

Charitable Choice: First Results from Three States



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FAITH-BASED SOCIAL SERVICE PROVISION UNDER CHARITABLE CHOICE: A STUDY OF IMPLEMENTATION IN THREE STATES

This project is made possible by support from the Ford Foundation and is being conducted by the Center for Urban Policy and the Environment (Center). The study involves an in-depth evaluation of the implementation of the Charitable Choice provisions of the 1996 welfare reform legislation over the course of three years in three states—Massachusetts, North Carolina, and Indiana. In addition to evaluating the comparable efficacy of secular and faith-based providers, the study focuses on three elements critical to the success of implementation. These include the capacity of faith-based organizations to deliver and states to monitor the identified services; constitutional and fiscal accountability for resources, outcomes, and processes; and adherence to First Amendment boundaries between church and state.

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EXECUTIVE SUMMARY

The Charitable Choice provisions of the 1996 welfare reform legislation, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), introduced a major shift in the relationship between government and religious, or “faith-based,” human and social service organizations (FBOs). While federal, state, and local governments have all contracted with religious social service providers for many years, Charitable Choice legislation encourages government agencies to make greater use of such organizations—and to contract directly with those considered “pervasively sectarian”—to provide a broad array of social services.

The legislation was premised upon three assumptions:

- that the faith community contained significant untapped resources;
- that FBOs had encountered unnecessary barriers to partnerships with government agencies; and
- that FBOs are more effective service providers than secular organizations.

This research is an effort to test those assumptions.

The project, made possible by the Ford Foundation, involves an in-depth evaluation of the implementation of the Charitable Choice provisions of PRWORA over the course of three years in three states—Massachusetts, North Carolina, and Indiana. In addition to evaluating the comparable efficacy of secular and faith-based providers (the first such study of which we are aware), the study focuses on three elements critical to the success of implementation:

- the capacity of FBOs to deliver and states to monitor the identified services;
- constitutional and fiscal accountability for resources, outcomes, and processes; and
- adherence to First Amendment boundaries between church and state.

This report includes preliminary results based on two years of investigation, data collection, and analysis.

Selected highlights from report findings include:

- State approaches to Charitable Choice differ substantially. Indiana engaged for-profit consultants to assist with active recruitment of FBOs. North Carolina used a statewide nonprofit organization to contract for and manage a series of demonstration projects. Massachusetts, which had revamped its procurement system in 1995, took the position that the reforms incorporated at that

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time were sufficient to bring the state into compliance with Charitable Choice legislation.

- In all three states, relatively few new faith-based providers have become government contractors. Many religious organizations continue to be wary of partnering with government, or continue to have difficulty entering the system.
- Analysis of secondary data reveals that faith-based job training and placement services are somewhat less effective than those of secular organizations.
 - Faith-based and secular providers have the same rates of placement into jobs, and those jobs offer similar hourly wages.
 - Clients of the faith-based providers work substantially fewer hours per week and are less likely to be offered health insurance.
 - Providers in only one state were studied, and these conclusions say nothing about the comparative efficacy of other types of social service provision.
- Neither the original Charitable Choice legislation, nor the faith-based initiatives that followed it, defined “faith-based.” Accordingly, the research team developed a typology that distinguishes among religious organizations and between secular and religious providers. Among organizational findings:
 - The organizational networks of providers with a strong faith influence were weakest.
 - Strongly faith-influenced providers increased their community involvements and altered their relations with other organizations as a result of their partnership with government.
 - Fifty-seven percent of strongly faith-influenced organizations report that contracting with the state affected their mission. Sixty-seven percent say that contracting with government has led to other community involvements.
 - Strongly faith-influenced organizations are somewhat more community-based, serving their own neighborhoods and areas of the city.
 - Moderately faith-influenced organizations face fewer management challenges than either secular or strongly faith-influenced organizations.
- Congregational leaders lack the constitutional knowledge and competence to assure constitutionally appropriate program implementation, and states lack



the resources to monitor for constitutional violations. Congregational leaders averaged a score of 66 percent on a simple questionnaire testing constitutional knowledge. Sixty-seven percent of respondents did not know that tax dollars cannot pay for religious activities like prayer and bible study.

It would be a mistake to draw broad conclusions about Charitable Choice laws from this limited research project. Nevertheless, the findings to date raise issues that should be addressed in future efforts at implementation, and point to areas requiring further research.





INTRODUCTION

Federal “Charitable Choice” statutes have been enacted in recent years in an effort to encourage state and local governments to contract with faith-based organizations (FBOs) for the delivery of social services. The first such law was passed in 1996 as a little-noted provision (Section 104) of The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), the landmark welfare reform legislation that dramatically changed the face of public assistance in the United States (see Appendix A). Section 104 allows faith-based service providers to use religious criteria when hiring staff, maintain religious symbols in areas where programs are administered, and use faith-based concepts in providing services. Clients have a right to an alternative secular provider and may not be forced to participate in religious observances or services to receive services. Public funds may not be used for purely sectarian activities, such as worship, instruction, or proselytizing.

Historically, significant funds have gone to social service providers affiliated with and informed by the religious precepts of FBOs, and government funds have always followed individual hospital patients and nursing home residents to religious facilities. However, inherently or “pervasively” sectarian religious organizations were ineligible to receive public funds prior to 1996. In a major departure from prior practice, Section 104 encouraged government agencies to partner directly with sectarian organizations, including those considered “pervasively sectarian,” to provide a wide array of social services. Charitable Choice provisions subsequently have been added to Welfare-to-Work legislation, the Community Services Block Grant Program, the Substance Abuse and Mental Health Services Administration’s drug treatment programs, and the Children’s Health Act, and President Bush has made a “faith-based initiative” a priority of his administration.

All of the Charitable Choice legislation is predicated upon three assumptions:

1. that religious providers have been discriminated against—that they have encountered barriers not required by the First Amendment to their full participation in the contracting process;
2. that the faith community contains significant untapped resources that might, with encouragement, be marshaled to help the poor; and
3. that FBOs are more effective than their secular counterparts—that they do a better job at less cost.

No reliable research data supported these assumptions. Perhaps the best investigation to date of the relationships between religious providers and government is detailed in Stephen Monsma’s book *When Sacred and Secular Mix* (1996).

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Monsma found little evidence of discrimination; indeed, he found that FBO contractors on average had less trouble with government monitoring than did secular nonprofits. Evidence of untapped congregational resources has been called into question by Mark Chaves in *Religious Congregations and Welfare Reform: Who Will Take Advantage of Charitable Choice* (1999). Chaves concluded that it is unrealistic to expect an increase in the relatively small number of congregations providing social services. Chaves found that only 12 percent of American congregations operated such programs under their own auspices in 1998, and the programs they typically engage in are those that address immediate, short-term needs. While congregations are adept at mobilizing small groups of volunteers to conduct well-defined, periodic tasks, they are less able to mount programs requiring sustained involvement and long-term goals. With respect to the comparative efficacy of secular and faith-based service providers, there is simply no data at all. FBOs may be more effective providers of social services, but no credible research exists either to prove or disprove that thesis.

Faith-Based Social Service Provision under Charitable Choice: A Study of Implementation in Three States, the study from which this interim report is drawn, is a three-year research project being conducted by the Center for Urban Policy and the Environment and made possible with support from the Ford Foundation and the preliminary assistance of the Indiana Family and Social Services Administration, the Joyce Foundation, and the Indiana University Center on Philanthropy. The study is an attempt to generate data on social service provision by faith-based organizations under the original Charitable Choice law, Section 104 of PRWORA, and to provide a baseline for further research. While limited to analyzing human services delivery under PRWORA's Temporary Assistance to Needy Families (TANF) block grant program, the study's findings may shed light on social service provision under other Charitable Choice statutes, and inform efforts to implement President Bush's Faith-Based Initiative through the White House Office of Faith-Based and Community Initiatives.

The Study: An Overview

The project is an evaluation of program implementation over the course of three years in three states—Massachusetts, North Carolina, and Indiana. These states have responded differently to the enactment of Section 104, have taken different approaches to implementation, and represent different stages of development with respect to Charitable Choice initiatives.



Specific research goals of the project include:

- investigate and describe how states choose to work with FBOs;
- compare the relative successes and costs of services provided by FBOs and traditional social service providers:
 - measure outcomes, including whether clients who participate in FBOs programs hold jobs longer, make more money, and/or stay off public assistance longer; and
 - analyze variables that might account for discrepancies in performance—and if such discrepancies are found, look at differences in state implementation strategies, client population, and similar factors that might be expected to affect performance;
- analyze the capacity of FBOs to bid for and manage contracts and the capacity of states to monitor the identified services:
 - examine how states define FBOs and measure their capacity to perform, e.g. minimal requirements for staff; legal, accounting and informational resources; and ability to absorb the transaction costs associated with government contracting;
 - examine efforts by the states to develop and enhance the institutional capacity of small FBOs; and
 - analyze the capacity of the states to initiate and sustain appropriate management of these contracts;
- investigate the constitutional and fiscal accountability of both organizations and state agencies for resources, outcomes, and adherence to First Amendment boundaries between church and state; and
- study the effects of government contracts on organizational behavior, including fiscal and other burdens as a result of government reporting requirements and dependency on public funding.

These dimensions of Charitable Choice are being investigated from various perspectives: that of the consumer/client, the provider organizations, and the state. Because neither Section 104 nor subsequent Charitable Choice provisions defined “religious” or “faith-based” organizations and because so many religious providers have a long history of collaboration/contractual relations with government, one of the first challenges of the study was determining how to define “faith-based” for purposes of program implementation and analysis. The typology that we ultimately developed is included in Chapter 5.



During the two years we have devoted to this research thus far, national interest in the subject has grown exponentially. Transformed from a minor provision in a welfare reform bill to a major presidential initiative, Charitable Choice has engendered heated debate among policymakers, pundits, and scholars alike. Unfortunately, the great preponderance of that debate has been driven by ideology rather than research. We are issuing this interim report in an effort to redirect that focus by sharing what we have learned to date.

This Interim Report

In the following pages, we describe what the three states in our study have done to implement Charitable Choice, and we share our preliminary findings about client outcomes, organizational impacts, and constitutional compliance. **These are preliminary outcomes.** They are suggestive, but by no means conclusive. Indeed, even with the additional data to be gathered during our final project year, our study may well raise more questions than it will answer. Ours may be the first word on some of these questions, but it assuredly will not be the last.

This report is divided into three parts. The articles in Section I (beginning on page 9) are descriptive. The three articles in Section I describe the experiences of the three states chosen for inclusion. Those states—Massachusetts, North Carolina, and Indiana—were chosen because they brought very different political and religious cultures to the interpretation of the legislation, and thus promised to be more broadly representative of the nation at large than a single state or states from a single region. Massachusetts is a politically liberal state with a strong Catholic influence. North Carolina is a conservative state where Baptists are the dominant religious group. Indiana is also relatively conservative, but no single religious denomination predominates. Not surprisingly, these states took very different approaches to Charitable Choice; as a result, it was not possible to prescribe a template, or uniform outline, for the state reports that follow. The authors did consider—and address—common questions: What was the contracting culture of the state prior to 1996? What was the level of participation by religious providers? How did state officials responsible for TANF services interpret and apply the 1996 Charitable Choice legislation? What effort, if any, has been made to encourage FBOs to bid for government contracts? What effect, if any, has there been on the rate of participation by FBOs in the provision of social welfare services? How did the state's history and political organization affect its approach to implementation?

Section II (beginning on page 55) contains the results to date of the empirical portions of the study. Three areas lent themselves to empirical analysis: comparative



efficacy of faith-based and secular social service providers; the effect of government contracting on congregations and other small FBOs; and the capacity of such organizations to deliver services in a constitutionally appropriate fashion. Due in part to budgetary and personnel considerations and in part to Indiana's greater effort to recruit new FBOs, empirical investigations were limited to providers operating in Indiana, where we were also extremely fortunate to have the full cooperation of Indiana's Family and Social Services Administration.

In Indiana, efforts to recruit FBOs were focused primarily on job training and placement providers, thus the report on comparative efficacy of faith-based and secular providers is based upon, and limited to, a comparison of such job training and placement providers. We compared only objective outcomes, asking such questions as: What percentage of clients was placed? What were their earnings? How many received employment benefits?

The second empirical report (beginning on page 65) addresses the experiences of the providers. While larger, organizationally sophisticated religious contractors have been a fixture of government-funded social services for decades, it is generally understood that Charitable Choice initiatives are targeted to smaller, more grass-roots faith providers. We wanted to analyze the effect of government contracting on such organizations: Did they experience "mission creep"? Were they able to manage cash flow? Were they able to handle the paperwork involved? Did they feel pressured to change their program contents? How did they perceive their relationships with state officials?

The final article in Section II (beginning on page 87) begins with a brief analysis of the First Amendment raised by Charitable Choice legislation, and reports the results of a survey gauging the "constitutional competence" of religious congregations, assessing whether leaders of these organizations possess sufficient understanding of First Amendment requirements to administer government-funded programs in accordance with those requirements.

In Section III (beginning on page 93), we tie the disparate elements of this report together and draw some preliminary conclusions from our analyses thus far.

Finally, it should be emphasized that this is an **interim** report. The contributions that follow are by different researchers who are at different stages in their analyses. There is a significant amount of work yet to do, and some of what follows will be "fleshed out" in forthcoming journal publications and in a final report. We offer these preliminary results at this time in the hope that, even though incomplete, our research to date can help others who are beginning similar inquiries. Whatever the merits or flaws of Charitable Choice policies, one salutary outcome is already evi-



dent: an increase in scholarly attention to the capacities and roles of faith-based organizations in the complex web of American social service provision. This publication is our preliminary contribution to that effort.



Section I

Descriptive Reports





INTERIM REPORT ON THE IMPLEMENTATION OF CHARITABLE CHOICE IN MASSACHUSETTS

Abstract: *Massachusetts has neither altered its policies and procedures nor dedicated special resources to faith-based initiatives since the enactment of Section 104. Key aspects of the policy environment are hospitable to Charitable Choice, including the commonwealth's centralization of authority for public welfare, its staunch commitment to welfare reform, its heavy reliance on nongovernmental contractors for the performance of public functions, and its long history of contracting with faith-based organizations for the provision of social services. However, Massachusetts officials interpret Section 104 simply to guarantee that religious organizations have equal rights to compete for state contracts. Because faith-based organizations are not perceived to have suffered discrimination or to have been disadvantaged by procurement processes in the past, affirmative action is not believed to be warranted. Massachusetts continues to focus upon the capacity rather than the identity of social service providers, a practice rooted in its extensive (and ongoing) experience in implementing public welfare programs through a vast network of contractors, often under federal oversight.*

The next phase of our study will involve an in-depth examination of the public-private partnerships through which Massachusetts implements the TANF-funded Young Parents Program (YPP), an alternative education program serving pregnant and/or parenting welfare recipients aged 14 to 22 who have not yet earned a high school diploma or its equivalent. Because services are provided by an array of governmental and nongovernmental, faith-based and non-faith-based contractors, the YPP program provides a fertile ground for assessing procurement procedures, client pathways to service, variations in program content and performance, and oversight mechanisms.

