial inner-city church’s programs, a Black pastor recently said, “I am a pastor *comma*, not a pastor *period*, because I like to do more than help people worship. I like to help people. That’s why this church exists.”<sup>214</sup>

“Our findings, in broad strokes, suggest that black congregations are smaller and less resourced [than non-Black Philadelphia congregations] but are eagerly involved in social services provision, and that while some of their programs are of a smaller scope, they provide more programs overall that focus more on the neediest city residents and their neighbors. In other words, black congregations are still a major agent of change and strength for the quality of life in the black community.”

— Ram A. Cnaan, Stephanie C. Boddie, Charlene C. McGrew, and Jennifer Kang, “Black Congregations in the City of Brotherly Love” (2006).<sup>215</sup>

These congregations, large and small, contribute essential services to their communities but with little support from government. They are eligible to compete for government funding thanks to the changed church-state rules of the faith-based initiative. Yet large historic congregations and small minority congregations need more than the formally level playing field. That is, a new creativity is needed in the faith-based initiative—innovations in grantmaking, program design, communications, and training initiatives so that greater support can be given to these vital congregational sources of social blessing. Government may not fund a house of worship in order to support its religion, no matter the social benefits of the religion. But there are legitimate ways to increase support for these institutions.

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<sup>212</sup> Ihsan Bagby, *The American Mosque 2011: Activities, Administration and Vitality of the American Mosque* (Islamic Society of North America, 2012).

<sup>213</sup> Ram A. Cnaan, Stephanie C. Boddie, Charlene C. McGrew, and Jennifer Kang, *The Other Philadelphia Story: How Local Congregations Support Quality of Life in Urban America* (Philadelphia: University of Pennsylvania Press, 2006), ch. 7, “Black Congregations in the City of Brotherly Love.”

<sup>214</sup> Joya Schreurs, “A Pastor, Comma, Not a Pastor, Period: An Interview with Joshua Robertson about the Learning Center at Allison Hill,” *Shared Justice* (blog), Center for Public Justice, October 17, 2023, <https://cpjustice.org/a-pastor-comma-not-a-pastor-period-an-interview-with-joshua-robertson-about-the-learning-center-at-allison-hill/>.

<sup>215</sup> Cnaan et al., *The Other Philadelphia Story*, ch. 7, p. 153.

**What can be done?** Here are some possibilities.

In response to a request from the Trump administration's HHS faith-based Center for information about possible barriers that hamper access to federal funding by faith-based organizations, a group of Black religious leaders from the Washington, DC, area enumerated these problems:

- grant programs are designed without input from grassroots organizations that daily wrestle with the issues;
- government officials do not grasp the particular advantages of partnering with neighborhood-rooted faith-based organizations, nor the challenges such organizations face in seeking to compete for government funds;
- grassroots organizations find it challenging to keep informed about relevant grant opportunities; and
- federal funds often pass through state and local agencies before being awarded and these agencies sometimes mis-state federal requirements and add inappropriate additional conditions.<sup>216</sup>

### ***1. Further expand access to existing programs.***

Government agencies (federal, state, and local, as appropriate), by partnering with religious networks and not only denominations, can ensure that the great diversity of houses of worship are aware of their eligibility for infrastructure-support funding such as Nonprofit Security grants, FEMA disaster relief funds, and historic preservation grants. This requires pushing out information and not simply passively making it available. Governments also should partner with religious networks to offer technical assistance and training for houses of worship interested in such programs. The Biden administration's Centers for Faith-Based and Neighborhood Partnerships in the Department of Homeland Security and the Department of Veterans Affairs have been particularly active in connecting with faith-based and community-based organizations, including houses of worship.<sup>217</sup>

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<sup>216</sup> Comment submitted by Pastor Cheryl Gaines, Esq., ReGeneration Church in the Field, Washington, DC; Chelsea Langston Bombino, director of the Sacred Sector Project at the Center for Public Justice; and Stanley Carlson-Thies, Institutional Religious Freedom Alliance, on November 24, 2017, <https://www.regulations.gov/comment/HHS-OS-2017-0002-8096>. This was submitted in response to the HHS Center for Faith-Based and Neighborhood Partnerships Request for Information, HHS-9928-RFI, 82 Fed. Reg. 49300 (October 25, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-10-25/pdf/2017-23257.pdf>.

<sup>217</sup> For more details, see <https://www.dhs.gov/faith> and <https://www.va.gov/CFBNP/collaborations.asp>.

## ***2. Vigorously use the public-official platform.***

While governments themselves cannot specifically fund houses of worship, private foundations and corporate philanthropy can do so. There is no First Amendment barrier to their support, although such misinformation may still exist.<sup>218</sup> Government leaders should encourage private support, neither dismissing the social good provided by houses of worship as inferior to government-designed programs nor treating some congregations as harmful because they do not embody majoritarian beliefs.

In 1997, the United Way of Massachusetts Bay (UWMB) created the Faith and Action Initiative “to fund faith-based organizations working with inner-city youth specifically *because* their programs encouraged religious or spiritual belief.” Previously, UWMB funded only secular services. Why the change? To achieve its social change/social justice goals, it had decided it should fund the entities—Black churches—whose faith-full services were located where the needs existed and that showed promise of achieving significant results.<sup>219</sup>

## ***3. Provide congregational-support tax credits.***

Federal, state, and local governments operate a wide range of tax credit programs to incentivize corporate and individual taxpayers to support activities that produce social good. For example, nearly twenty states offer tax credits to individuals or to businesses that donate funds to provide tuition support for families that choose private schools. The US Supreme Court has upheld the inclusion of religious schools in such tuition tax-credit programs.<sup>220</sup> Congress, the states, and

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<sup>218</sup> For a discussion about why such donors are often reluctant to support faith-based organization and yet why they ought to, see Jeri Eckhart Queenan, Peter Grunert, and Devin Murphy, *Elevating the Role of Faith-Inspired Impact in the Social Sector* (The Bridgespan Group, January 2021), <https://www.bridgespan.org/insights/role-of-faith-inspired-impact-in-the-social-sector>.