The Implementation Environment in Massachusetts

When Section 104 became federal law in 1996, the political and policy environment that existed in Massachusetts arguably was amenable to its terms. To begin with, a majority of state officials already had made a staunch commitment to welfare reform despite intense public debate and resistance from liberal and progressively inclined citizens. Well ahead of congressional and presidential action, the Massachusetts legislature had enacted comprehensive legislation in February 1995 that was hailed widely as “one of the most sweeping welfare reform bills in the nation.”¹ Relying upon waivers from the U.S. Department of Health and Human Services, the legislation (Chapter 5 of the Acts of 1995) transformed the 60-year-old federal/state entitlement program Aid to Families with Dependent Children (AFDC) in the commonwealth into Transitional Aid to Families with Dependent Children (TAFDC). In its benefit cuts, work requirements, strict time limits, family caps, requirements for pregnant and parenting teens, and sanctions, Massachusetts's new welfare program anticipated many of PRWORA's key features. Republican Governor William Weld, members of his staff, legislators, and officials from the state Department of Welfare had spent years working toward consensus on the shape of welfare reform, and they were determined to transform a system that fostered dependency into one that promoted self-sufficiency (Buis, 1998, p.1). Reflecting their intention of changing both the culture of the welfare bureaucracy and the

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¹ Radical changes in welfare enacted in Massachusetts, *Los Angeles Times*, February 11, 1995.



expectations of welfare recipients, the Department of Welfare was renamed the Department of Transitional Assistance. The commonwealth's goals for welfare reform were clear and consistent in 1996, and congruent with new federal welfare policy.

Massachusetts also evinced a strong commitment to privatization in the form of contracting out when Section 104 was enacted in August 1996. Since the late 1960s, when the state took over responsibility for the administration of public assistance from local welfare offices, Massachusetts increasingly has relied upon non-governmental entities to deliver publicly funded programs and services. According to former governor Michael Dukakis, privatization held the potential of cost savings, but the commonwealth began contracting out human service programs because there was a sense "that large institutions had failed, that there was a need to get out from under civil service requirements in order to allow some program experimentation, and that putting people in community settings might work better" (cited in Wallin, 1997, p.12). Massachusetts leaders indeed viewed the purchase of services as a means of "protecting the promise of community based care" (Commonwealth of Massachusetts, Senate, 1986).

Between 1971 and 1988, the cost of the commonwealth's purchase of service agreements with nonprofit agencies soared from \$25 million to \$850 million (Smith & Lipsky, 1993, p. 6), and further expansion of the commonwealth's contracting regime was a high priority of the Weld administration in the early- to mid-1990s. Because Governor Weld's privatization initiative was rooted in anti-public employee and anti-public sector union imperatives in addition to traditional Republican anti-big government, fiscal conservatism, it ran into serious opposition in the Democratic-controlled legislature (Wallin, 1997). Massachusetts legislators nonetheless took the practice of contracting out seriously enough to enact a bill regulating privatization decisions in 1993. Procurement reform legislation followed in 1996. The goal of the procurement reform legislation was to make it easier for a broader range of organizations and firms to find out about contracting opportunities, and for new vendors to engage successfully in competitive bidding to become state contractors. As was the case with welfare reform, the commonwealth's orientation toward privatization in the form of contracting out was clear and consistent when Section 104 was enacted, and in line with federal policy.

In addition, the commonwealth's contracting in the area of public assistance historically had been marked by the presence of faith-based organizations as social service providers. Bidding and contracting by religious providers was already business as usual in 1996. This almost certainly reflects the politically and theologically liberal disposition of the Massachusetts faith community—a disposition that



inspires congregations and religious organizations to engage in social involvement rather than close themselves off to the larger world (Chaves, 1999). Massachusetts shelters, youth programs, and employment and training programs for welfare recipients have long been run under the aegis of purchase of service agreements by such organizations as Catholic Charities, the Jewish Vocational Service, and the Salvation Army. As of May 2000, the Department of Transitional Assistance (DTA) had contracts with 30 different FBOs.²

Both the commonwealth's colonial origins and more recent immigrant influences have contributed to the religious landscape of contemporary Massachusetts (Kosmin & Lachman, 1993), where a recent trend has been increased relations between organized religion and the secular community (Demerath & Williams, 1992). As is also the case in Rhode Island and Connecticut, Catholics hold a large denominational majority in Massachusetts. In 1990, almost half of the state's residents, or 49 percent, were Catholic, followed by Jews (5 percent), members of the United Church of Christ (2 percent), Episcopalians (2 percent), and members of the United Methodist Church (1 percent), the American Baptist Church (1 percent), and the Unitarian Universalist Society (1 percent).³ Catholic Charities, the largest provider of contracted social services in the state, has been a force in shaping welfare policy in Boston since the early nineteenth century (Brown & McKeown, p. 57).

Another factor that was amenable to the implementation of Section 104 after its enactment in 1996 was the commonwealth's centralization of policy authority at the state level. Unlike most states outside of New England, where county governments have considerable influence over the details of public policy, Massachusetts has no functional county government. Larger cities and towns play important roles in social provision, but authority and responsibility for social service contracting, for the implementation and administration of state and federal public assistance programs, and for policy evaluation lie at the state level. Even "local" welfare offices are run by the commonwealth: the DTA maintains 33 regional offices, to which Massachusetts residents in need of aid must go to apply for federal or state benefits.⁴

It would be an exaggeration to say that there is strict "top-down" control over welfare policymaking and implementation in Massachusetts. However, the degrees of decentralization and institutional complexity present in the commonwealth—factors critical to goal congruence and the achievement of policy objectives (Meyers, Riccucci, & Lurie, 2001), are lower than those found in many other states. The DTA is the primary agency responsible for administering and overseeing the state's TANF block grant. Massachusetts utilizes the bulk of its TANF funds (\$459.4 million annually from FY 1998 through FY 2002) to provide income assistance (TAFDC), employ-

² Communication from Paul O'Brien, Department of Transitional Assistance legislative liaison, May 31, 2000.

³ Calculated from data at the American Religion Data Archive retrieved from <http://www.thearda.com/arda.asp?Show=home> and from the U.S. Census Bureau Web site retrieved from http://factfinder.census.gov/servlet/BasicFactsTable?_lang=en&_vt_name=DEC_1990_STF1_DP1&_geo_id=04000US25

⁴ The distance between these offices, already problematic from the perspective of the welfare client, is growing as welfare rolls shrink and the DTA offices accordingly are closed.



ment services, emergency shelter and rent, transportation support, child care, work subsidies, and employment and training programs. State maintenance of effort (MOE) monies, another \$358.9 million annually, fund the same functions as well as a state-level Earned Income Tax Credit and supplemental income assistance and food stamp programs (STAFDC and SSFSP) for noncitizen families with children with few assets and little or no income (Commonwealth of Massachusetts, 2000). In FY 2001, the commonwealth collected \$30.6 million dollars in TANF high-performance bonus awards in addition to its annual grant. The DTA spends almost \$1 billion per year in contracts for social services.

The Implementation of Section 104 in Massachusetts

Our study of Charitable Choice commenced in late 2000. At that time, three reports had been disseminated that analyzed Charitable Choice's implementation in Massachusetts during the first three years after Section 104's enactment. In the briefest of these reports, the Center for Public Justice (CPJ), a Washington organization, gave Massachusetts a grade of "F" for "fall[ing] short on compliance with Charitable Choice" (Center for Public Justice, 2000). According to the author of the CPJ's 50-state Charitable Choice "compliance report card," Director of Social Policy Studies Stanley Carlson-Thies, the implementation of Section 104 in Massachusetts was barred by legal impediments.⁵ The commonwealth thus was cited as one of a number of states that "mistakenly claim Charitable Choice is an option they can ignore" (Center for Public Justice, 2000).

Massachusetts also received poor marks in a report written by Amy Sherman (2000) of the Hudson Institute, which attempted to catalog new collaborations between government and FBOs in nine states. Massachusetts was the only one of the nine states Sherman studied in which no "enthusiasm" for Charitable Choice could be detected, and in which welfare reform had not yet "begun to recast the relationship between government welfare bureaucracies and the faith community" (Sherman, 2000, p. 17). Sherman concluded that "much remain[ed] to be done to bring government administrative procedures and procurement policies into sync with the letter and spirit of Charitable Choice" in all of the states (Sherman, 2000, p. 2).

Finally, in a more detailed study of Charitable Choice co-authored by a former state employee and a member of the clergy, Charitable Choice was declared to be an "untapped resource" in Massachusetts (Wubbenhorst & Hurt, 1998). According to Wubbenhorst and Hurt, no "so-called Charitable Choice partnerships" had developed in the commonwealth since the enactment of Section 104. Nor had existing partnerships between FBOs and government undergone "any significant changes . . .

⁵ Remarks at the Charitable Choice Research Project Meeting of Advisory Panels, Indiana University—Purdue University Indianapolis. January 19, 2001.



as a result of Charitable Choice” (Wubbenhorst & Hurt, 1998, p. 1). Wubbenhorst and Hurt blamed this “lack of Charitable Choice activity” upon the sophistication of Massachusetts’s procurement system, the maturity of its social services market, and the underdeveloped state of the faith community’s social service ministries, particularly in urban areas.

The existence of a seemingly hospitable policy environment coupled with these uniformly negative reports framed the initial line of inquiry in our study of the implementation of Charitable Choice in Massachusetts. How, if at all, did the commonwealth react to the enactment of Section 104? What was its official response to the original charitable choice legislation? How did it implement Section 104?

Tracing the implementation of Charitable Choice in Massachusetts is a challenging task. Unlike the situation in the other two states under investigation in our study, Indiana and North Carolina, Massachusetts has not put any new policies or programs into place specifically in reaction to Section 104. Faith-based initiatives were not a policy priority of either former Governor A. Paul Cellucci or of Acting Governor Jane Swift. There are few legislative or administrative records to follow. Nor do media accounts reveal much, if anything, about the commonwealth’s formal reaction to Charitable Choice.

Interviews were conducted with state officials both before the election of George W. Bush in November 2000, and after President Bush took office in January 2001, when his proposal to “rally the armies of compassion” became front-page news. In early interviews, the phrase “Charitable Choice” was unfamiliar to most Massachusetts officials. When asked about contracting FBOs, however, they uniformly responded that the state “already did that.” For example, Ellie Giannini, former director of contracts and recoveries at the Department of Transitional Assistance, said that the commonwealth “always has contracted with faith-based organizations” — or at least always had done so in her 13 years as a state official. She reported that “major changes” had occurred “on many fronts” with respect to the TANF program since PRWORA was enacted in 1996, “but not with respect to contracting with faith-based organizations.”⁶

⁶ Telephone interview with the author, May 31, 2000.

Massachusetts officials became far more conversant with the term “Charitable Choice” once President Bush’s faith-based initiative was unveiled as the centerpiece of his domestic policy agenda. Their new familiarity with the term did not, however, alter their response when they were asked about social service contracting with FBOs under TANF. They routinely described the practice of awarding social service contracts to FBOs by means of a competitive bidding process as “nothing new.” According to staff members at both the Department of Transitional Assistance (DTA) and the Operational Services Division, the state agency in charge of procurement,



proposals from FBOs have always been welcome. Like proposals from other agencies and organizations, some have resulted in contract awards and some have not, both before and after Section 104's enactment.

In contrast to the situations in Indiana and North Carolina, the commonwealth has taken very little action as a direct consequence of Section 104. The Charitable Choice provision did inspire former DTA Commissioner Claire McIntire to pay a visit to the Black Ministerial Alliance in the late 1990s to talk about potential contracting opportunities. Beyond that visit, however, state officials have done little else. No particular effort has been made to recruit FBOs as social service providers. No special technical assistance program has been devised for them, nor is there a designated person within the DTA to whom FBOs interested in contracting are directed to turn. Nor have the state's procurement processes been changed. According to Edward Sanders-Bey, DTA assistant commissioner for policy and program management, Massachusetts "is not doing very much to try to bring in new faith-based organizations" because "the door has always been open."⁷ William Bell, DTA assistant commissioner for administration and finance, concurs. Given that faith-based organizations historically have played significant roles as social service contractors, the state does not feel obligated "to do anything affirmative."⁸

This includes changing the terms of Massachusetts statutes governing welfare policy and procurement. At least on the face of it, there are no legal impediments to Charitable Choice in Massachusetts. There are no identifiable constitutional, statutory, or regulatory bars, at least as far as the delegation of governmental functions to FBOs via purchase of service agreements per se is concerned. According to Assistant Attorney General Johanna Soris, the staff of the Attorney General's Office discussed Section 104 and found no discrepancies between its terms and Massachusetts law.⁹ Assistant Commissioner Edward Sanders-Bey likewise reports that the DTA's legal staff has studied Section 104 and is satisfied that the commonwealth is in full compliance with the TANF program's Charitable Choice provisions.¹⁰

Clearly, there is a considerable gap between the commonwealth's view of its implementation of Section 104 and the views of its critics. This gap is explained by major differences in statutory interpretation, both with respect to the legal requirements of Section 104, and to the definition of a "faith-based organization."

Massachusetts officials understand the legal requirements of Section 104 as simply to guarantee FBOs the right to compete for state contracts. They interpret the Charitable Choice statute to constitute a commitment to equal access in procurement processes: what Senator John Ashcroft, Charitable Choice's original sponsor, metaphorically termed a "level playing field." State officials assert that they were

⁷ Interview with Edward Sanders-Bey, May 17, 2001.

⁸ Telephone interview with the author, January 9, 2002.

⁹ Telephone interview with the author, January 3, 2002.

¹⁰ Interview with Edward Sanders-Bey, May 17, 2001.



committed to a level playing field with respect to social service contracting long before Section 104 was enacted. As evidence of this, they point to the fact that the DTA's social service contracting is governed entirely by general state laws dictating fairness in procurement.¹¹ The state's Requests for Responses (RFRs) are not targeted, but are open to bidding by all organizations.¹²

The commonwealth does have a policy of encouraging minority-owned and women-owned business enterprises (MBEs) to seek state contracts. All RFRs require bidders to submit plans detailing how they would identify and develop business relationships with MBEs. This identity-oriented policy is explained as compensatory action aimed at ensuring equal access in procurement to groups that have been underrepresented and/or discriminated against in the past. To date, no such policy has been established with respect to FBOs because of their long history as state social service contractors. They are not perceived to have suffered discrimination, or to have been disadvantaged by Massachusetts' procurement processes.

Of course, this perception hinges upon the issue of how a faith-based organization is defined. As many commentators have pointed out, Section 104 contains no language specifying precisely what a religious or faith-based organization is. The states are thus free to employ their own definitions, whether those definitions are explicitly spelled out in state law or of the "know it when I see it" variety. To date, Massachusetts has not adopted a highly specific definition that differentiates between faith-based and non-faith-based organizations, or, for that matter, *among* faith-based organizations. As a result, Massachusetts does not distinguish highly sophisticated, tax-exempt, religiously affiliated, nonprofit social service organizations like Catholic Charities and Lutheran Social Services from other religious groups. The former organizations are included in the commonwealth's claims of equity and nondiscrimination.

Massachusetts officials point out, however, that even in the case of minority- and women-owned businesses, the state seeks to do business with organizations able to produce the desired results. As a consequence, organizations responding to RFRs typically must submit documented evidence of their ability to perform as part of their bid. According to one DTA official, this evidence is particularly critical in evaluating social service bids because contract awardees become involved in the lives of vulnerable people. If, for example, the DTA is seeking contractors to establish and run a residential program for pregnant and parenting teens, then the RFR will contain language asking bidders to provide evidence of their ability to operate such a program. To the commonwealth, what matters most is organizational capacity, not organizational identity.¹³

¹¹ Telephone interview with William Bell, January 9, 2002.

¹² RFR is the Massachusetts term for what many states call an RFP, or Request for Proposal.

¹³ Telephone interview with William Bell, January 9, 2002. As is discussed below, capacity and how it is measured are vitally important issues.



These understandings stand in contrast to the perspectives of Massachusetts' critics. Carlson-Thies, Sherman, and Wubbenhorst and Hurt interpret Section 104 not simply to require equal access in procurement processes, but moreover, to command some kind of substantive, affirmative state action.¹⁴ At minimum, they expected the 1996 Charitable Choice statute to "facilitate increased government-faith collaboration" (Sherman, 2000, p. 5; see also Wubbenhorst & Hurt, p. 1). As a consequence, they assessed the implementation of Charitable Choice according to the presence or absence of new or revitalized "partnerships" between government and faith-based organizations. According to Sherman (2000, p. 6), such partnerships either could take the form of "new collaborations" established through the letting of contracts after Section 104's enactment, or collaborations "that blossomed under the hospitable climate . . . created more generally by welfare reform." Similarly, Wubbenhorst and Hurt evaluated the extent to which Section 104 had "resulted in any new partnerships with FBOs, or whether any existing government-FBO partnerships had changed as a result of these safeguards" (1998, p. 1). By "change" in a government-FBO partnership, they meant a reduction in "the secularizing influence of government funding," so that FBOs could "introduce, or at least increase, the religious or faith content of their programs" (1998, pp. 3, 7).

In addition to interpreting the commands of Section 104 quite differently than the commonwealth's officials do, these critics understand its definition of religious or "faith-based" organizations very differently. Where Massachusetts believes that its array of contractors satisfy the meaning of Section 104 with respect to the inclusion of religious organizations, its critics look to the statute to broaden the traditional social services network by the inclusion of previously excluded groups: new players "doing new things" who "do not have to sell their soul in return for the money" (Sherman, 2000, pp. 1, 5). They expect Section 104 to result in contracting with a new array of FBOs that somehow are inherently different, or that behave differently, than the FBOs already under contract to provide publicly funded programs. Hence Sherman's criticism of the states for failing to modify Request for Proposal processes "to make them more accessible and 'user-friendly' to FBOs with no experience in contracting with government" (2000, p. 9). Wubbenhorst & Hurt (1998, p. 7) likewise denounce the Massachusetts purchase-of-service system because FBOs "unfamiliar with the procurement process face an extremely high learning curve in order to compete in this mature social services market." In their view, many faith-based social service ministries do not operate with a "service delivery mind-set, and it is not clear that they should" (1998, p.2).

¹⁴ Note that these authors conducted their studies in 1998–2000, before the Bush administration's more affirmative initiatives had been put forward.



Close examination of the language of Section 104 suggests that Massachusetts officials have good reason to believe that the commonwealth meets its requirements, at least as far as the letter of the law is concerned. It is difficult to read a mandate for substantive action into Section 104. The statute clearly guarantees the universe of religious organizations the right to compete for state contracts on the same basis as all other organizations. It is not at all clear that Section 104 demands the creation of new contracting partnerships with a new subset of the universe of religious organizations. The section's stated purpose is "to *allow* States to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers, or other forms of disbursement . . . on the same basis as any other non-governmental provider."¹⁵ Describing the states' *options* under PRWORA, Section 104 asserts that the states "*may* administer and provide services . . . through contracts with charitable, religious, or private organizations; and provide beneficiaries of assistance . . . with certificates, vouchers, or other forms of disbursement redeemable with such organizations."¹⁶ The final subsection of Section 104 even contains an anti-preemption clause: "Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations."¹⁷

Absent either a mandate for action or a firm definition of what a faith-based organization is and is not, the charge that Massachusetts disadvantages or discriminates against FBOs is highly problematic. The commonwealth's critics are right to sense that Massachusetts social service contracting demonstrates a degree of bias, but it is the classic institutional bias toward retaining existing organizational arrangements. In procurement, this manifests itself as caution toward contracting with organizations that cannot document their ability to perform specified functions. This form of bias does not stem from animus against faith communities, but rather from long-established principles of public administration and management demanding competency and accountability. Moreover, such a bias can work to the advantage, as well as the detriment, of FBOs with a history of social service provision. When asked in May 2001 about Section 104's requirement that secular alternatives be provided for clients preferring non-faith-based social services, for example, a DTA official countered that "there may not always be a secular interest in providing a particular service." He went on to state that, to the best of his knowledge, the commonwealth had never received a complaint about a faith-based provider already in the game. "If a vendor has a proven track record," he asserted, "there is no reason for the state to seek change."¹⁸

¹⁵ PRWORA, Sec. 104, emphasis added.

¹⁶ PRWORA, Sec. 104, emphasis added.

¹⁷ PRWORA, Sec. 104

¹⁸ Interview with Edward Sanders-Bey, May 17, 2001. Here it seems relevant to note a recent development in Massachusetts, albeit one in which the DTA was not obviously involved. Early in 2002, ex-convict Gerald Jones filed a discrimination complaint with the Massachusetts Commission against Discrimination against Rev. Eugene Rivers and his associates at the nonprofit Ella J. Baker House. Jones, a Muslim, claims that he was ordered to leave the Baker House felon reintegration program, along with the Baker House apartment he had rented for \$450 per month using emergency rent assistance (attained with the help of a Salvation Army official), because he had refused to embrace the beliefs of Rivers' Azusa Christian Community at a church meeting. Jones' allegations are denied by Rivers, who also has denied that he has any legal responsibility toward Jones as a landlord or through his association with Baker House. According to the *Boston Globe*, the discrimination complaint and Rivers' denials "point to a tangled web of faith and money at the heart of the national backlash against faith-based initiatives." See "Ex-Inmate Says House No Haven; Religious Bias Complaint Names Rivers and Aides." *Boston Globe*, March 12, 2002, p. B1.



Avenues for Further Inquiry

Such an assertion raises vital questions about how “proven track records” are established, maintained, and verified. By what measures do the states assess institutional capacity, both at the time of procurement and in program evaluation? What kind of evidence of performance is required of social service contractors, and how does the effort of amassing and presenting that evidence impact providers and/or programs? Should special measures be applied in order to assess religion-regarding behavior and program content in the case of faith-based social service providers? Although more research is needed to answer these questions fully in Massachusetts and other states, recent controversies over the treatment of certain “types” of welfare clients point to the complex issues of capacity, accountability, and oversight that arise when state agencies implement social service programs—especially programs that are intergovernmental in nature, and run by nongovernmental actors (Gilmour & Jensen, 1998).

Numerous civil rights complaints and lawsuits have been filed since the passage of PRWORA, alleging that TANF-funded public assistance programs administered by the states have failed to make reasonable accommodations for disabled persons and persons with limited English. Some of these charges have been brought against the Massachusetts Department of Transitional Assistance. Complaints filed with the U.S. Department of Health and Human Services Office for Civil Rights (OCR) have accused the DTA of systematically discriminating against learning disabled persons in its operation of the Employment Services Program, a job placement and training program for adult TAFDC clients, and the Young Parents Program (YPP), an alternative education program for pregnant and parenting teens receiving TAFDC who do not have a high school diploma or GED (U.S. Department of Health and Human Services, Office for Civil Rights, 2001a, pp. 1-2; U.S. Department of Health and Human Services, Office for Civil Rights, 2001b; U.S. Department of Health and Human Services, Office for Civil Rights, no date; Seiler, 2001).

The complaint regarding the YPP remains open and continues to be investigated by the OCR. However, the OCR found the Employment Services Program complaint to constitute “a priority case raising issues of national significance in the context of welfare reform.” In January 2001, the OCR ruled that the DTA had discriminated against individuals with learning disabilities in violation of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and their respective implementing regulations. In addition, the OCR ruled that the DTA failed generally “to provide for the needs of learning disabled individuals in the TAFDC program.” (U.S. Department of Health and Human Services, Office of Civil Rights, 2001a, pp. 1-2). The DTA was ordered to take a number of remedial actions to comply with federal anti-

¹⁹ State agencies across the country have taken notice of the OCR ruling against the DTA. In Texas, for example, the head of the state’s Workforce Development Commission issued a June 2001 memorandum warning relevant personnel that local workforce development boards must “provide equal opportunity and access to all federally-funded workforce services to individuals with learning, emotional or behavioral disabilities.” Directing attention to new DHHS guidelines clarifying the standards that would be applied in OCR compliance reviews and/or investigations of complaints of disability discrimination, she noted that grassroots groups and advocates are using federal civil rights laws to seek “meaningful access” policies (Texas Workforce Commission, 2001, p. 2). OCR indicates that many disability rights organizations and state TANF agencies have requested copies of its letter of finding against the DTA, which made headlines in the *Boston Globe* (DHHS OCR, no date). See “U.S. Faults State, Says It Discriminated against 2,” *Boston Globe*, January 23, 2001, and “The Equal Access Mess,” *Boston Globe*, February 6, 2001.

²⁰ Wagner was formerly undersecretary for administration and human services, Massachusetts Executive Office of Health and Human Services. He originally was interviewed for this project when serving in that capacity.

²¹ Cited in “Mass. Strict on Faith-Based Funding,” *Boston Globe*, January 31, 2001 (emphasis added). When interviewed for this project in March 2002, Wagner was undersecretary for administration and human services, Massachusetts Executive Office of Health and Human Services.



discrimination law. It must provide additional training for technical assistance for its employees, contractors, and vendors regarding the assessment and provision of appropriate services to individuals with learning disabilities. The DTA also must modify programs, policies, and procedures in order to eliminate disability-based discrimination, and monitor its employees, contractors, and vendors more closely to ensure compliance with laws and regulations governing discrimination (U.S. Department of Health and Human Services Office for Civil Rights, 2001a, p.22).¹⁹

These and other discrimination complaints, along with related rulings by federal agencies and courts, illustrate the kind of administrative issues and problems posed by public social service provision. Government-sponsored programs and services are expected to comport with the terms of a host of laws and regulations designed to ensure the accountable use of public authority and public funds. Clearly, there is something of a contradiction between federal policies urging contracting with relatively inexperienced social service providers and policies mandating strict adherence to federal civil rights laws. Beyond the kind of constitutional and statutory competence that social service contractors must develop (no small task for the kind of smaller, voluntaristic, FBOs targeted by Charitable Choice, which likely would require special training), the states are placed in an untenable position by policies that push them simultaneously in the direction of less *and* more control over contractor performance. The OCR's ruling that Massachusetts must exercise more authority and oversight over its social service contractors provides a cautionary tale for those who believe that Section 104, or any other single federal statute, may easily reconstitute the way public programs are run in the United States.

There is no doubt that religiously affiliated social service contractors serve civic purposes through collaborations with government in Massachusetts and elsewhere. As DTA Commissioner John Wagner observed, faith-based social services are "an integral component of what [the commonwealth does] to ensure access to things like health care, job training, and general self-sufficiency."²⁰ But as with all of the contractors in the state's social service network, Massachusetts must examine its partnerships with FBOs "to figure out how to *constructively* build on them and expand them."²¹

The next phase of our study of Section 104's implementation in Massachusetts will involve an in-depth examination of the set of partnerships through which the Department of Transitional Assistance implements its TANF-funded Young Parents Program (YPP). YPP is an alternative education program serving pregnant and/or parenting TAFDC recipients between the ages of 14 and 22 who have not achieved a high school diploma or its equivalent. The goals of the program are to enable young recipients of TANF-funded income assistance to earn a high school diploma or GED,



and to help young parents “take the next step toward employment, through further education and training” (Commonwealth of Massachusetts, DTA, no date). YPP services are provided a variety of local settings across the state by an array of governmental and nongovernmental, faith-based, and non-faith-based contractors.²²

Our research on the Young Parents Program will have the full support of the DTA, which has promised to enlist the cooperation of all YPP contractors, and to provide relevant data and clarification on contracts and program experience. A number of questions will be addressed, including those specified in a memorandum of understanding between the DTA and the University of Massachusetts signed in May 2002:

- How has Massachusetts implemented the Charitable Choice provisions?
- What is the process by which clients access faith-based providers?
- What is the process by which they can reject such providers?
- What are the contracting procedures and processes?
- What are the criteria for awarding contracts and what monitoring mechanisms are in place?

To the extent possible, we also will examine the content of YPP programming in an effort to assess whether it varies across providers, and if so, whether differences in programming are significant, and whether they can be attributed to a contracting organization’s religious or non-religious identity. The DTA will provide copies of existing evaluations of the Young Parents Program along with performance-based data on client outcomes.

In addition to conducting interviews and visiting program sites, we will administer appropriately tailored versions of the two questionnaires utilized by our project team in Indiana to evaluate the Indiana FaithWorks IMPACT welfare-to-work program. While differences between the welfare-to-work and teen education programs will necessitate some differences in the survey instruments, we hope to be able to generate some empirical data that will enable valid cross-state comparisons. We have agreed to provide the Department of Transitional Assistance an opportunity to review and comment upon our research in Massachusetts before issuing any final reports.

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²² FY 2002 YPP providers include: Action for Boston Community Development (ABCD); American Training/Inc./LARE Training Center; BerkshireWorks; Brockton Area Private Industry Council; Cambodian Mutual Assistance Association; The CARE Center; Catholic Charities-El Centro del Cardenal; Catholic Charities-Merrimack Valley; Catholic Charities-North Region; Concilio Hispano del Cambridge; Corporation for Public Management; Crittenton Hastings House; Health Awareness Services of Central Mass., Inc.; Jewish Vocational Services; Jobs for Youth; Job Training and Employment Center; Just-A-Start Corporation; Lawrence Public Schools; Massachusetts Job Training, Inc.; New Bedford Public Schools; SER-Jobs for Progress, Inc.; South Middlesex Opportunity Council; South Shore Educational Collaborative; Tapestry Health Systems; YWCA of Central Massachusetts; YWCA of Haverhill.



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INTERIM REPORT ON THE IMPLEMENTATION OF CHARITABLE CHOICE IN NORTH CAROLINA

Abstract: *The Charitable Choice provision of the Welfare reform bill had a mixed set of goals and provided the states little guidance for implementation. The result was tremendous variation and varying degrees of “success.” In North Carolina, implementation of Charitable Choice involved the state’s faith community in helping to develop the state’s responses to welfare reform. Although this process generated some animosity and disagreement, it also led to programs designed to create a support network for families making the transition from welfare to work. The establishment of 11 Faith Demonstration Award pilot programs reflected the intentionality of this approach and the involvement of the religious community in developing it. From training congregational teams to support and mentor welfare families, to developing programs focused on church women working with female recipients of Temporary Assistance to Needy Families as they struggled with the demands of work and family, to offering intensive training in job and life skills, the North Carolina programs expressly viewed their work as part of a larger endeavor and not merely as the delivery of a specific contracted service. The provision of technical assistance and capacity building added greatly to the work of these organizations. Additionally, the emphasis on locating additional funding sources and peer support and education also served to aid the organizations, particularly as they increasingly were forced to address new problems created by a state budget crisis and a declining economy.*

During the next several months, detailed analysis of the surveys will continue. Additionally, the research team will examine the various ways in which the pilot projects have responded to overall decreases in state funding. That work will be linked with an attempt to discover the way in which the pilot projects and the faith community coordinators have built additional linkages within the various communities, including private funders, businesses, and various elements of the state’s religious communities.