<sup>219</sup> “United Way Mass Bay and the Faith & Action Initiative (A): Should Faith Be Funded?” and its “Sequel,” Kennedy School of Government Case Program, case studies C16-04-1759.0 (2004) and C16-04-1759.1 (2004), and “United Way Mass Bay and the Faith & Action Initiative (B): Going for the Gold?” case study C16-04-1760.0 (2004). The latter case study documents an ironic decision made by the faith-based organizations supported by the Faith & Action Initiative. To participate in the initiative, they had to offer faith-inclusive services. They decided they should not apply for a Bush-administration Compassion Capital Fund grant to support training and technical assistance because CCF funds specifically could not be expended on activities that included religion!

<sup>220</sup> For a survey of the programs, see the invaluable annual *The ABCs of School Choice*, e.g., the 2024 edition (Indianapolis: EdChoice, 2024). Supportive Supreme Court decisions are *Arizona Christian School Tuition*

municipalities should design similar programs to incentivize greater giving to houses of worship of any faith, along with other community facilities that anchor social-good programs, supporting them and thereby their many works of service.

#### ***4. Strengthen congregations' capabilities.***

Congress, the administration, and/or the states should revive the Bush administration's Compassion Capital Fund or the Obama administration's similar Strengthening Communities Fund, both briefly described earlier. Government agencies also should make widely available training and technical assistance about how to apply for and manage their social service grants. This requires pushing out information through unconventional networks, utilizing, for example, not only denominational networks and the networks built by the many state associations of nonprofits, but also other pathways such as local social service coalitions and clergy alliances. Because the "no aid" interpretation of the First Amendment remains strong among both officials and civil society organizations, it is essential that such training and technical assistance stress the revised church-state rules—not only the limits on religious activities but also protections for the religious identity and practices of faith-based organizations.

#### ***5. Connect with civil society organizations.***

An important way for the government to establish connections with new and unconventional partners is through nonfinancial partnerships, as the Obama administration demonstrated. Some of those nonfinancial partners may decide to explore government funding and, because of their nonfinancial collaboration, will be more able to find and connect with needed information and training. And governments should strongly encourage participation by civil society organizations in the many coordinating councils and networks that the various levels of government maintain, such as the Continuum of Care for organizations providing services to the homeless and

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*Organization v. Winn* (2011) and *Espinoza v. Montana Department of Revenue* (2020). For assessments of these decisions, see, respectively, Nicole Stelle Garnett, "A Winn for Educational Pluralism," *Yale Law Journal Online* 121, no. 31 (2011); and Thomas C. Berg and Douglas Laycock, "*Espinoza*, Government Funding, and Religious Choice," *Journal of Law and Religion* 35 (2020): 361–79.

networks that provide information about services for veterans or for the elderly. Involvement by faith-based and community-based organizations, including houses of worship, should be encouraged because these organizations themselves provide essential services, because coordination improves services, and because such participation will facilitate access by the organizations to government information, training, and financial support.

The Department of Human Services of the City of San Antonio, Texas, has a faith-based initiative liaison, Rev. Ann Helmke, a Lutheran minister and former nonprofit executive, whose job is to connect secular and faith-based nonprofits, congregations, and city services. A major project, now a stand-alone nonprofit, is SACRD.org, the San Antonio Community Resource Directory, which provides for the city a vast, web-based, easily searchable listing of social service, health, and educational programs. Someone needing child care or looking for a way to help a struggling family down the block can type into the search box their zip code and the kind of service they seek and immediately see a list of nearby programs, governmental and nongovernmental, secular and religious. Rev. Helmke points out that SACRD.org also has another vital function: it aids houses of worship and service providers in locating organizations to collaborate with and gaps in service that need to be filled.<sup>221</sup>

## ***6. Reconfigure funding mechanisms to make financial support more accessible to congregations.***

**a. Smaller grants.** It is convenient and efficient for government administrators to award and monitor a single or a few large awards, but only large organizations designed for service delivery at volume are able to manage and operate such awards. Smaller grants are usually more accessible to houses of worship, which typically have only limited management capacity for service delivery and are more likely to serve a smaller number of people with diverse needs than a large cohort with one kind of need. Government program designers should also more often utilize grant tiers, enabling organizations with small capacity to compete with each other for small grants while large organizations compete for large grants.

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<sup>221</sup> Iris Dimmick, “City’s First Faith-Based Liaison Aims for a More Compassionate San Antonio,” San Antonio Report, September 29, 2019, <https://sanantonioreport.org/citys-first-faith-based-liaison-aims-for-a-more-compassionate-san-antonio/>; City of San Antonio Department of Human Services Faith-Based Initiative: <https://www.sa.gov/Directory/Departments/DHS/Faith-Based>; San Antonio Community Resource Directory: [www.SACRD.org](http://www.SACRD.org).

**b. Civil society grants.** Connectedness is a strength of congregations and nonreligious neighborhood organizations, such as ethnic associations and service clubs. And connectedness is a quality useful to many government-operated and government-funded services, although it is not a native quality of either government or its conventional—large—social service partners. Governments can resource congregations, among other locally rooted organizations, by providing small grants when they ask these organizations and their leaders to utilize their networks to draw in residents for vaccination clinics, to convey public health messages, or to share information about available services such as subsidized child care and government health insurance or job training opportunities.

**c. Convert to “indirect” funding.** Not surprisingly, social services provided by houses of worship often—though not always—incorporate a religious message and religious activities.<sup>222</sup> Government can fund faith-full services, which may be the first choice of many and acceptable to many others, by using some form of indirect funding rather than grant or contract funding. Setting up a full conventional voucherized funding system, as in federally supported child care (the Child Care and Development Block Grant program) is not always appropriate and is not always necessary. Beneficiary-Choice Contracting is one promising practice, as noted earlier.

**d. Require sub-granting.** Grant program designers can create opportunity for congregations and other small, local, organizations by requiring grantees, where appropriate, to use subgrants to draw local organizations into partnership to improve the delivery of the service by expanding outreach, offering networking in addition to the service itself, and enhancing service uptake because of the subgrantees’ validation of the service and the service network. To prevent the large grantee from taking advantage of churches or other local partners, grant applicants should be required to include signed memoranda of understanding with the intended subgrantees and the program rules should specify a generous dollar amount for the subgrants.