North Carolina proved to be an interesting state in which to examine the implementation of Charitable Choice; partly because significant sections of the religious community already had mobilized to address the issues of welfare reform and poverty, and the governor publicly supported greater inclusion of religious organizations in the provision of social services. A southern state, North Carolina has had a history, albeit often interrupted, of innovative and progressive social policies.¹ The state also provided a good mixture of rural and urban populations in which, unlike Indiana, African-Americans were as likely to be rural residents as Whites.

For research purposes, North Carolina presented numerous challenges. Not only were the faith-based providers distributed throughout the state, but also its radically decentralized contracting system made it exceedingly difficult to obtain a clear view of the situation in the entire state. Fortunately, one set of programs was handled at the state-level. These “Faith Demonstration Award” pilot projects became the core group of contractors studied. Not only were they easily identifiable, but also they had entered the contracting regime in the same way and had access to the same technical assistance and training resources. These similarities provided a good starting point for comparisons and removed certain unknowns from the equation. While the data for North Carolina continue to be analyzed, this chapter provides some ten-

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¹ For a brief discussion of North Carolina’s social, political, and religious history see Queen, E.L. (1991). *In the South the Baptists are the Center of Gravity: Southern Baptists and Social Change, 1930–1980*. Brooklyn, NY: Carlson Publishing.



tative conclusions not only about issues of effectiveness, but also about how the process of implementing a policy can affect outcomes.

To gather information on the implementation of welfare reform in North Carolina and the state's contracting with faith-based organizations (FBOs) for the delivery of services funded by Temporary Assistance to Needy Families (TANF), we collected data between May 2001 and December 2002 from:

- senior staff of the state's Department of Health and Human Services,
- the project director of the Communities of Faith Initiative,
- executive directors and staff members of the faith-based service providers,
- county faith community coordinators,
- local researchers,
- training materials and reports,
- other written materials (both published/printed and unpublished), and
- Web-based materials.

The information was gathered through an extended site visit in August 2001, and shorter site visits in October 2002 and March 2003, numerous telephone interviews and conversations, e-mail, and other communications.

Early Welfare Reform in North Carolina

Work First is North Carolina's response to welfare reform at the state level. North Carolina began Work First in 1995, operating it under a waiver from the federal government until the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996. Work First was designed to move families off welfare and toward self-sufficiency and to ensure that former welfare families (and low-income working families, in general) obtain the support they need to remain self-sufficient. The program included many of the components of the federal welfare reform legislation including time limits, sanctions, and an emphasis on employment.

North Carolina operates a statewide welfare plan for Work First, but counties are allowed to "opt-out" of the statewide plan and implement their own local plans. As of July 2002, 13 of North Carolina's 100 counties were "electing" counties, functioning with their own block grant plans, including responsibility for distributing cash assistance.²

² The counties were Caldwell, Caswell, Davie, Henderson, Iredell, Lenoir, Lincoln, Macon, McDowell, Randolph, Sampson, Surry, and Wilkes. It must be noted that while all counties are required to submit a county TANF/Work First plan, the plans for electing counties also must detail how the county will handle all the functions performed by the state in other counties, including the provision of cash assistance.



The level of government (state or county) responsible for contracting for the delivery of welfare services in North Carolina varies depending on the type of services. Most TANF-funded programs are state supervised but county controlled. This means that the state releases a set portion of North Carolina's federal block grant to the counties.³ The counties then contract with the providers they choose. North Carolina's State Department of Health and Human Services and its sub-agency, the Division of Social Services (DSS) which directly oversees TANF programs, have little knowledge of those organizations with whom the various counties contract for the delivery of services.⁴

State oversight is provided by a formal audit process, although the state does not audit every program annually. Additionally, the North Carolina State Department of Health and Human Services has field representatives responsible for monitoring specific programs. North Carolina has eight such field representatives for Work First. Their responsibilities include overseeing issues related to program eligibility, children's services, adult services, and food stamps.⁵

Since spring 2001, the state of North Carolina has experienced severe budgetary crises and state employees have faced stringent restrictions on travel. These restrictions have limited the ability of the field representatives to make on-site reviews of programs and they mostly have been limited to reliance upon telephone interviews and written reports.⁶

Several of North Carolina's counties also have "faith community coordinators" some of whom are funded directly by the counties and their divisions of social services. These individuals also provide project reports to the field representatives. (See below for a more detailed discussion of the faith community coordinators.)

North Carolina does not use performance-based contracting. Contractors are paid a fixed overall contract price for services delivered. In general, there are no performance incentives and payments are not linked to any specific goals achieved by the individuals who are served.⁷

The U.S. General Accounting Office (GAO) Report (2002) on oversight of welfare reform severely chastised North Carolina for the weaknesses in its accounting procedures. The state was cited for failing to adequately audit accounts of both counties and sub-recipients. Additionally, procedures for determining eligibility were deemed inadequate (GAO Report, 2002, p. 51).

Jim Hunt, the governor of North Carolina during the mid 1990s, strongly advocated for welfare reform and, like Governor Frank O'Bannon in Indiana, Governor Hunt publicly called for greater involvement of the faith community in the delivery

³ The U.S. General Accounting Office (GAO) reports that North Carolina is among the states spending the smallest proportion, 2 percent or less of its TANF funds, on contracts with nongovernmental entities. At the same time, the GAO reports that more than 15 percent of the contracted funds in North Carolina went to faith-based organizations. *WELFARE REFORM: Interim Report on Potential Ways to Strengthen Federal Oversight of State and Local Contracting*. GAO-02-245, April 2002. There are, however, some anomalies in the numbers reported in the GAO report. The claim that North Carolina is one of the states that spent the lowest amount of its contracted funds with nongovernmental entities makes sense only if the GAO were looking at the funds contracted directly by the state and not those contracted by the counties.

⁴ Personal communication from Deborah Landry, assistant chief for program operation, Economic Independence Section, North Carolina Department of Health and Human Services. November 16, 2001.

⁵ Interview with Deborah Landry, assistant chief for program operation, Economic Independence Section, North Carolina Department of Health and Human Services. June 27, 2002.

⁶ *Ibid.*

⁷ Personal communications with Diana Jones Wilson, Pheon Beal, Deborah Landry, Wilbert Morris, and all of the executive directors (August 20, 2001), and with Deborah Landry (June 27, 2002).



of social services and in meeting the needs of the poor. He called on the religious communities of North Carolina to do their part in making welfare reform successful.⁸ Additionally, the Governor's Task Force on Community Initiatives on Welfare Reform focused extensively on the potential roles of FBOs in aiding those who would be affected by welfare reform.⁹

One interesting element in North Carolina is that the manner in which FBOs increased their role in contracting for the delivery of social services emerged from a process in which the faith community had an active voice. A contract between the state Division of Social Services (DSS) and the North Carolina Rural Economic Development Center (Rural Center) for a series of faith-based pilot projects was the major impetus for this development

Response to Welfare Reform through Division of Social Services Partnerships

A conversation between a senior administrator at the Rural Center and a senior administrator at the DSS brought about a project built on a series of ongoing activities by segments of North Carolina's faith communities to respond to the challenges presented by welfare reform, specifically, and poverty, more generally.¹⁰ As a result, many North Carolina projects focused not only on providing particular services to TANF recipients, but on creating local sources of support for TANF families. For example, one of the pilot projects, Families First, funded a training program to teach congregations and other faith based community groups how to mentor and support families making the transition from welfare to employment. State monies, did not, however, fund or support the congregations in mentoring the TANF clients.¹¹

Faith Demonstration Awards

The contract between the Rural Center and the DSS was funded through a line item in the North Carolina state budget calling for pilot projects for job training, retention, and followup.¹² The state agency lacked the personnel and resources to operate the program, and it desired a partner organization. The Rural Center had long been a trusted partner of the department. It had a good record of delivering contracted services, managing federal reporting requirements, and working in North Carolina's most economically disadvantaged counties. When the Rural Center approached DSS with the idea of pilot projects for TANF recipients for job training and retention, FBOs appeared to be an appropriate place to direct those designated monies.

The initial result was a \$3.5 million contract between the DSS and the Rural

⁸ See article about Governor Jim Hunt's speech in the *Greensboro News and Record* (July 25, 1996), Section A4. Untitled article.

⁹ Personal communications with Barbara Zelter (August 20, 2001) and Robert Wineburg (August 17, 2001, and November 30, 2001). See also Wineburg, B. (2001). *A Limited Partnership: The Politics of Religion, Welfare, and Social Service*. New York: Columbia University Press.

¹⁰ Interview with Pheon Beal, director, Division of Social Services, State of North Carolina, August 20, 2001. Interviews with Diana Jones Wilson, director, Communities of Faith Initiative, July 20, 2001, August 20, 2001, and November 12, 2002.

¹¹ E-mail communications and interviews with Barbara Zelter, director, JUBILEE, August 20, 2001, and with Winnie Morgan, faith community coordinator, Orange County, NC, November 7, 2002.

¹² Interviews with Pheon Beal and Diana Jones Wilson, see footnote 7. Interview with Deborah Landry, see footnote 5. Interviews with Wilbert Morris, chief, Economic Independence Section, Division of Social Services, North Carolina Department of Health and Human Services, July 12, 2001, and August 20, 2001.



Center to establish the Communities of Faith Initiative. The contract period for this project was from March 1, 1999, until June 30, 2001.

Faith Demonstration Awards

The Communities of Faith Initiative (COFI) funded a series of faith-based programs known as the Faith Demonstration Awards. These pilot projects were designed to implement economic development strategies to assist families living in poverty. In addition to acting as the regranting agency to organizations delivering funds, COFI also provided technical assistance to the service providers. This assistance included training in financial accountability, eligibility and case management functions, and reporting systems. The ultimate goal of the project was to develop the capacity of religious service providers to assist families making the transition from welfare to work with the aim of ensuring the families' abilities to reach and sustain a living family income.¹³

The Faith Demonstration Awards established program activities in 53 counties with approximately 105 distinct sites of activity. (This number does not include multiple program sites within a single county by the same organization.) The Rural Center, in consultation with the DSS and an external review team, awarded contracts to the following organizations:¹⁴

- **Catholic Social Ministries, Inc. (CSM)**, \$70,299—CSM of the Diocese of Raleigh, is a nonprofit agency serving people of all faiths in 54 eastern North Carolina counties. It has seven regional offices and several family support sites. The pilot project, Working Family Partners, was a faith-based welfare program that established teams of church members to serve as volunteer mentors to welfare families. The teams worked to assist families as they moved from public assistance toward economic independence and self-sufficiency. Some of the services provided to the families included mentoring, assistance in employment, education and training, household budgeting, parenting, transportation, and health issues. CSM worked closely with the county divisions of social services. DSS caseworkers referred Work First families to the program and also participated in training sessions. The project hired four part-time caseworkers (eight hours per week each) to staff the regional offices and provide ongoing local presence and support for families and teams. During the fiscal year 1999-2000, eight teams were trained and matched with Work First families. During year two (FY 2000-2001), the program expanded, with 11 churches committing volunteers and 95 volunteers

¹³ The GAO identified North Carolina as one of the states with the largest percentages of contracted TANF funds distributed to FBOs (GAO Report, 2002, p.1). As discussed in footnote 3, this number is difficult to reconcile with the realities of North Carolina's contracting system. Apparently, the GAO treated all funds directed to the counties as non-contracted monies despite the fact that the counties later used these funds to contract for services.

¹⁴ This information is drawn from North Carolina Rural Economic Development Center, *Report on Work First Job Retention Pilots Funded through Temporary Assistance for Needy Families (TANF) Block Grant*. Pursuant to Session Law 1999-237, Part V, Section 5(g). November 2001.



trained. By the conclusion of the grant, Working Family Partners had 17 teams active in 7 counties.

- **Women’s Missionary Union’s Christian Women’s Job Corps**, \$194,402—The Woman’s Missionary Union of the Baptist State Convention of North Carolina established the Christian Women’s Job Corps (CWJC). The program pairs church women with Work First families to aid them as they transition from welfare. During the contract period, CWJC established coordinating and training sites in 20 counties. Each site trained coordinators and mentors who worked closely with service providers, government programs, and client advocates in the local area. CWJC served over 175 families during the project period.
- **Asheville-Buncombe Community Christian Ministry (ABCCM)**, \$728,734—ABCCM, a multi-service agency providing basic necessities for families in need, expanded its activities to include job readiness assessment, a case management program to help families move from welfare to work, and facilitation of transportation services for those families. Beyond extensive training and monitoring of volunteers during the project period, ABCCM provided pre- and post-TANF screenings to 3,924 individuals, case management and follow-up services to 530 families, training in interview techniques and communication skills to 174 individuals, job readiness and continuing education (GED, etc.) to 182 persons, and employment training to 107 TANF recipients. At the close of the grant period, 174 persons had become employed.
- **The Jobs Partnership and the TANF Faith Collaborative**, \$621,280—The Jobs Partnership conducted a series of 12-week life and job skills classes in three North Carolina counties. The classes, held at host churches and taught by local pastors, focused on job readiness skills. Participants were assigned mentors to work closely with participants to ensure course completion. The TANF Faith Collaborative, a coalition of clergy from the African Methodist Episcopal Church, the African Methodist Episcopal Zion Church, the General Baptist State Convention, and the United Methodist Church, focused on implementing faith and business partnerships. The program created an innovative computer-assisted instruction program addressing vocational skills, basic skills, and life skills training, as well as motivational and attitudinal training, basic literacy, job readiness, and life skills. The program developed a close working relationship with the local DSS in Pitt County. Under the name Lifestyle Innovations, it evolved into a new 501(c)3 organization entitled STRIVE, developed a 13-week training session, and has leveraged \$225,000 in grants to support the program.



By the conclusion of the grant period, the program had graduated 183 participants, with 83 percent employed and 71 percent of participants sustaining their employment. As part of its plans for long-term sustainability, the program has explored the idea of replicating Welfare Reform Liaison Project's Distribution Center (see page 30).

- **The Greater Enrichment Program** and the **TANF Faith Collaborative**, \$487,284—The Greater Enrichment Program used its funding to expand its computer-assisted instruction training program for vocational skills, basic skills, and life skills. In addition to the computer-assisted instruction program, congregations are paired up with Work First families to help them make the transition into the workplace by helping the participants define goals, fulfill their goals, develop self-confidence, prepare for job interviews, and identify potential employers.
- **St. Paul Employment Institute**, \$200,000—The St. Paul Employment Institute provided life skills training to TANF recipients in Wake County. The program focused on helping participants develop appropriate attitudes, job search skills (filling out an application, resume and interview preparation, and appropriate clothing), time and money management, and developing social and financial resources. The Institute focused on replicating its training among other FBOs in the state through regional training workshops. The Institute trained 40 sites in 22 counties across the state of North Carolina. By the conclusion of the grant period, 13 of the sites had conducted their training for TANF participants and the others were being planned. Additionally, the replication sites actively developed relationships with their county DSS offices, paving the way for additional collaborations in those counties.
- **Faith Empowerment Community Consortium (FEC)**, \$146,000—The FEC is comprised of more than 200 congregations and FBOs in 11 counties. The congregations represented 13 denominations including African Methodist Episcopal; African Methodist Episcopal, Zion; Assemblies of God; Christian Methodist Episcopal; National Baptist Convention; Progressive Baptist Convention; Southern Baptist Convention; Presbyterian; Full Gospel Baptist; Church of God in Christ; Pentecostal; Holiness; and United Methodist. Under the contract, FEC provided training, mentoring, and job placement assistance to TANF recipients and additional job training, clothing and food distribution, emergency assistance, and mentoring to more than 500 individuals in a seven-county region. Seventy-four individuals completed the eight-week training program in job and life skills.



- **Welfare Reform Liaison Project, Inc. (WRLP), \$50,000**—WRLP created a 12-week educational program that combined classroom instruction, on-the-job training, and intensive casework. The Liaison Distribution Job Training Center worked with the United Way of Greater Greensboro and Gifts in Kind International to inventory and distribute corporate donations to families, churches, and nonprofit organizations throughout a multi-county service area. Participants gained experience in warehousing, inventory control, and distribution, as well as job experience. More than 70 percent of the TANF recipients who attended the WRLP training program completed their training. As of summer 2001, 63 percent of the graduates were employed, with an additional 10 percent previously employed and seeking new employment. Another 14 percent qualified for additional training. The success of the program has led to numerous requests for advice on replication.
- **North Carolina Council of Churches JUBILEE, \$99,000**—With its grant monies, JUBILEE expanded Families First to counties in northeastern and southeastern North Carolina. Initially designed by ABCCM, JUBILEE began running the Families First program in 1997. Designed to engage service providers, funders, and Work First families, Families First was a three-way partnership between the county DSS office, congregational faith teams, and TANF families. Its goal was to improve the success of Work First families by providing ancillary services and support. JUBILEE also established a Faith Community Coordinator Peer Network and provided training and technical assistance to 18 faith community coordinators from 17 counties as of June 30, 2001. At the close of the contract period, Families First was working with 99 Work First families through congregational faith teams and 23 others in mentoring relationships. It also had provided more than 130 cars to TANF recipients.
- **Truth in Youth and Family Services/Southeastern Empowerment to Work Program, \$59,840**—Truth in Youth (TiY) is a Community Resource Center providing crisis case management and referral services for TANF families. The project's target population was women, particularly Hispanic women, on TANF. In Brunswick County, it provided youth with structured after-school counseling and work programs. Working with the Southeastern Interfaith Alliance (SIA), a consortium of more than 300 churches in Bladen, Brunswick, and Columbus counties, it provided support services to TANF families. During the last six months of the grant period (January–June 2001) the project expanded to providing job readiness and placement follow-up pro-



grams for TANF recipients, including developing a Personal Home Health Care Certification Program for TANF recipients. During the grant period, TiY provided intake and assessments for 42 TANF recipients, with 39 becoming active in program activities and 20 TANF clients matched with mentors. The program trained about 57 mentors, and approximately 75 percent were active at any given time.

Currently, all of the pilot/demonstration projects are being surveyed regarding the programs during and since the grants ended, including final project numbers for the entire grant period and the current status of those individuals who received services. Organizational viability, funding, and level of service provision are being analyzed, as are the current relationships with the county and state DSS offices.

Beyond its work with these specific service providers, the Communities of Faith Initiative also undertook a wider series of activities including:

- delivering technical assistance and training to churches across the state;
- working to help Faith Partners achieve alternative funding sources as they assisted poor families making the transition from welfare to work;
- engaging in a dialogue regarding a broader agenda for outreach ministries by Faith Partners; and
- mobilizing a “Faith Network” to assist flood victims in Eastern North Carolina.

These activities highlight an additional goal of the efforts to bring North Carolina’s faith communities into social service provision: helping those communities to engage more directly with the wider issues of social justice and economic self-sufficiency.¹⁵ The involvement of FBOs through the Communities of Faith Initiative and activities preceding that program focused on getting the faith communities to think beyond TANF-funded projects and services to basic social policy issues surrounding welfare, poverty, and employment. Many of the projects were not designed solely or primarily to provide specific services to TANF eligible families and individuals. Instead, they were designed to create a wider structure of support for these individuals by providing services that TANF monies did not fund, including transportation, emergency aid, clothing, and a supportive environment.¹⁶

The grantees under the Communities of Faith Initiative varied greatly in terms of composition, age, size, and program structure. Most of the major funding, however, went to large multi-service entities or to projects based on existing programs. Another significant component of COFI was that the Rural Center actively encouraged its grantees to partner across denominational and racial boundaries.¹⁷ Finally,

¹⁵ Interviews with Barbara Zelter, Diana Jones Wilson, and Pheon Beal, August 20, 2001. Interview with Bob Wineburg, August 16, 2001.

¹⁶ See footnote 11 .

¹⁷ Personal communications from Diana Jones Wilson (August 20, 2001).



it should be noted that the overall project received funding from local and national foundations including the Z. Smith Reynolds Foundation and the Duke Endowment.¹⁸ These foundation monies helped offset administrative costs and costs related to the provision of technical assistance and the dissemination of information. With the conclusion of the grant period, Faith Partnerships has remained active in trying to sustain and increase the engagement of North Carolina's faith communities in providing services to those in need and in addressing the root causes of poverty and impoverishment.¹⁹

Another important component of the pilot projects was the struggle to create multi- and inter-racial partnerships as well as partnerships across denominational lines. While most noticeable in the larger projects such as ABCCM and the CWJC, it pervaded most of the projects, with only one or two exceptions. For the CWJC, this was markedly new and distinctive since it required women from an overwhelmingly White denomination to work across both denominational and racial boundaries. The result was the development of new connections and new ways of interacting.²⁰

This attempt again reflects the goals of the organizations involved in the program. For them, the projects were not solely about the delivery of services and fulfilling a contract, but were more deeply and importantly about how society ought to be organized and how it ought to function.

Families First as a Representative Program—Strengths and Weaknesses

An initiative of JUBILEE, Families First is described as "a faith-based family empowerment initiative supporting Work First Families in North Carolina." Originally piloted by Asheville-Buncombe Community Christian Ministries, JUBILEE adopted the program and attempted to expand it through much of the state.²¹

The goal was to create an environment in which local congregations would provide support to North Carolina's Work First families as they attempted to make the transition from welfare to employment, and eventually to economic self-sufficiency. This was a major emphasis of much of the faith-based work in North Carolina. The goal was not only, or even primarily, to increase the role of FBOs in contracting with the state or counties for the provision of services under TANF, but to have FBOs provide a wider network of support for those families. This network would help to provide services to these individuals and their families that were not supplied by governmental programs along with personal support for these individuals. As Families First articulated it, the purpose of such a network was "to provide extended family support services (plus encouragement, faith, love, and hope) to Work First families."²²

¹⁸ See www.faithpartnerships.org as well as the Web sites of the Z. Smith Reynolds Foundation and the Duke Endowment. Faith Partnerships, Inc. continues to receive support from numerous private foundations and corporate sponsors. For its current work providing training and technical support to faith-based organizations, it has received support from the Duke Endowment, First Citizens Bank, the Ford Foundation, Regency Development Associates, the North Carolina Conference of the United Methodist Church, Wachovia Bank, the Warner Foundation, and the Z. Smith Reynolds Foundation. Faith Partnerships has been asked to expand its work into Florida, and for this work it has received support from the Jesse Ball DuPont Foundation, the MacArthur Foundation, and the Donors Forum of South Florida. (Personal communication with Diana Jones Wilson, March 10, 2003. Acknowledgements on program for Faith Partnerships, Inc. annual meeting. Copy is in author's personal possession.)

¹⁹ For more information, see the Faith Partnerships, Inc. Web site at www.faithpartnerships.org.

²⁰ Personal communications with Diana Jones Wilson (August 20, 2001) and with the Reverend Elizabeth Edwards, director, Christian Women's Job Corps (North Carolina) (September 18, 2002) and survey from CWJC. This work also presented some challenges as clients themselves were forced to address their views of race, for example, when White TANF recipients were paired with members of a predominantly African-American congregation or vice versa. Additional conversations with Winnie Morgan and Roy Falgout.

²¹ JUBILEE, NC. (2001, August). *Final Report to North Carolina Rural Economic Development Center*. Copy in author's personal possession.

²² Project JUBILEE, *Families First: A Guide for Your Journey*, (n.p.: Project JUBILEE, 2000).



Families First is a voluntary program for both the local congregations and the participant families. While JUBILEE received monies from the COFI to train county faith community coordinators, build connections with county DSS offices, and train local congregations in becoming Families First providers, none of the congregations serving as such providers received funds from the COFI project. The congregations, however, have received funds and in-kind support from local individuals and companies. Additionally, some of the faith community coordinators have been active in seeking out private and corporate funding to help congregations support the TANF families.²³

Families First assumes that there is capacity among local congregations to provide necessary services, that training is available and adequate, and that the individuals involved are willing to expend the effort necessary to weather the difficulties and frustrations of such engagements. Families First is designed to be a committed relationship between the congregation and the family, lasting at least 12 months. This time commitment poses challenges to the program's success: Will congregations be able to fulfill their commitment given the demands on individuals' time, the possibility of burnout and disillusionment, and the possibility of losing key individuals to employment changes and relocation?

The families that were partnered with congregations also faced challenges—lack of responsiveness, fear of failure, differences in expectations between the family and the congregation, and discomfort at having strangers actively involved in their private lives. All of these factors were described as major problems that could lead to families dropping out of the program.²⁴

To the extent to which Families First has been successful, it must be attributed to the intensive training and ongoing support that the congregations or para-church organizations received from JUBILEE and COFI.²⁵ The importance of the faith component is much harder to measure. The degree to which these organizations understand the engagement with Families First to be part of their theological-liturgical-missional identity, it becomes a program that will not be allowed to fail, despite the difficulties experienced.²⁶ This is not to discount the specific and important roles played by individuals. Research has shown, however, that while individuals can play key roles in initiating programs and in encouraging others, they cannot sustain programs over the long term. For that to happen, the programs must become institutionalized.²⁷

²³ Interviews with Winnie Morgan (September 18, 2002), Roy Falgout (April 8, 2002), and Ralph Williamson (October 3, 2001).

²⁴ Interview with Barbara Zelter. Interview with Winnie Morgan, faith community coordinator, Nash County, NC (November 6, 2002).

²⁵ Personal communications and survey responses by participants.

²⁶ This conclusion is consistent with the findings of other scholars. See, for example, Dudley, C. (1996). *Next Steps in Community Ministry; Hands-On Leadership*. Bethesda, MD: Alban Institute.

²⁷ *Ibid.*



Response to Welfare Reform at the County Level

The second strand of North Carolina's response to Charitable Choice resides at the county level, but also links back to the COFI projects. As previously discussed, counties have the options of participating in the state welfare plan or devising their own plans. Most counties have opted for participation within the statewide plan.

Counties participating in the state plan retain significant control over contracting for services, however. In North Carolina, the state itself runs relatively few programs. These include direct cash assistance (for standard counties), most child welfare programs, substance abuse programs, and pregnancy prevention. Additionally, there are certain legislative set-asides in the annual budgets for specific projects (such as the one which gave rise to the Communities of Faith Initiative) over which the DSS has oversight.²⁸

Most other services are contracted directly at the county level (although there are some regional and multi-county entities with contracting powers as well). One of the most interesting projects at the county level, while not directly a service provision undertaking per se, was the development and placement of faith community coordinators in several of the counties.

Beginning in 1997, JUBILEE initiated a project designed to bring the faith community into active engagement with the county DSS offices and the provision of services. One result was the creation of the position of faith community coordinator.²⁹ Initially begun by the Reverend Ralph Williamson in Mecklenburg County (Charlotte), the faith community coordinator is an individual, often employed by and located in the county DSS office, whose function is to facilitate partnerships between the county DSS office and local congregations, para-church organizations, and other FBOs with the goal of aiding individuals making the transition from welfare to work.³⁰ These partnerships can include everything from contracting with the counties for the provision of services to establishing referral networks for emergency services provided by the religious organizations that are not funded by governmental monies.

Although many of the faith community coordinators are located in the county DSS offices, there exists significant variety in the ways that the coordinators work and how they are funded. At one time, 21 faith community coordinators functioned in 17 counties, with Buncombe, Burke, Henderson, and Mecklenburg counties each having two such positions. In several counties, the faith community coordinator also shares other responsibilities, including functioning as the business liaison. In other counties, the faith community coordinator is located in one of the FBOs itself and then works with the DSS and other religious service providers from that position.³¹

²⁸ Interview with Pheon Beal, August 20, 2001.

²⁹ Interview with the Reverend Ralph Williamson, October 3, 2001.

³⁰ For a description of these programs, see the Mecklenburg County Faith Community Office Web site, <http://www.co.mecklenburg.nc.us/codss/admin/Faith.htm>

³¹ Personal communication from Deborah Landry (June 27, 2002). Information retrieved from JUBILEE Web site from www.jubilee-nc.org (The site is now unavailable.)



As of July 2002, only eight counties had DSS staff serving as formal faith community coordinators. In two of the counties, the same individual served as the official liaison to both the business and faith communities. In one county, the faith community coordinator's position was a prescribed duty rather than a position, and was rotated among the staff. Two counties had either eliminated or frozen the position for budgetary reasons, and one county was seeking to fill an open position. The remaining nine counties had individuals in local faith-based social service agencies serving as the local faith community coordinator.³²

The faith community coordinators have been active in promoting interaction between local faith communities and the county DSS to facilitate the transitions of families moving from welfare to work. The extent to which they have been successful remains to be seen. Mecklenburg County, which has two coordinators (including the creator of the program) on the county DSS staff, appears to be the most advanced. It has formal procedures by which congregations and other members can help provide support for TANF families. Emergency assistance for those families is provided by local FBOs through space located in the county DSS office and staffed by members of the local congregations. The Faith Community Office in Mecklenburg County also provides a structured way for local congregations and FBOs to support TANF recipients by working directly with an "adopted" social worker and her or his caseload. It provides a location for coordinating service provision for congregations and congregational members to directly aid TANF families by providing employment opportunities on an apprenticeship basis.³³

Although Wake County does not have a system as elaborate as Mecklenburg County, its faith community coordinator also has been successful in bringing local congregations and FBOs into the DSS system. In its list of community resources for families requiring emergency aid or additional assistance, 17 of the 19 organizations listed are identifiably religious, and of these, 11 are congregations.³⁴

The extent to which the faith community coordinators have been successful in facilitating county-based contracts with local congregations and faith-based service providers remains to be seen. None of the faith community coordinators interviewed to date have seen the development of such relationships in their counties. Overall, identifying faith-based contracts within North Carolina's 100 counties has proven difficult. The GAO acknowledged its inability to accomplish this task in its evaluation of TANF programs oversight (GAO Report, 2002, p.13). This project's efforts have proven only slightly more successful.³⁵

³² *Ibid.*

³³ See Mecklenburg County (NC) Department of Social Services, the Faith Initiative Web site at <http://164.109.58.120/department/dss/faith+initiatives/volunteer+to+become+a+faith+initiatives+partner.asp>

³⁴ This list is available at both the county DSS offices, through caseworkers, and on the World Wide Web at <http://www.co.wake.nc.us/HS/website.nsf/1d063a21be7edec48525685e00809baa/2231cb2202c3976d85256a570013e2c3!OpenDocument>

³⁵ In interviews with more than half of the currently active faith community coordinators, none identified any contracts between their county DSS and a faith-based service provider.