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<sup>222</sup> See the discussion in Jo Anne Schneider, *Social Capital and Welfare Reform: Organizations, Congregations, and Communities* (New York: Columbia University Press, 2006), 85–86, 105, and ch. 11.

**e. Expand the use of intermediaries.** Intermediaries, which bring together an administratively strong central organization with locally rooted small organizations, ought to be more extensively utilized as a way for the government to draw on the distinctive strengths of congregations in service delivery while expanding its support for these vital community resources.

The State of Ohio’s faith-based initiative has extensively employed intermediaries as a way to connect with, provide training to, and facilitate the flow of government funding to smaller community-based and faith-based organizations. The Ohio Governor’s Office of Faith-Based and Community Initiatives was established in 2003 and has been maintained on a bipartisan basis through multiple changes of administration. An early action was to provide specific training on Charitable Choice and the responsibilities and limits, as well as freedoms, it provides to faith-based organizations that receive government funds. This work was supported, in part, by a federal Compassion Capital Fund grant. In 2013, the Office funded a survey of faith-based and community-based organizations to document their locations, services, and funding sources. More recently, the Office has worked with a privately funded initiative to accelerate the development of city-based and regional networks of providers. The Office itself has designated regional representatives so that it can better coordinate with civil society initiatives.<sup>223</sup>

We can denote some of these facilitators as *fiscal* intermediaries: they operate competitive grant systems, announcing and then awarding subgrants to neighborhood organizations. However, many local service-delivery networks pre-date any such process, existing as a set of neighborhood organizations gathered around a larger organization that has management and training expertise. We can call these *affinity* intermediaries, that is, intermediaries with partners that work together because of a common interest, faith, or ideology.<sup>224</sup>

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<sup>223</sup> Byron Johnson and William Wubbenhorst, *Ohio Governor’s Office of Faith-Based and Community Initiatives: A Case Study* (Waco, TX: Baylor Institute for Studies of Religion, January 2007), <https://www.baylor.edu/content/services/document.php/40017.pdf>; Amy L. Sherman, Jay F. Hein, Laurel Christensen, and Kristin Owen, *Mapping Ohio’s Compassion* (Indianapolis: Sagamore Institute for Policy Research, January 2014), <https://search.issuelab-dev.org/resource/mapping-ohio-s-compassion.html>; and the Ohio Good Community Project, Sagamore Institute, <https://sagamoreinstitute.org/faith-in-communities/>.

<sup>224</sup> The Equal Treatment regulations do not distinguish between these two types of intermediaries or, rather, have in mind only the fiscal variety, calling them “pass-through entities.” See, e.g., the HHS regulations: 45 CFR 87.1(e).



“[T]he reality is that not all congregations can or should become social service providers . . . . Yet, even churches limited by small budgets can join with other congregations and church networks. Collaboration enables them to join hands and work together in a structure that provides the monitoring and evaluation necessary to promote effective service delivery.” — Harold Dean Trulear, *The African-American Church and Welfare Reform* (1999).<sup>225</sup>

Such networks might bring together Hispanic or Black organizations of different types, including houses of worship, small faith-based service organizations, and community-based organizations, or a grouping of Catholic and Protestant, or Catholic, Mainline Protestant, and Jewish, congregations and other nonprofits. The common interest that connects such networks should be seen as an asset both because of how it draws the member organizations together for mutual support and because of how it makes particular networks especially attractive and trustworthy to some set of residents needing services.

The government should fund such affinity intermediaries and not require them to construct afresh a service network of random local groups through a neutral subawards process. It is a strength, not a problem, that one intermediary network will be distinctively Black Protestant and another one Islamic or Hispanic Pentecostal. However, the government must then also make arrangements so that beneficiaries in these communities who do not desire to be served through such intermediary networks have reasonable access to equivalent services from another source. Extensive use of affinity intermediaries is an important way that government resources can be made available to local, small, religious or secular organizations, including houses of worship.

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<sup>225</sup> Harold Dean Trulear, *The African-American Church and Welfare Reform: Toward a New Prophetic Perspective* (Washington, DC: Center for Public Justice, 1999), 19–20.

“The federal government needs to invest more in grassroots Black ministries. We need equal access to financial support, but we also need capacity building. [A model would be] the federal government working with organizations as government contractors, which function as mediating institutions. These mediating institutions facilitate government funding, through sub-grants and sub-contracts, to small, grassroots groups who need support with financial compliance, technical assistance, capacity building and more.

“When I moved to the Washington, D.C. area, during the President George W. Bush administration, I was hired to work with a federal contractor, McFarland & Associates. The Substance Abuse and Mental Health Services Association (SAMHSA) had provided faith-based federal funds to address three major priorities: prisoner reentry, HIV/AIDs and substance abuse prevention. In the Bush administration, the federal government really recognized the vital role of the faith community in addressing these systemic challenges. In the contract I worked on, we gave sub-grants to smaller churches and faith-based community groups that were grassroots. Our role as the primary contractor was to provide infrastructure, fiscal and technical support to these place-based groups providing the direct services.

“Many of these churches and community organizations could provide the best services because they knew the needs of the community best and had the community’s trust. And yet, many of these groups didn’t know how to navigate the technical world of the Federal Acquisitions Regulations. [Through my work as a contractor, I was able to free up] smaller organizations from the hassles of back-end operations so they could do what they do best—serve.” — Pastor Cheryl Gaines, Esq., The Church in the Field, Southeast Washington, DC.<sup>226</sup>

**g. Harness the potential of Community Action Agencies.** Community Action Agencies (CAAs), dating back to President Johnson’s 1964 War on Poverty, are intended to enable poor communities themselves to identify their specific challenges and to develop and implement unique solutions. There are more than one thousand neighborhood-rooted CAAs, each of which must have a board comprised at least one-third of local residents. The Community Services Block Grant program (CSBG) funds the CAAs and supports their services, and CAAs use CSBG funds and other government and private funds to make subgrants to local organizations to provide additional services.

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<sup>226</sup> Quoted in Chelsea Langston Bombino, “Black Ministries are Essential Services Now More Than Ever,” *Religion Unplugged* (blog), June 27, 2020, <https://religionunplugged.com/news/2020/6/24/black-ministries-are-essential-services-now-more-than-ever-3h7Kw>.

As noted earlier, Charitable Choice was added to the CSBG statute in 1998 at the urging of Senators Dan Coats (R-Indiana) and Ted Kennedy (D-Massachusetts).<sup>227</sup> A study released a few years later by a CAA association documented multiple financial and nonfinancial partnerships between these agencies and faith-based organizations, including congregations. CAAs often acted as fiscal intermediaries, bearing much of the administrative and financial management load while channeling some of the federal funds to diverse networks of faith-based and community-based organizations. And often, it seems, congregations, other faith-based organizations, and community-based organizations provided resources to the local CAA in the form of volunteers, in-kind gifts, and money.<sup>228</sup>

The intermediary role of CAAs ought to be refined and expanded as part of a strategy of making federal funding more accessible to houses of worship to support their multiple good works. CAAs already exist in most communities, they are familiar with the intermediary role, and they typically have multiple connections with local houses of worship—although, it seems, often to receive support from them rather than to give it. The federal government should press CAAs to more extensively engage with diverse houses of worship, including by awarding the congregations subgrants to support their multiple community services.<sup>229</sup>

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<sup>227</sup> S. 2206, Coats Human Services Reauthorization Act of 1998. See Senate Report 105-206, July 1, 1998, <https://www.congress.gov/105/crpt/srpt256/CRPT-105srpt256.pdf>.

<sup>228</sup> National Association of Community Action Agencies, *Community Action Agencies and Faith-Based Organizations: A Legacy of Productive Partnerships* (Washington, DC: NACAA, 2001), 19, 28–29, 32–33, 36–37. The report is skeptical about the just-launched Bush faith-based initiative, suspecting it would give too much freedom to faith-based organizations, and has the tone of an apologia: Bush officials need not interfere with the CAA movement—we’re already doing the right thing.

<sup>229</sup> The CSBG reauthorization bill adopted by the House in May 2022 (H.R. 5129), but not accepted by the Senate, proposed to remove the program’s Charitable Choice provision, with a CAA association arguing that, even with it, few faith-based organizations received CSBG funding (Memorandum from Community Action Program Legal Services, “The Community Services Block Grant (CSBG) Act and Charitable Choice,” January 24, 2019). But that minimal involvement, instead, indicates the need for the federal government to better hold CAAs accountable to facilitate involvement by small faith-based organizations and congregations in their networks of subgrant-supported services. The Minority Views section of the House Report on H.R. 5129 argued against deleting Charitable Choice and for a greater engagement of faith-based organizations in CAA services. House of Representatives Report 117-311, May 6, 2022, pp. 125–26, <https://www.congress.gov/117/crpt/hrpt311/CRPT-117hrpt311.pdf>.

## **To counter backsliding, there must be stronger reforming pressure from the faith-based initiative**

The federal government, and state and local governments (often with federal support), in multiple ways comes to the aid of people and communities who need assistance. These include the provision of monetary and in-kind benefits and the funding of social services provided by private organizations. It seems to be a routine process for government to determine eligibility for and distribute income support to individuals and to award funding to large secular nonprofits, religiously affiliated organizations, and commercial enterprises to provide standardized social services. However, it goes against the conventional tendencies and practices of government to constructively connect to and partner with, and to protect, support, and train, smaller, locally focused, diverse, and religious organizations, even when these are the most appropriate and effective assistance providers. Considered in this way, we can say that the faith-based initiative, with its origins in the Charitable Choice innovation of the Clinton years and continuing onward through the subsequent four administrations, both Republican and Democratic, stands out as a notable and creative policy innovation. In addition to numerous specific changes, pilot programs, and modified practices and policies, the initiative has brought into being major advances such as the reversal of the church-state rules for funding religious organizations and the firm establishment of federal partnership officials and offices at the White House and in major agencies—officials and offices with the responsibility to promote the partnership vision and the reforms of government policies and practices that are entailed by that vision.

The beginning of this account showcased how the COVID-19 pandemic in the State of Oregon exposed the need for its government agencies to engage in new and creative ways with civil society organizations and particularly with clergy and houses of worship, which sparked a new commitment to partnership that required the government to act outside of its conventional practices. The federal government's response to the pandemic, by contrast, demonstrated how routine, in important ways, the partnership vision and practice is at the national level. But that federal response also demonstrated that the transformation is not deep enough.

On the positive side, Congress wrote the CARES Act, its first large pandemic response law, such that not only faith-based charities but even houses of worship were eligible for forgivable loans through the new Paycheck Protection Program (PPP) administered by the Small Business Administration (SBA). And when SBA regulations and administrative routines mandating secularism loomed as barriers to participation by religious organizations, Senator Bernie Sanders and others insisted on the eligibility of churches and other houses of worship.<sup>230</sup> And yet small, minority religious institutions, although equally eligible for the PPP loans, discovered that, without strong connections to banks, lawyers, accountants, and government officials, actually securing the loans was very challenging.<sup>231</sup> And some Muslim institutions found religiously challenging the specific character of the PPP support: should the funds be regarded as (unacceptable) interest-bearing loans or as (allowable) forgivable loans?<sup>232</sup> Officials from several of the faith-based Centers fielded calls about these matters and mediated discussions with their respective agency's officials to come up with solutions. Yet with more extensive interaction between government and civil society organizations, such difficulties might have been forestalled.

Similarly concerning has been the choice by Congress and the Biden administration to sidestep the pluralistic existing federal child care funding program when offering via the states additional support to child care providers, whose viability was undermined by the pandemic's economic dislocations. New child care grants were created, rather than channeling the additional funds through the Child Care and Development Fund (CCDF). The CCDF program's funding rules are based on the Child Care and Development Block Grant (CCDBG) Act, noted before. Faith-based child care providers were eligible for the new child care grants, but the grants require setting explicitly religious activities and teaching outside the supported program, whereas when states use CCDF funding, they must give parents the choice of using vouchers, and when a provider receives CCDF support by means of a voucher, it can offer religion-infused child care. And more

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<sup>230</sup> See the April 2, 2020, letter from Democratic senators Schumer, Cardin, Coons, and Sanders to SBA Administrator Jovita Carranza asking, among other things, that houses of worship not be ruled ineligible.