Welfare Reform under Current State Fiscal Conditions

Following the end of the initial contract period, the Communities of Faith Initiative spun off from the Rural Center as Faith Partnerships, Inc. During the fiscal year 2001–2002, it received \$266,250 to continue its work; \$100,000 of this went to the Faith Demonstration Awards, while the remainder was used to continue the provision of technical assistance and capacity building. This marked decline in funds for the Faith Demonstration Awards projects clearly affected the service providers. However, none of them were forced to cease operation, although several had to decrease their services, and one—JUBILEE—experienced a severe budgetary shortfall.³⁶

Over the past two years, North Carolina's financial crisis hindered the passage of the state's budget and forced extensive cuts at all levels. For the 2002–2003 fiscal year, Faith Partnerships, Inc. received no new state contracts.

At the state level, North Carolina currently appears to invest little effort in publicizing either the greater openness to contracting with FBOs provided by Charitable Choice or its project with the Rural Center. The project receives no mention on the state Web site, and a search of the Web site reveals few mentions of religion or faith in the context of urging the involvement of the faith community or religious organizations in meeting the needs of individuals and families on welfare. The site's extensive topical index lists neither religion nor faith, and the link for Families First actually takes readers to the Families Accessing Services through Technology (FAST) page.³⁷

This is surprising given that in the early period of welfare reform, the state actively encouraged the engagement of FBOs, including an express request in the state's 1997–1998 Work First Plan for involvement of the faith community in Work First. The state plan for FY 1998–1999/2000–2001 and the current plan for FY 2002–2003 emphasized faith-based service providers to a lesser extent. The current plan mentions FBOs three times: in a discussion of FBO involvement in the planning process, in a suggestion that representatives of the faith-based service providers (along with Work First participants) be added to the county planning committees, and in a report that faith community coordinators had been hired.³⁸

The earlier attention may have reflected the support that North Carolina's Governor Jim Hunt gave to faith-based involvement in social services during his terms in office. This included the establishment of the Governor's Task Force on Community Initiatives on Welfare Reform which brought in, both directly and indirectly, large numbers of representatives of North Carolina's faith communities. Interviews with several of the participants have suggested that the entire process

³⁶ Personal communication with Barbara Zelter. In November 2002, JUBILEE went out of existence, after relocating its projects to other organizations. The director of JUBILEE made this decision after consultations with its board of directors. The decision was made that JUBILEE, as an organization, had achieved its purposes and that its programs could be moved safely to other homes. Personal communications with Barbara Zelter (December 1 and December 10, 2002). Personal communication with Odell Cleveland, member of the Board of Directors of JUBILEE (March 11, 2003).

³⁷ See North Carolina's Department of Social Services Web site at http://www.dhhs.state.nc.us/dss/ei/ei_hm.htm and North Carolina's Department of Health and Human Services Web site at <http://www.dhhs.state.nc.us/>

³⁸ See North Carolina's Department of Social Services Web site at www.dhhs.state.nc.us/dss/ei/ei_hm.htm



had numerous problems, including the tendency of state representatives issue directives to the faith community and to assume that they (and other private funders) would support the suggested undertakings.³⁹ Such attitudes antagonized many of those involved, especially when those same individuals harbored major reservations about the entire welfare reform policy in general.

The election of a new governor and personnel changes at the Department of Health and Human Services (which includes the Division of Social Services) may explain part of this shift. The current governor does not appear to support faith-based service provision as vocally as his predecessor. Additionally, the person at the Department of Health and Human Services who created (with the Rural Center) the faith demonstration projects has been promoted. Her replacement is an individual who was skeptical of the program, although not hostile to it.⁴⁰ Undoubtedly, these changes leading to a diminishing emphasis on faith-based service provision have been exacerbated by the state's budget crises.

Possible Unintended Results of Implementation

Like most states, North Carolina began the process of welfare reform in the midst of economic growth and increasing prosperity. By June 1999, North Carolina (along with nearly every other state in the union) realized the lowest unemployment rate on record. Despite this accomplishment, North Carolina (again, along with every other state) fundamentally was unable to eliminate poverty, especially in the rural areas. Although the thriving economy and the sanctions within the welfare system helped reduce the welfare rolls significantly, certain social problems possibly linked to stresses created by the new welfare regime itself—child and spousal abuse and no-parent families—began to increase.

North Carolina's decision to reduce taxes in the midst of economic prosperity left it particularly vulnerable to economic downturn. The results are reflected in the state's ongoing budget crises and reductions in services to the poor, including the elimination or freezing of the faith-community coordinator positions in several counties.

The relationships between the service providers and the state welfare department have been somewhat fraught, with delays in payments being the major sources of frustration.⁴¹ In North Carolina, one of the organizations in the Communities of Faith Initiative that had an additional contract relationship with the state for part of its service provision experienced severe hardship when its reimbursements were delayed. At one point, it had such a significant cash flow problem

³⁹ Personal communications. Because of the sensitivity of this information, the informants requested that they not be identified. For corroboration, see pp. 131-135 in Bob Wineburg's book: *A Limited Partnership: The Politics of Religion, Welfare, and Social Service*. New York: Columbia University Press, 2001.

⁴⁰ Wilbert Morris. Interview and personal communications (July 18 and August 20, 2001).

⁴¹ Analysis of written surveys of executive directors of the faith demonstration pilot projects. (fall 2001 and winter 2003).



that it was forced to seek a bridge loan from a local foundation. One of the costs of the loan was an agreement not to seek funding from the foundation for at least three years.⁴²

These cash flow problems not only suggest that most of the service providers are undercapitalized, but that the slim margins under which they are forced to operate hinder their ability to develop adequate cash flows. Evidence suggests that governments radically underpay for social service delivery (an assumption supported by the decreasing number of for-profit entities in the field).^{43,44,45,46} While the ability to renegotiate contracts exists, nothing like the cost-plus contracts let by the U.S. Department of Defense are available in the social service field. Even in states such as North Carolina that have not moved to performance-based contracting, the maximums allotted for certain services basically do not cover costs, and nearly every organization is forced to rely on additional sources of funding to ensure its survival.

Undercapitalization and inadequate compensation hinder the effectiveness of even the best-managed service providers. The effect is increased during periods of economic decline. At those moments when demand increases, the amount of available funds decreases. When service providers experience the greatest need for their services, state and private resources usually are dwindling. In North Carolina, for example, in the summer of 2002, JUBILEE was forced to initiate an urgent funding appeal in order to meet a significant budgetary shortfall.

Although one of the assumed benefits of increasing governmental engagement with FBOs is the additional resources that the faith community could provide to address the problems of poverty and impoverishment, there are some major flaws with this assumption. Need increases when the economy decreases. This is as true for volunteer labor as it is for monetary donations. At times of economic downturn, individuals not only decrease their giving, but also begin to focus more on job security by working longer hours, taking shorter vacations, and eliminating distracting demands.

Growing need amidst declining resources causes major internal problems for faith-based service providers. Unlike organizations that are profit maximizers, the work of FBOs is often related to fulfilling the responsibilities of their faith. Interviews with many executive directors suggest that most FBOs would attempt to deliver the services they provide regardless of governmental funding. The failure of state government to pay adequately represents burden-shedding and cost-shifting on the part of state government. One objection raised to governmental contracting with FBOs is that it could make it possible for FBOs to shift funds previously put into serv-

⁴² Personal communication from Odell Cleveland, August 17, 2001.

⁴³ This conclusion has been drawn from analysis of survey responses from executive directors of the faith demonstration award pilot projects and from interviews with those individuals. It is supported by information obtained by researchers in other parts of the United States. See sources listed in the following three footnotes.

⁴⁴ De Vita, C., & Palmer, P. (March 5-7, 2003). *D.C. Congregations in Three Low-Income Wards and Their Experiences with Government Funding*. Paper presented at Independent Sector Spring Research Conference, Bethesda, MD. Copy in author's personal possession.

⁴⁵ Campbell, D. et al. (March 5-7, 2003). *Evaluating the California Community and Faith-Based Initiative*. Paper presented at Independent Sector Spring Research Conference, Bethesda, MD. Copy in author's personal possession.

⁴⁶ Orr, J., & Spoto, P. (March 5-7, 2003). *Promising Public Practices in Public/Private Partnerships that Involve Faith-Based Organizations: Implementing Charitable Choice in California*. Paper presented at Independent Sector Spring Research Conference, Bethesda, MD. Copy in author's personal possession.



ice provision to religious activities. However, it could be that the acceptance of governmental monies requires these organizations to put even more of their own funds into service provision to cover the shortfall created by governmental underpayment.⁴⁷

Preliminary Conclusions

Generally speaking, the work appears to have been relatively successful in North Carolina. Analysis of the organizational reports as well as personal interviews suggests that most of the programs have met their target goals, although the economic decline in North Carolina over the past two years, as well as the flooding resulting from Hurricane Andrew, dramatically affected the state's employment situation. Between June 1999 and June 2002, North Carolina's unemployment rate more than doubled from 3 percent to 6.7 percent. The economic downturn also markedly diminished the state's revenues, leading to severe cutbacks in funding for governmental services.⁴⁸

As mentioned previously, despite the decline in DSS funding, none of the projects funded through the COFI have closed their doors. Although several have decreased the level of service provision, all continue to function. This could be attributed to the quality of technical assistance they obtained as part of the COFI, and the insistence of the trainers that the programs should never be solely (or even primarily) dependent on governmental funding. Additionally, the community-centered and partnership model emphasized by the COFI gave the programs a local base of support.⁴⁹ Once final project numbers and reports are available, a final analysis can be undertaken.

Some preliminary conclusions drawn from information gained from interviews with several service providers about apparent keys to success can be identified, however:

- Technical assistance—the high quality of the technical assistance provided to the various projects seems to have been a key element, at least in institutional success. Although several project directors suggested that early on they had problems with the intensity and precision of the assistance, all later acknowledged that it was central to their organization's ability to operate effectively and efficiently.
- Multiple funding sources—the ability to attract funds beyond governmental contracts always was cited by participants as important. Not only did the additional funding make it possible to weather government cutbacks and to

⁴⁷ Statements to this effect were made to this author by numerous executive directors of the pilot projects.

⁴⁸ Interview with Pheon Beal (August 20, 2001), Diana Jones Wilson (August 20, 2001; September 26, 2002; November 12, 2002; and February 20, 2003), and Scott Rogers (August 15, 2001; September 10, 2002; November 12, 2002; and March 11, 2003).

⁴⁹ These preliminary conclusions are based upon interviews with and surveys of executive directors.



provide additional administrative and training services, it also meant that the organizations did not have to view themselves as obligated to the state.

- Extra effort—most of the organizations attributed part of their success to not limiting their work to the requirements of the contract. They all viewed their own willingness and ability to go beyond those formal requirements as key. Such extra efforts could include everything from providing clothing, automobiles, and additional (no-cost) training to taking a strong personal interest in the individuals whom they served.

North Carolina presents a potentially intriguing model of a different way of implementing Charitable Choice, one where government is led (to some extent) by the faith-based community rather than taking the lead and initiative itself. It also presents a model whereby the faith communities of the state focus on meeting the needs of the poor and impoverished rather than merely providing a particular contracted service. Built upon a fairly sophisticated set of organizations, many of which provide a myriad of services, there is a greater likelihood that individuals in North Carolina's Work First program will be able to overcome the multiple challenges that usually beset those moving from welfare to work. The centerpiece of this success remains the ability of the TANF recipients to find employment. If that part collapses, the organizations will again be reduced to providing emergency aid, much of it to those no longer eligible for cash assistance or other governmental programs.



INTERIM REPORT ON THE IMPLEMENTATION OF CHARITABLE CHOICE IN INDIANA

Abstract: *Indiana is recognized by proponents of Charitable Choice and faith-based initiatives as a model for implementation. The state has committed significant resources to actively recruiting among religious organizations to become government contractors. These efforts have been carried out primarily through the FaithWorks program.*

Initiated by the state in November 1999, FaithWorks was designed to reach out to faith-based organizations (FBOs) by providing technical assistance and capacity building, thus equipping them to bid for available state funds. The goals of the program are to help FBOs identify community needs and apply for funding to support new and existing self-sufficiency programs. Long-term objectives include establishing networks and links that will allow the religious community to sustain an effective presence in the area of social service delivery.

Since our study began, relatively few FBOs have become government contractors. As of 2001, seven new organizations that the state identified as faith-based began contracting for service provision under the state's IMPACT program. In 2003, only three FBOs remain IMPACT contractors. Significant cuts in the state's budget have reduced the number and size of provider contracts for both FBOs and non-faith-based organizations.

In the next (third) year of our study, further research efforts will inform the overall investigation of Indiana's implementation of Charitable Choice. We also will perform a comparative analysis of the similarities and differences in approaches to implementation among the three states in the study (Indiana, Massachusetts, and North Carolina). These analyses will include a second round of organizational surveys, a survey of caseworkers who are responsible for referring clients to service providers (both FBO and non-FBO providers), in-depth case studies, and ongoing client surveys.

Background

Prior to the 1996 passage of the national welfare reform bill, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Indiana had already adopted a number of reforms. The state had been among the first to adopt the "work first" emphasis and "personal responsibility" approach for public aid recipients with the goal of helping recipients obtain employment and economic self-sufficiency. Among the reforms were strict sanctions for failure to comply with program requirements and broader participation requirements such as a 20-hour per week job search requirement. Also included were a Personal Responsibility Agreement (a contract detailing the recipient's responsibilities under program regulations), maximum time limits (24 months) on eligibility for cash assistance, a family cap, and sanctions for clients who failed to meet program requirements and/or parental responsibilities.

Benefits for a typical recipient of Temporary Assistance to Needy Families (TANF) in Indiana include a monthly cash benefit, Food Stamps, health insurance, and childcare. To receive assistance, applicants are required to sign a personal responsibility contract in which they agree to participate in work activities; adhere to child school attendance requirements, immunization/preventive health requirements, drug and alcohol provisions, and teen parent living arrangements; and coop-

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eration with development of an individual self-sufficiency plan. Failure to comply with provisions of the personal responsibility agreement can result in sanctions and loss of benefits.

A key philosophical element of reform was a shift in the focus of welfare away from an education and job-training model to a vigorous work-first approach that attempts to place clients in jobs suitable to their existing education and skills. The state has increased resources for job search and job readiness activities, and it now requires all clients to be formally assessed for job readiness when they first apply for assistance. Clients found to be job-ready are placed in programs with specific policies aimed at strengthening work incentives. Clients exempt from participating in work activities include individuals caring for children under age one, the disabled, persons with temporary illness or incapacitation, those caring for a disabled household member, those over age 60, domestic violence victims, and pregnant women.

In Indiana, TANF—like Aid to Families with Dependent Children (AFDC) that preceded it—is administered by the Indiana Family and Social Services Administration (FSSA). The Indiana Manpower Placement and Comprehensive Training (IMPACT) program began as the state’s welfare reform demonstration project. The program, funded by the TANF Block Grant and administered by FSSA, includes cash assistance and employment service programs for needy and eligible families with dependent children. IMPACT provides job preparation programs, employment opportunities, and supportive services to help families attain economic self-sufficiency.