<sup>231</sup> See, e.g., the observations of Rev. Cheryl Gaines recorded in Langston Bombino, "Black Ministries Are Essential Services Now More Than Ever."

<sup>232</sup> Chelsea Langston Bombino and Stanley Carlson-Thies, "Religious Literacy and Social Services," in Chris Seiple and Dennis R. Hoover, eds., *The Routledge Handbook of Religious Literacy, Pluralism, and Global Engagement* (London: Routledge, 2012), 241–53, at 247.

recently the Biden administration has proposed that various federal funding programs specify that recipient organizations must use part of the funding to pay for child care—but without a requirement of using some form of indirect funding that would enable participation by providers whose child care includes religious activities and stories.<sup>233</sup>

I note three trends in the faith-based initiative that have weakened its transformative power.

***Weakened transformative energy: A changed emphasis from equipping to mobilizing.***

One debilitating trend is the accelerating shift of the federal outreach to faith-based and community-based organizations from *equipping* to *mobilizing*. The several administrations, in addition to connecting with civil society organizations through meetings, email newsletters, publications, and web-based information, have organized recurring conference calls or video meetings to communicate with the government’s current and potential partners. However, increasingly, these recurring teleconferences are being used not so much to equip and inform about partnerships but as a way for the administration of the day to praise its own programs and policies and to seek grassroots support for its own policy priorities. For instance, while the topic of one of the regular conference calls during the Trump administration was an Office of Federal Contract Compliance draft regulation intended to protect participation in contracting by religious employers with morally conservative sexuality standards, the call was organized not by the Department of Labor’s faith-based Center but by the White House’s Office of Public Liaison (OPL). Judging from the questions, the audience was mainly pastors, although surely few, if any, houses of worship hold federal contracts. The pastors were not interested in the details of the proposed changes but wanted to hear how President Trump was battling secularism in the federal government.<sup>234</sup>

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<sup>233</sup> Executive Order 14095, “Increasing Access to High-Quality Care and Supporting Caregivers,” April 18, 2023, 88 Fed. Reg. 24669 (April 21, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-04-21/pdf/2023-08659.pdf>.

<sup>234</sup> I listened to the conference call, August 16, 2019.

The Biden administration’s partnership teleconferences are hosted by the Office of Public Engagement—this administration’s OPL—and while containing some information about grants and other partnership topics, often are dedicated to praising the administration’s general policy actions and proposals. The February 1, 2022, email following up on one such teleconference featured a guide to funds available from the recently passed infrastructure law and added this hosanna: “The Biden-Harris Administration remains committed to building a better America—creating good middle-class jobs, supporting disadvantaged and underserved communities, advancing climate resilience and sustainability, and investing in American manufacturers. It is our hope this resource is another step forward in our work together to build a better America.” And while the partnership video call that followed Biden’s signing of the Respect for Marriage Act proudly announced the new statutory protection for same-sex marriage, it was entirely silent about the act’s carefully designed protections for faith-based organizations committed to traditional marriage—even though these protections are vital to many of the government’s faith-based partners and potential partners. Efforts at mobilization subvert partnerships, because an administration’s general policies will match the values and mission of only some of the organizations that should nevertheless partner with its social assistance programs.

***Weakened transformative energy: Reduced clarity of vital information.***

A second undermining trend is the decline in providing clear, precise, and detailed information about the freedoms and responsibilities that accrue to faith-based organizations that receive federal funding. Certainly, clear information about limits and freedoms needs to be made easily available to every civil society organization, religious or not, for these organizations have concerns about government requirements and red tape and often do not have staff time to devote to deciphering and navigating these burdens. But easily found and easily understood information is especially important to faith-based organizations with their natural and justified concerns about secularizing requirements. Clarity about what is protected and what is prohibited creates a more hospitable environment for organizations committed to their religious identity and practices and not staffed with legal counsel. Yet such information has become less easily available over time.

Compare the Bush White House Office’s *Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government* with the Obama counterpart, *Partnerships for the Common Good: A Partnership Guide for Faith-Based and Neighborhood Organizations*.<sup>235</sup> The Obama guide valuably profiled many ways that smaller and faith-based organizations could partner, financially or nonfinancially, with federal programs. But it gave little information about church-state requirements and freedoms, although it stated twice that “financial partnerships with the government must be characterized by their ability to both uphold the free exercise of religion and to prevent the establishment of religion.” But what did that mean, for example, for a mosque interested in funding to construct housing for low-income seniors? The Bush booklet did not give as much detail on partnership opportunities, but it did extensively explain the level playing-field rules. A community-based or faith-based organization interested in working with the government to provide some service would know that it was welcome to apply, that officials must not be biased against it, and that the organization’s religious identity and practices would be protected even as it was required to follow specific rules to protect the rights of beneficiaries. Such detail is, itself, a “you are welcome here” banner for organizations that have long regarded themselves as excluded because of their religion or lack of sophisticated knowledge of government requirements. However, such vital information is increasingly less visible on the websites associated with the faith-based initiative.

***Weakened transformative energy: Attenuated connections with state and local initiatives.***

A third concerning major trend is the attenuated federalism element of the faith-based initiative. This account is about the *federal* faith-based initiative and not the diverse reform efforts that have been originated by states and local governments, as when mayors, for example, recognizing how important neighborhood organizations are to the well-being of the residents, tell city agencies to build connections with community-based and faith-based organizations. But the

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<sup>235</sup> Office of Faith-Based and Community Initiatives, *Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government* (White House, 2003?), [https://georgewbush-whitehouse.archives.gov/government/fbci/guidance\\_document\\_01-06.pdf](https://georgewbush-whitehouse.archives.gov/government/fbci/guidance_document_01-06.pdf); Office of Faith-Based and Neighborhood Partnerships, *Partnerships for the Common Good: A Partnership Guide for Faith-Based and Neighborhood Organizations* (White House, 2010?), <https://obamawhitehouse.archives.gov/blog/2010/02/18/a-vision-faith-based-and-neighborhood-partnerships>.



federal effort necessarily has a *federalism* aspect because so many of the federal funding programs involved are federal-state or federal-state-local programs.

The federal rules, as stressed before, accompany the federal dollars to state and local government agencies and are meant to govern the award of the funds to private organizations. Do state and local officials know and follow these reversed church-state rules?<sup>236</sup> And equally important, have state and local governments worked to make their grant and contract systems more practically hospitable to smaller, locally focused, religious, and newcomer organizations when they expend the federal funds? A state and local commitment to both the church-state and the funding transformations of the faith-based initiative is essential to the success of the federal initiative not only because so much of the federal money is awarded by state and local officials. It is vital also because smaller and newcomer organizations will always be disadvantaged if they seek federal funding by participating in federal agencies' own grant competitions, where their competitors for the five or fifteen large grants are large, experienced, well-staffed, and federally savvy nonprofits and businesses. Better to compete at the state or local level where connections can be more readily made and the competition is more even. Moreover, it is administratively more practical for state or local officials, rather than federal officials, to connect with, assist, and monitor small, locally oriented organizations. Thus, the more committed state and local officials are to the vision, practices, and rules of the faith-based initiative, the greater its success will be in achieving innovative partnerships between government and civil society organizations.

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<sup>236</sup> For an early report showing incomplete understanding, see Jonathan Jacobson, Shawn Marsh, and Pamela Winston, *State and Local Contracting for Social Services Under Charitable Choice: Final Report*, submitted to the Office of the Assistant Secretary for Planning and Evaluation, US Department of Health and Human Services (Washington, DC: Mathematica Policy Research, 2005), <https://www.mathematica.org/publications/state-and-local-contracting-for-social-services-under-charitable-choice>. In 2000, as part of a project tracking the consequences of the enactment of the initial Charitable Choice provision, a colleague and I sent out questionnaires that asked state officials whether they were adhering to the Charitable Choice rules when expending the covered federal funds. Based on their responses, the project could give passing grades to only a dozen of the states and territories. Stanley W. Carlson-Thies and Stephen Lazarus, *Charitable Choice Compliance: A National Report Card* (Washington, DC: Center for Public Justice, 2000).

President Obama’s Advisory Council on Faith-Based and Neighborhood Partnerships, *A New Era of Partnerships: Report of Recommendations to the President* (2010), Recommendation 3: Develop a strategy to partner with state, county, and city officials:

“The Office of Faith-Based and Neighborhood Partnerships and the Agency Centers should develop a strategy to communicate to State, county, and city officials the church-state standards that accompany the Federal funds that State and local governments award to nongovernmental organizations. The Office and Centers for Faith-Based and Neighborhood Partnerships should assist Federal officials who interact with State and local officials to understand and communicate the standards; collaborate with organizations of State and local officials (such as the National Governors Association and the National Association of Counties) to communicate the goals and rules of the Federal initiative; and expand and systematize their collaboration with State and local faith-based and neighborhood partnership offices and assist them in educating their government colleagues.

“An important part of the Office’s and the Centers’ communications and training strategy with secular and faith-based organizations should be to clarify that State and local officials award most Federal social service funding and to help those organizations connect with those State and local officials. Outreach and training events and publicity and guidance documents should stress that church-state standards accompany the Federal funds, and these efforts also help community groups identify and connect with State and local agencies that award Federal funds.”<sup>237</sup>

A significant number of states, cities, and counties instituted their own faith-based offices or designated faith-based officials during the years after Charitable Choice was first enacted and while the Bush and Obama administrations maintained a high-profile White House partnership Office and partnership Centers authorized for action.<sup>238</sup> After a decline and lull, such offices and officials are again being created and named, prompted in part by experiences such as Oregon’s and perhaps also by the renewed attention across the nation to addressing neglected needs and marginalized communities. Yet what I hear from these officials—this admittedly is very much an unsystematic sample—is that they are disconnected from the federal faith-based initiative, not knowing where to turn for guidance and information, not receiving much encouragement, not

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<sup>237</sup> President’s Advisory Council on Faith-Based and Neighborhood Partnerships, *A New Era of Partnerships*, 124.

<sup>238</sup> In 2008, more than thirty states and one hundred municipalities had faith-based offices or faith-based liaison officials. White House Office of Faith-Based and Community Initiatives, *The Quiet Revolution: The President’s Faith-Based and Community Initiative: A Seven-Year Progress Report*, ch. 5, “Taking Root Across America,” <https://georgewbush-whitehouse.archives.gov/government/fbci/text/qr5.html>.

finding federal support when officials at their own level misunderstand or ignore federal intentions and rules.

## **How to restore transformative energy**

Each of the three trends is in itself troubling, but they are troubling, too, as strong indicators of a declining transformative energy in the faith-based initiative. Troubling, because just that quality—strong, persistent, unwavering, transformative energy—is vital if the partnership vision is to be much more than only a fine ideal. And that is because, to repeat the point, government, and certainly the federal government, has strong preferences that conflict with the partnership vision and goal. It has a bias for secular partners, not faith-based ones; for larger volumes, greater dollar amounts, bigger grantees; for applicants that talk government talk and know exactly which phrases and explanations will please grant award committees; for long-familiar organizations in place of newcomers.

Barriers, whether facial or operational, that obstruct smaller, more religious, less professional, less connected organizations—such barriers when not continually being watched for and creatively battled will creep or rush back into place, no matter that the civil society organizations may offer in particular instances more effective help, can count on neighborhood trust, and might be more aligned with the beliefs, needs, and preferences of those to be served. Without continual watchfulness and ever-fresh inputs of positive energy, the arc of government policy will spring back to its convenient, default pattern of privileging larger and secular private providers.