The *work first* approach stresses job placement and work experience as the best approach to economic independence, emphasizing transitional services over cash assistance in order to reduce dependence on public aid. Job placement is a key component of case management, along with work-preparation activities such as education, training, and skills acquisition. From the time they apply for assistance, individuals who are found to be “job-ready” are given employment services and are expected to begin the job search process.

Clients who are job-ready are assigned an IMPACT family case coordinator who is responsible for referring them to local providers or contractors. Family case coordinators also monitor clients’ compliance with employment-related program requirements. Once clients are accepted to the program and referred to providers, the types of activities that clients will engage in will vary by provider. Providers may offer client services that include assessment, job readiness, search and training, case management, education, and life skills instruction. For all programs, however, the end goal is the same—economic self-sufficiency.¹

¹ FSSA hired Abt Associates to perform a six-year (1995 through 2001) evaluation of welfare reform and the impact of new policies on families’ incomes, employment, self-sufficiency, and other indicators of well-being. The evaluation involved the comparison of outcomes of a control group subject to AFDC policies with those of clients receiving public assistance under reform policies. Although interim reports indicate clients subject to reform policies experience increased self-sufficiency, such as higher income levels, their situation remains vulnerable after they leave public assistance. (1998)



The IMPACT Program

Since Indiana began implementing welfare reforms in the mid-90s, the state has increasingly contracted out for services and has moved toward performance-based contracts. Under performance-based contracting, payment for the services provided is linked to specific outcomes (such as job placements and retention), which are outlined in negotiated contracts. In the IMPACT program, the contracting process also is decentralized to the local county welfare offices, which are responsible for negotiating contracts with local service providers. The bidding process is competitive.

Potential contractors prepare proposals and bid for job search and training contracts through the local county Department of Family and Children (DFC) offices. The criteria for awarding contracts includes prior experience working with welfare recipients and/or low-income populations, cost, and—if the organization bidding is a current contractor—past performance.

The primary way that IMPACT monitors contracts is via regular billing records, which contractors submit to the central office for payment monthly. Approximately five months into the contract year (September 30 through October 1), IMPACT draws a sample of all providers for annual site visits. This process is initiated at the central office level but the local DFC conducts the site visits and is responsible for monitoring procedures. Site visits include a review of clients' records (assessment and attendance documentation) and financial reports (claims and billing), and interviews with staff and clients. Site visits also include a review of program activities and compliance, financial accuracy, service delivery, and performance (i.e., job placement and retention). Following the site visit, contractors are sent a letter summarizing key findings. If there are concerns, a course of corrective action is established. The contractor would then be required to submit a proposal addressing concerns and performance deficiencies that, if accepted by IMPACT, must be fulfilled by the contractor.²

² IMPACT Provider Orientation, Indianapolis, November 11, 2001.

Indiana and Charitable Choice

According to FSSA officials, before the passage of PRWORA and Charitable Choice, the faith community in Indiana had been involved in providing services to eligible individuals through informal networks under TANF's predecessor, AFDC. It was through these networks that referrals for emergency services such as food, shelter, clothing, or cash assistance often were delivered.³

A report on the history of religion and social welfare in Indianapolis in the 20th century reveals that partnerships between the public welfare sector and private vol-

³ Interview with Matt Raibley, IMPACT manager, October 2000. Despite cooperation from state officials, it has been difficult to assess the scope of the faith community's historic involvement in service provision due to lack of available data regarding such referrals.



untary organizations (many of which have been religiously affiliated) are not new to the city, and cooperation between the two sectors for service provision has in fact been quite prevalent. According to Mary Mapes (1999), beginning in the 1930s and through the 1960s, both public and private organizations recognized an individual's religious heritage and considered affiliation when making referrals. One religious body to which referrals were made was Catholic Charities—an agency involved in children's social welfare services that had arrangements with the city's public and private agencies to refer Catholic children. Neither sector was completely independent of the other, and as Mapes suggests, both "recognized such cooperative endeavors as a way to achieve their own goals."

A more recent example of public cooperation with faith-based entities in Indianapolis is the Front Porch Alliance. This program was initiated in 1997 by former Mayor Stephen Goldsmith as a way for FBOs to partner with government for the improvement of inner city conditions by encouraging collaboration among city agencies, FBOs, and neighborhood groups. It was hoped that these partnerships would allow for sharing of information and expertise, and that they would, to some extent, help organizations obtain funding. The Front Porch Alliance program was relatively small. Its budget ranged from \$100,000 in its first year to \$400,000 in 1999. Most of the grants that it awarded also were relatively small, averaging \$5,000. Shortly after Mayor Bart Peterson took office, he reduced the number of staff involved in the program, removed all references to it from the city's Web site, and moved the program away from the Mayor's Office (Polis Center, 2000).

In 1998, the state began to explore the possibility of expanding the religious community's involvement in service delivery. From the state's perspective, this seemed a "natural fit," given the religious community's historic and current involvement with provision of emergency services. The state wanted to capitalize on the perceived benefits of working with FBOs—including their ties in local communities, proximity of services to potential clients, and an assumed greater level of trust—as well as to broaden the scope of social services provided. In addition, most clients who remained on the welfare rolls in 2000 faced a laundry list of multiple barriers to self-sufficiency: lack of a high school diploma or GED, low skills, child care problems, children's health problems, lack of transportation to job sites, depression and other mental illness, disability or other health problems, substance abuse, domestic violence, and other family health problems. It was thought that the faith community might fill a void by offering holistic services to these "hardest-to-serve" populations.



The FaithWorks Initiative

In 1999, the state requested applications for a contractor to administer a technical assistance program aimed at recruiting and educating FBOs, to be called *FaithWorks*. Among the goals of the initiative were outreach to the faith community, development of technical assistance materials and a training program, and efforts to increase awareness of Charitable Choice in the faith community. Crowe Chizek, a private consulting firm and one of three applicants, was selected for a two-year \$500,000 contract. The contract was subsequently extended for a third year, through November 2002.

In 2000, the state sponsored a survey of 400 Indiana congregations to gather baseline data about congregations' interest in applying for government funding, current provision of services by FBOs, capacity of FBOs to provide services, and identification of best practices. To allow for comparison with the rest of the nation, the survey was designed to mirror the National Congregations Survey conducted by Mark Chaves.⁴ Survey findings suggest that congregations in Indiana offer more human services than congregations nationally (79 percent in Indiana compared with 57 percent nationally) and are more interested in applying for public funding (52 percent in Indiana; 36 percent nationally). One-third of Indiana congregations are familiar with Charitable Choice and the state's technical assistance initiative. Fewer than 3 percent of Indiana congregations receive some form of government funding, however, more than half (52 percent) indicate willingness to apply for such support. Survey results also suggest that few congregations (3 percent) offer programs that would qualify for TANF funding—such as job training, education, counseling, and childcare.⁵

With regard to service provision and awareness of Charitable Choice, preliminary results of a recent 2002 survey of more than 2,000 Indiana nonprofits reveal similar results to the national findings (Clerkin & Grønberg, 2003). More than half of the congregations (56 percent) and other faith-based nonprofits (58 percent) report that they currently deliver health or human services. Roughly one-third of congregations in the study were aware of Charitable Choice or "a national initiative to make it easier for religious organizations to obtain government funding." Thirty percent of FBOs that do not offer human services report such awareness compared with 64 percent of faith-based nonprofits that do provide human services. In terms of organizations' interest in seeking government funding, results of the Indiana study differ from the Polis Center study. The Polis Center results reveal that most congregations, regardless of their human service provisions, say they do not intend to seek government funding. Among faith-based nonprofits that provide human services, about one-third indicate they do not intend to seek such support. And among faith-based

⁴ The National Congregations Study Web site is available at: <http://saint-denis.library.arizona.edu/natcong/>

⁵ Survey completed by the Polis Center for FaithWorks Indiana. *Indiana congregations' human service programs: A report of a statewide survey*. Indiana Family and Social Services Administration. Prepared by the Polis Center with Crowe Chizek and Company, March 7, 2001.



nonprofits that do not provide human services 79 percent say they do not intend to apply for government funding (Clerkin & Grønbjerg, 2003).

The FaithWorks initiative was designed to reach out to FBOs by providing technical assistance and capacity building, thus equipping them to bid for available state funds. Goals of the program include providing FBOs with assistance in identifying community needs and applying for funding to support new and existing self-sufficiency programs. Long-term goals include establishing networks and links that will allow the faith community to sustain an effective presence in the area of social service delivery. In testimony before a U.S. House subcommittee, outgoing FSSA Secretary Katie Humphreys stated that, “We view the work of FaithWorks Indiana as simply ‘widening the doorway,’ if you will, for a new generation of potential providers in human services and to involve them in an integrated service strategy to help individuals and families move to self-sufficiency. These new providers help us build the provider base, and ultimately may contribute to increasing the quality and level of services offered to those in need.”⁶

Beginning in 1998, the state has been aggressive in its outreach and education to FBOs and the faith community. FaithWorks defines FBOs as “houses of worship” and/or “nonprofit service providers affiliated with religious organizations.”⁷ The state held six informal meetings in February 2000 to gather input from the faith community and to gauge the interest of FBOs in applying for government funding. FaithWorks purchased a list of more than 9,000 statewide FBOs representing diverse religious perspectives and mailed all of them invitations to attend the public forums. Approximately 1,000 responded by attending one or more of the sessions that were held throughout the state. Of those in attendance at the outreach meetings, 86 percent were from the faith community (congregations and religiously-affiliated nonprofits).

FaithWorks has subsequently conducted technical assistance workshops around the state for organizations interested in applying for state funding as well as for organizations that have existing contracts. The workshops help organizations understand the promise and limitations of the Charitable Choice legislation, state procurement procedures, the contracting process, and effective proposal development. During the workshops, FaithWorks staff explicitly explain the issue of separation of funds—that no government funding can be used for worship, religious instruction, or proselytization—and recommend that FBOs form separate nonprofit, tax-exempt 501(c)3s if they receive government funds. The workshops also have the goals of helping organizations to identify the services they could or do provide, conduct needs assessments, and match services to funding opportunities. Workshops are followed by a series of sessions geared toward organizations that have received contracts.

⁶ Testimony of Katherine Humphreys, secretary, Indiana Family and Social Services Administration, before the United States House of Representatives Subcommittee on Criminal Justice, Drug Policy, and Human Resources. April 26, 2001.

⁷ Interviews with FaithWorks staff, fall 2000.



These sessions focus on state program requirements and regulations, contract administration, fiscal management, and accountability. Post-contract technical assistance is available via a toll-free line and regional FaithWorks consultants.

In 2000, 400 Indiana FBOs received technical assistance from FaithWorks through workshops and consulting. In the southern part of the state, however, the response to FaithWorks has been poor in terms of attendance at outreach forums, workshops, and contract bidding meeting. FaithWorks staff attribute this to regional political and cultural attitudes toward government.⁸

⁸ Interviews with FaithWorks staff, April 2002.

In spring 2001, FaithWorks held regional workshops in Fort Wayne, Indianapolis, South Bend, Evansville, and Madison. That year the number of organizations participating in technical assistance workshops dropped to just over 100. In 2002, 122 representatives of FBOs and community-based organizations attended technical assistance workshops held at five locations across the state.⁹

⁹ Interviews with FaithWorks staff, September 2002.

FaithWorks also offers ongoing technical assistance to organizations and individuals via a toll-free hotline, regional consultants who provide on-site assistance, a Web site with information about other funding opportunities, and links to useful resources. FaithWorks also has assembled a technical assistance packet to help FBOs access funding and plan and implement services. This packet is available to all who attend workshops or express interest. It provides information about Charitable Choice, an overview of welfare reform in Indiana, a list of current services available, and a directory of contract, voucher, and grant opportunities available through FSSA, other state agencies, and private foundations. FaithWorks also developed a *Promising Practices Handbook* that describes national and local faith-based efforts which it distributes along with a service referral directory aimed at integrating providers into the social service network and a resource directory of funding streams.

In 2002, FaithWorks developed “participants’ rights” posters for display in all county welfare offices, emphasizing the client’s right to a choice of provider (faith-based or non-faith-based) for service provision. When clients meet with their IMPACT family case coordinator to determine which TANF services they need, the coordinator presents them with the choice to receive services from a faith-based or secular provider. Under the Charitable Choice provisions, if beneficiaries object to the religious nature of providers, state and localities are required to provide alternative providers without religious affiliation. Under Indiana’s IMPACT program, once a provider has been selected, the client may return to the family case coordinator to request an alternate provider. Prior to 2002, the state relied on client complaint and grievance procedures already in place. The posters developed by FaithWorks include a toll-free line for clients to contact with any complaints about providers. FaithWorks



reports that there have been no complaints from clients about any providers receiving government funds via this toll-free line.

In the last year of the state's three-year contract with Crowe Chizek, the contractor for FaithWorks technical assistance scaled back outreach efforts and focused on increasing program awareness among local DFC offices and on efforts toward building capacity and self-sufficiency for handing over day-to-day administration to the state in November 2002 (once the three-year contract expired). The contractor will continue to conduct periodic technical assistance workshops.

In 2002, the state also identified 75 community service liaisons (CSLs) at local county offices to serve as contact points and to foster partnerships with the religious community. CSL responsibilities will include conducting outreach efforts to FBOs and facilitating the formation of new collaborations with faith- and community-based organizations. The perceived benefits of CSLs include presumed ties in the local community, a level of trust that such ties suggest, and respect from neighborhood residents. The CSLs also will serve as an information resource for other DFC staff in local offices, for DFC central office staff, and for local providers.¹⁰

In 2002, FaithWorks held six regional CSL training sessions during which they provided the CSLs with information about Charitable Choice legislation and FaithWorks materials for outreach purposes. (About 100 representatives of local DFC offices attended these regional meetings.) This training eventually will be integrated into regular training of FSSA staff. CSLs are encouraged to host open houses for FBOs and community-based organizations in an effort to promote collaboration. To date, FaithWorks staff have been involved in three open houses hosted by DFC in three rural counties.¹¹

FaithWorks also established the FaithWorks Indiana Support Work Group to provide feedback on the project. This group is composed of individuals both supportive and skeptical of the initiative, and it includes representatives from traditional service provider organizations, congregations, the Indiana Civil Liberties Union, and other state agencies such as the Department of Workforce Development and the Health Department. FaithWorks expects this broad representation to bring balance to the program and to help address areas of concern, such as the separation of church and state.

¹⁰ FaithWorks Community Service Liaison training, Greensburg, Indiana, April 2002.

¹¹ In addition to interviews and e-mail communications, details about FaithWorks activities are based on progress reports including the following: *FaithWorks Indiana Weekly Reports* (March 3–June 30, 2000); *FaithWorks Indiana Quarterly Progress Reports* (June 2001–November 2001); and *FaithWorks Indiana Semi-Annual Progress Report* (June 2002).