What is missing and what is to be done? Responsibility for the lack of driving energy and for backsliding cannot be placed with the officials in the faith-based offices. It belongs with those above them—the president, chief executives of agencies, congressional appropriators—with all of the officials who set priorities, specify management goals,<sup>239</sup> allocate funds, determine staff sizes

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<sup>239</sup> Tevi Troy, who was a high-ranking official in the George W. Bush administration with responsibilities including the success of the faith-based initiative and management reforms, has reminded me that Bush made achieving goals of the faith-based initiative a part of his management agenda. The management agenda gave agencies specific

and responsibilities, use their authority to speed the mission of the partnership staff, or neglect to do so. A fundamental need is for the appointed secretaries of the key agencies, and not only the Centers in those agencies, to be committed to the partnership vision and to ensuring that agency policies and processes are hospitable to civil society organizations. After all, the purpose and effect of the faith-based initiative is to improve the effectiveness of the respective agencies' programs.

In the Bush administration, a President's Management Agenda (PMA) Scorecard was regularly updated to monitor agency progress in achieving key administration priorities. "Incorporating the faith-based initiative into the PMA did not attract the same press attention as its legislative strategy to increase tax credits, but it had deep and lasting impact on agency performance. For eight years of the Bush administration, cabinet secretaries were required to report regularly on their progress toward ending discrimination against faith-based groups and adding innovative programs." — Jay Hein, *Quiet Revolution* (2014).<sup>240</sup>

More authority, administrative power, and funds for personnel and operations are needed so that the officials in the White House Office of Faith-Based and Neighborhood Partnerships and the agency Centers for Faith-Based and Neighborhood Partnerships are able, *with more than only their own personal persuasiveness*,

- to educate federal and state officials about the vision, requirements, and value of partnerships and, at least as important, to counteract the persisting myths about the First Amendment's provisions;
- to appeal to the Attorney General and other Department of Justice officials mistaken or ungenerous interpretations of the freedoms due to faith-based organizations that may be insisted upon by an agency's legal and policy officials;
- to advocate on behalf of faith-based and community-based organizations that are denied fair opportunity;

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management targets such as greater participation by civil society organizations in federal funding and ensuring adherence to the Charitable Choice and Equal Treatment rules. See, e.g., Executive Office of the President, Office of Management and Budget, *The President's Management Agenda [FY 2002]*, January 16, 2002, government-wide initiative 6, "Faith-Based and Community Initiative," 35–38; and the archived Department of Justice webpage showing the Department's progress in achieving such goals, complete with red, yellow, and green indicators: <https://www.justice.gov/archive/ag/annualreports/ar2003/p2pma.htm>.

<sup>240</sup> Hein, *Quiet Revolution*, 24–25.

- to get program officials to engage in a creative reconsideration of how services are designed and delivered, to create civil society pilot projects, and to fairly assess the value of drawing on the particular capabilities of civil society organizations;
- to actively solicit complaints from smaller, newer, and more sectarian grantees and to persuade agency officials to respond constructively;
- to clearly and publicly explain the transformed church-state rules, highlighting not only the responsibilities but also the freedoms that belong to faith-based applicants and grantees;
- to engage with, equip, and encourage state and local faith-based offices and officials; and
- to perform, as they believe are needed, partial or complete audits of programs, policies, and rules and to recommend necessary reforms.

Without such authorization, without access to additional staff and operational resources, without strong backing from the top, partnership officials have little opportunity to be the change agents they are meant to be. Instead, they are dragged down into a caretaker role—extending invitations more widely but for participation in a system that is not that much more hospitable; making it easier, but mainly only for organizations already known and engaged, to access funding; helping programs and the grants system operate more efficiently but not much more creatively and effectively.

Most important is authorization for partnership officials and offices to be absolutely and resolutely clear about the equal eligibility of faith-based organizations for federal funding and about the institutional religious freedom protections that must be accorded them. Program, policy, and legal officials need clarity, and clear and accessible information needs to be communicated to religious applicants and grantees. The First Amendment requires this. It is imperative, as well, because of how important religion is to so many providers and to so many who need assistance.

To achieve its promise, the faith-based or partnership initiative requires consistent practice of the reversed church-state rules, but it also requires new vigor in transforming the grants system. In a scathing critique of the “unchecked”—we can say, unreformed—“contractor state,” John J. DiIulio Jr. recently detailed the excessive and corrupt access of large, conventional, lobbyist-rich

companies and nonprofit organizations to federal funding. But “[m]eanwhile,” he writes, “small community-serving nonprofits, most notably street-level urban faith-based organizations, typically get either nothing or get federal grant or contract crumbs as subcontractors or secondary vendors for both religious and secular nonprofits with multimillion dollar annual budgets.”<sup>241</sup> That is a sad, heartbreaking observation, nearly a quarter century after President George W. Bush launched the federal faith-based initiative in 2001 and more than a quarter century after President Bill Clinton for the first time signed the Charitable Choice provision into law, in 1996.

Faith-based or partnership officials and offices need to be empowered with

- more staff, more resources;
- more authority to challenge their colleagues’ routines and presumptions;
- greater reform authority; and
- expanded transformative power.

## **Conclusion: A heartening policy commitment reveals a disheartening reality**

On September 12, 2023, Administrator Samantha Power of the US Agency for International Development (USAID) unveiled a new Biden administration policy on federal collaboration with faith-based organizations. USAID’s new “strategic religious engagement policy” is detailed in the document she announced, *Building Bridges in Development*.<sup>242</sup> The new policy is a commitment by USAID to expand its partnerships with US faith-based relief and development organizations and with overseas faith communities and religious leaders.

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<sup>241</sup> John J. DiIulio Jr., “The Real Deep State,” *American Purpose*, October 13, 2023, <https://www.americanpurpose.com/articles/the-real-deep-state/>.

<sup>242</sup> USAID, *Building Bridges in Development: USAID’s Strategic Religious Engagement Policy* (Washington, DC: USAID, September 2023), [https://www.usaid.gov/sites/default/files/2023-09/USAID-Strategic-Religious-Engagement-Policy-9-6-23\\_1.pdf](https://www.usaid.gov/sites/default/files/2023-09/USAID-Strategic-Religious-Engagement-Policy-9-6-23_1.pdf).

In announcing the policy, Administrator Power quoted Madeleine Albright, Secretary of State in the Clinton administration, who said, “Religion is a large part of what motivates people and shapes their views of justice and right behavior, [and] it must be taken into account.” Powers added,

In my travels to the communities that we serve around the world, I have seen how faith-based leaders are often the most trusted and effective changemakers in their communities. I've witnessed their unique ability to draw from wide networks to convene important, difficult conversations, to bring people together and to inspire action. And I've seen how during times of crisis, which sadly there are too many of these days, they are often the first to arrive and the last to leave. Many have committed their lives to fighting for justice and caring for those with the greatest needs. Grounded in the principles of their faith and living out their religious conviction in a way that uplifts humanity and inspires us all. And when we partner with these changemakers, the results can be extraordinary.<sup>243</sup>

As Power also noted, USAID has always carried out its work in partnership with US and overseas nonprofit organizations and local communities, including faith-based organizations and houses of worship. The goal of the new policy is to strengthen such partnerships so that the federal government's efforts to aid people and communities can be more effective. To that end, the policy incorporates two key reforms, one internal to USAID and the other involving communications between the agency and faith-based organizations and religious communities.

The internal reform is to assure, instruct, and train USAID staff not only that the agency *may enter into collaborations* with religious organizations and communities but also that it *must not avoid such collaborations* due to misinterpreting or ignoring constitutional principles and federal

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<sup>243</sup> USAID, “Administrator Samantha Power at the Launch of USAID's First-Ever Strategic Religious Engagement Policy,” September 12, 2023, <https://www.usaid.gov/news-information/speeches/sep-12-2023-administrator-samantha-power-launch-usaids-first-ever-strategic-religious-engagement-policy>.

church-state rules. Faith-based organizations are as welcome as their secular counterparts to work with USAID and are equally eligible to compete for federal funding.

The communications reform is to spread that same message outward. USAID staff and publications must more vigorously and clearly convey to faith-based organizations and to religious communities that USAID values their work of serving their neighbors and their social impact and that it desires to strengthen its collaboration with them. This must be active communication: not simply having an open door but creating ways to communicate about that open door to communities, leaders, and organizations that have thought they were excluded.

These religion-specific actions go along with two fresh USAID emphases. One initiative, which stretches back to the Trump administration, as does this new religious engagement policy, is to simplify USAID rules and processes so that smaller organizations and those new to collaboration with government are not defeated by the very complexity and burden of government requirements. The other is a stress on the “co-creation” of programs by USAID in partnership with local organizations so that federal funds can support activities that spring from and take into account local knowledge, local assets, and local goals.

All of this is positive news, promising more effective USAID assistance because of stronger and more effective collaboration between USAID, with its many resources, and faith-based organizations, domestic and abroad. Yet this new religious engagement policy is disheartening as well as encouraging:

- It is *encouraging* because this is what every government agency must do: not only end every policy that discourages engagement with and support of faith-based organizations and religious leaders but also actively design ways to partner with such organizations and leaders even as it builds connections with nonreligious organizations and leaders.
- It is *disheartening* because exactly such a policy of religious engagement supposedly has been the policy of every federal agency for more than two decades!



By adopting Charitable Choice rules as part of federal welfare reform in 1996, Congress and the Clinton administration set a new path for the federal government of equal access to funding for faith-based and secular providers. In inaugurating in 2001 the White House Office of Faith-Based and Community Initiatives and its counterpart faith-based Centers in various federal agencies, President George W. Bush committed the whole federal government to a new era of partnerships with faith-based as well as community-based organizations to correct the conventional government bias of favoring secular providers. That Bush policy—a White House commitment and officials, Charitable Choice and Equal Treatment regulations, agency commitments and Centers, reforms to the grants process and innovative new programs—has been maintained by subsequent administrations, both Democratic and Republican.

That USAID, more than twenty years later, has had to create a new religious engagement policy, admitting that its own staff and many of the organizations it would like to partner with do not grasp that federal collaboration with religious organizations is constitutionally required and is already the stated federal policy, demonstrates the urgent need for the federal government swiftly to learn how better to walk the talk of its two-decade commitment to the faith-based initiative.

## **Coda**

City Hope is a downtown San Francisco anti-poverty program created by City Church, an evangelical congregation. It provides free meals via a restaurant, coffee shop, and food delivery service; a residential facility for recovering addicts; and employment training, including soft skills development. Deep respect, “radical hospitality,” and “dignified transformation” are key values. Among the many organizations from which it draws volunteers is Congregation Emanu-El. They operate the City Hope café on Sunday mornings, supplying to it deli food for free. City Hope is supported by private donors and volunteers and receives no government funds.

But should it receive government support for its services to the hard-to-employ? Should it be a partner with government employment programs? Michael Bernick, former director of the California Employment Development Department and a City Hope volunteer from

Congregation Emanu-El, notes, “There are City Hopes in all major cities and in many suburbs and small towns: faith-based enterprises feeding the hungry and ministering to the addicts, ex-offenders and the mentally ill.” They excel in mentoring and encouragement, in helping people remain faithful to their responsibilities, in making employment referrals through their networks, in building the confidence and motivation of people who have been outside the workforce. These are not strengths of the conventional, government-funded workforce development system.

“Over the years,” Bernick says, “there have been multiple attempts to integrate these groups, and the religious entities they are connected to, into the government system of job training.” The services they provide, their approach, is not a substitute for the job placement staff of government agencies and large private groups funded by government but their way adds something essential that is missing in the conventional programs. He asks, “Why not bring [programs like City Hope] more fully into the workforce conversation?”<sup>244</sup>

Yes. Why not? But for such partnerships to happen in a sustained way, there must be a creative, energetic, and transformative faith-based initiative at the federal, state, and local government levels. Great innovations have been made. More innovation is vital.

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<sup>244</sup> Michael Bernick, “God’s Tender Mercies’: A Faith-Based Jobs Strategy,” *Forbes*, June 27, 2023, <https://www.forbes.com/sites/michaelbernick/2023/06/27/gods-tender-mercies-a-faith-based-jobs-strategy/?sh=7fd1ac95389e>; *City Hope Annual Report FY 2022–2023*, [https://www.cityhopesf.org/uploads/1/1/4/6/114680485/ch\\_ar2023\\_single\\_page.pdf](https://www.cityhopesf.org/uploads/1/1/4/6/114680485/ch_ar2023_single_page.pdf).