Reported Challenges

Over the last three years, FaithWorks has provided some form of technical assistance—either via a workshop or help with proposal development—to roughly 18 percent of IMPACT providers throughout the state. FaithWorks and IMPACT personnel report that FBOs face significant challenges with contracting. These include learning to write effective proposals; a lack of familiarity with the government procurement process, proposal submission, and negotiation process; difficulty obtaining referrals (this is not unique to FBOs), and the challenges of working with the “hardest-to-serve” clients.¹² Arthur Farnsley of the Polis Center reported similar findings in an analysis of proposals from FBOs and other organizations in response to Requests for Proposals (RFPs) from three Indianapolis-based organizations. FBOs in this sample also faced challenges with effective proposal writing, developing evaluation strategies, and budgets. The three organizations that issued the RFPs were the Front Porch Alliance, the juvenile division of Marion County Superior Court which contracts with faith-based groups to provide mentoring, and the Coalition for Homelessness Intervention and Prevention (Farnsley, 2001). FBOs also report challenges related to government reporting requirements and questions about the proper balance of religion with service provision—separation of church and state issues.¹³ The research team has collected data via provider interviews specifically about organizational and IMPACT challenges that will be the subject of a forthcoming paper.

¹² Interview with Matt Raibley, IMPACT manager, October 2000. These reported challenges are based on the state’s experience with contracts in the first stages of the FaithWorks initiative; primarily the 2000 term Summer Youth Program providers.

¹³ Interviews with FaithWorks staff, April 2002.

Preliminary Results of Implementation Efforts

In 2000, roughly 75 of the 400 groups (both faith-based and non-faith-based) who attended the technical assistance workshops applied for funds. About 40 contracts were subsequently awarded to faith-based groups. These groups went through the same procurement process as other organizations. Like the others, they signed performance-based contracts in which they were required to perform specific services and achieve specific outcomes for payment. These contracts represented approximately \$3.5 million in state funds. Twenty-eight of these contracts, each for approximately \$25,000, were awarded to FBOs (using the state definition for a faith-based organization) for short-term summer youth programs in Marion and Lake counties. (These contracts were a result of supplemental IMPACT funds for FY 2000 only.) Of the 40 contracts, 10 were awarded to FBOs in the IMPACT program (see Table 3.2, 2001). These organizations contracted to provide job readiness, training, placement, and mentoring programs. Several contracts also have been awarded to FBOs under the state’s Fathers & Families Program, which addresses fatherhood and parenting issues.¹⁴

¹⁴ The Fathers & Families program is beyond the scope of this investigation.



It is extremely difficult to obtain copies of proposals (both rejected and accepted) or names of applicant organizations from the local county offices. This is probably a result of the state's decentralized contracting procedures combined with chronically understaffed local offices. This is a problem for researchers, as it is difficult to determine whether organizations whose contracts were not renewed were rejected or if they simply did not reapply. As the research team learned more about the IMPACT data and the agency's staffing constraints, it became clear that, while FSSA was willing to share its data, the project would require more staff time than the agency could provide. The research team therefore has placed a graduate student at FSSA for the duration of the data collection effort.

In the first year, our research efforts focused on organizations and clients in two Indiana counties, Lake and Marion (the most populous urban counties in the state), which had contracts with faith-based providers for IMPACT's 2001 fiscal year (October 1, 2000, through September 30, 2001). Prior to 2001, the state had not identified providers by any faith element. The state defined 2001 providers as faith-based by their participation in the FaithWorks technical assistance program.¹⁵ IMPACT consultants determined whether 2002 providers were faith-based based on information sheets submitted by organizations along with contract proposals. Potential contractors were asked to identify their organizations by auspice (nonprofit, for-profit, government, or other). In the "other" category, it is our understanding that a provider could indicate "faith-based." In 2001, of the 17 total providers in Lake County, 8 were faith-based and 9 non-faith-based (see Tables 3.1 and 3.2). (Three of the Lake County contracts that were terminated in the spring of 2001 were faith-based.) Of the 14 providers in Marion County, 2 were faith-based and 11 were non-faith-based. From the data provided on the new information sheets, only 6 2002 contractors were categorized as faith-based by the state, some because their name included a religious reference.¹⁶ For the 2002 contract year (October 1, 2001, through September 30, 2002), there were fewer total contracts in both counties, with only 4 faith-based providers in Lake County.

Indiana experienced a dramatic reduction in welfare caseloads from 70,000 in 1994 to 30,000 in 1999. However, because of recent economic conditions and rising unemployment in 2001 and 2002, welfare caseloads increased to more than 52,000 (as of June 2002). On July 17, 2002, FSSA announced that the state was facing a \$60 million deficit for FY 2003 and released a *TANF Budget Reduction Plan*. Due to rising caseloads and flat funding in the TANF federal block grant, FSSA proposed to cut \$60 million from its budget—including a \$21 million cut for childcare.¹⁷ The state projected that the budget reduction could affect 26,000 current IMPACT clients and that

¹⁵ From the beginning of this project, it was our understanding that the state's definition of "faith-based" was premised upon participation in the FaithWorks program. This interim report includes analysis based on this categorization of FBOs. It has recently come to our attention that this is no longer the state's method of classification. Our final report will address the new typology. It should be noted that for analytical purposes, the project made its own determination of the faith character of providers, and that while the state's categorization is relevant to descriptive issues, the change does not affect evaluations of comparative efficacy.

¹⁶ As a result of the state's reclassification of existing providers, two additional organizations were categorized as faith-based—one in Howard County and the other in Miami County. After we contacted both organizations and used screening questions from the project's survey instrument, we determined that the provider in Miami County was faith-based by our typology. All three IMPACT providers in Miami County have been added to our investigation.

¹⁷ A recent FSSA news release reported that in FY 2002, more than \$33 million was removed from the FSSA budget and an additional \$11 million will be permanently removed from the budget in 2003. FSSA will continue to hold the line on spending in 2004–2005, cutting \$150 million in the 2002–2003 biennium and holding those reductions in place for the 2004–2005 biennium. See *FSSA hold the line on spending*. (January 15, 2003) FSSA News Release retrieved January 15, 2003, from www.in.gov/fssa



Table 3.1: IMPACT Contractors by Reported Type of Organization

	County	2000	2001	2002	2003
Nonprofit	Lake*	6	11	8	5
	Marion	4	10	9	8
	Total	10	21	17	13
For profit	Lake	2	3	2	2
	Marion	2	3	3	1
	Total	4	6	5	3
Government Entity	Lake	2	3	3	0
	Marion	0	1	0	0
	<u>Total</u>	<u>2</u>	<u>4</u>	<u>3</u>	<u>0</u>
	Total	16	31	25	16

* 2001 count includes 3 terminated contracts

Table 3.2: Faith-Based IMPACT Contractors

	County	2000	2001	2002	2003
Faith-based	Lake*	3	8	4	2
	Marion	0	2	2	1
	Total	3	10	6**	3**
Non-faith-based	Lake	7	9	9	5
	Marion	6	12	10	8
	<u>Total</u>	<u>13</u>	<u>21</u>	<u>19</u>	<u>13</u>
	Total	16	31	25	16

* 2001 count includes 3 terminated contracts

** The addition of two faith-based providers in Miami and Howard counties on the basis of the new classification would increase the total number of faith-based IMPACT providers throughout the state to 7 in 2002 and 4 in 2003.

1,450 new clients annually would not receive services.¹⁸ The implications of these cuts are a reduced number of people served and fewer types of services available. Because of the state's fiscal crisis, IMPACT did not issue any RFPs for FY 2002–2003. Rather, funds were allocated to the counties, which then negotiated with 2002 contractors for services that support their goals. For the current contract year (October 1, 2002, through September 30, 2003) only two FBO contractors remain in Lake County and one in Marion County (see Table 3.2).

As shown in Tables 3.1 and 3.3, most providers in Lake and Marion counties in contract years 2001–2003 were nonprofits, as were most of the FaithWorks participants with IMPACT contracts. Though nonprofit organizations still receive most of the IMPACT contract funds in both counties, in the most recent contracting year (2002–2003), for-profit providers in Lake County increased their share of contract funds. In contrast, the for-profit providers' share in Marion County has decreased. While neither county contracted with a large number of government entities for IMPACT services in 2001 or 2002, neither one currently has any contracts with government entities.¹⁹

¹⁸ TANF Budget Reduction Plan. (2002, September 10). Available: www.in.gov/fssa/tanf/plan.html

¹⁹ Contract amounts were obtained from IMPACT financial reporting records. Totals do not reflect contracts with local DFC offices or a sizeable 2003 contract with an outside contractor for developing an online assessment tool.



As Table 3.2 illustrates (see page 51), the number of both faith-based and non-faith-based providers increased between contract years 2000 and 2001—the number of faith-based providers grew from three to ten. In contract year 2002, the number of faith-based providers dropped to six and then to three in 2003.

Table 3.3: IMPACT Contracts (TANF Funds) by Reported Type of Organization

Lake County	2001	Percent	2002	Percent	2003	Percent
Nonprofit	\$3,271,840	66%	\$2,278,400	76%	\$886,400	62%
For-profit	\$1,199,350	24%	\$381,000	13%	\$550,000	38%
Government	<u>\$455,490</u>	<u>9%</u>	<u>\$333,075</u>	<u>11%</u>	<u>\$0</u>	<u>0%</u>
TOTAL	\$4,926,680	100%	\$2,992,475	100%	\$1,436,400	100%

Marion County	2001	Percent	2002	Percent	2003	Percent
Nonprofit	\$3,017,200	72%	\$2,240,000	74%	\$1,535,075	82%
For-profit	\$793,350	19%	\$785,000	26%	\$335,000	18%
Government	<u>\$401,000</u>	<u>10%</u>	<u>\$0</u>	<u>0%</u>	<u>\$0</u>	<u>0%</u>
TOTAL	\$4,211,550	100%	\$3,025,000	100%	\$1,870,075	100%

Most faith-based providers were in Lake County during contract years 2000 and 2001. In contract years 2002 and 2003, however, the number of faith-based providers in the two counties was about equal. This is because the number of FBO providers in Lake County dropped between 2001 and 2002—probably because of the three FaithWorks contracts that were terminated. Two of these contracts were terminated for under-utilization of funds and one for legal reasons, demonstrating that FBOs are subject to similar financial and programmatic monitoring as other providers. (A detailed description and analyses of the IMPACT providers included in our study is the subject of Chapter 5.)

Table 3.4 shows IMPACT contract totals (TANF funds) in contract years 2001, 2002, and 2003. It illustrates that, while faith-based contracts to provide IMPACT services are a small proportion statewide (13 percent in 2001), they are more significant in Lake County (41 percent). The total contract amounts decreased in 2002, and faith-based contracts decreased disproportionately in Lake County and statewide. In Marion County, however, the faith-based proportion in 2002 is roughly similar to 2001. In 2001, statewide faith-based contracts represent 13 percent of all contracts. This is slightly higher than the national average for that same year. (U.S. General Accounting Office, 2002). The U.S. General Accounting Office reported that contracts with FBOs account for 8 percent of TANF funds spent by states on contracts with non-governmental entities.²⁰

²⁰ The 2002 study, *Charitable Choice: Federal Guidance on Statutory Provisions Could Improve Consistency of Implementation*, reported results based on findings from 2001 GAO national survey.



Table 3.4: IMPACT Contracts (TANF funds)

Lake County	2001	Percent	2002	Percent	2003	Percent
Faith-based	\$1,996,200	41%	\$907,500	30%	\$500,000	35%
Non-faith-based	<u>\$2,930,480</u>	<u>59%</u>	<u>\$2,084,975</u>	<u>70%</u>	<u>\$936,400</u>	<u>65%</u>
TOTAL	\$4,926,680	100%	\$2,992,475	100%	\$1,436,400	100%
Marion County	2001	Percent	2002	Percent	2003	Percent
Faith-based	\$344,700	8%	\$300,000	10%	\$100,000	6%
Non-faith-based	<u>\$3,866,850</u>	<u>92%</u>	<u>\$2,725,000</u>	<u>90%</u>	<u>\$1,770,075</u>	<u>95%</u>
TOTAL	\$4,211,550	100%	\$3,025,000	100%	\$1,870,075	100%
Statewide	2001	Percent	2002	Percent	2003	Percent
Faith-based	\$2,340,900	13%	\$1,279,000	9%	\$627,077	6%
Non-faith-based	<u>\$16,220,703</u>	<u>87%</u>	<u>\$13,126,917</u>	<u>91%</u>	<u>\$10,517,050</u>	<u>94%</u>
TOTAL	\$18,561,603	100%	\$14,405,917	100%	\$11,144,127	100%

Note: Statewide faith-based totals for 2002 and 2003 include contracts with providers in Miami and Howard counties.

Recent Developments

The state also is exploring the possibility of greater collaboration with the Department of Workforce Development (DWD). Under such an arrangement, IMPACT would focus on job placement and retention, while DWD would offer career development and skill enhancement services.²¹

In June 2002, Indiana was one of 12 states awarded federal grants by the U.S. Department of Labor (DOL) to faith-based, grassroots organizations. The \$1 million grant will be used to link faith-based and community organizations to Indiana's DWD career service programs and clients, a similar approach to that of IMPACT and the FaithWorks program. In fact, the same contractor (Crowe Chizek) wrote the DOL grant proposal and will be involved in its administration. The FSSA portion of FaithWorks programming concluded in November 2002. Given FSSA's role in developing the FaithWorks initiative, it will continue to participate in program facilitation. In February 2003, Governor O'Bannon announced the formation of an inter-agency task force to be supported by the grant. This group will represent a number of organizations and its objective will be further expansion of faith-based involvement beyond the human services arena.²²

Interim Conclusions

Indiana has invested significant resources in publicizing FaithWorks and aggressively reaching out to the faith community. The initiative has received strong support from Governor O'Bannon's administration since its inception. The state's efforts also are viewed by many around the nation as a model for implementation. For example, the Center for Public Justice, a religiously-based proponent of Charitable Choice, gave Indiana an "A" for compliance in terms of procurement policies and practices under the legislation.²³

²¹ Interview with IMPACT Program Manager, Matt Raibley, June 2002.

²² The task force will be comprised of representatives from the Governor's Office, FSSA, DWD, Commission on Community Service and Volunteerism, State Department of Health, Criminal Justice Institute, Department of Commerce, Department of Correction, and Department of Education. *State forms task force to coordinate FaithWorks Indiana*. (February 27, 2003). Office of Governor Frank O'Bannon. Retrieved Feb. 27, 2003, from www.insideindianabusiness.com/newsStory.asp?local=1&newsid=3531

²³ *Charitable Choice National Compliance Card*. (2000). The Center for Public Justice. Retrieved September 2000 from [www.cpublicjustice.org/stories/storyReader\\$296](http://www.cpublicjustice.org/stories/storyReader$296)



What is the result of Indiana's substantial investment in implementing the Charitable Choice provisions? In the first full year of the initiative, contracts with FBOs represented nearly 13 percent of statewide IMPACT contracts. In contract year 2001-2002, these decreased to roughly 9 percent; and in 2002-2003, contracts with FBOs decreased to 6 percent. It also remains to be seen what the effect will be of IMPACT cuts both on participant organizations and on state and local monitoring capacity. Preliminary research results suggest that many of the providers who were recipients of FaithWorks technical assistance and were awarded IMPACT contracts are smaller organizations whose revenues are more dependent on IMPACT dollars than are larger, traditional providers. As the IMPACT program shifts its primary objectives away from job readiness, search, and training, toward placement and retention, will organizations that wish to continue contracting adjust their missions to fit the program's more narrow goals? The research team expects to examine such issues through follow-up interviews and select case studies during course of the coming year.

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Section II Empirical Reports





DOES FAITH WORK? A PRELIMINARY COMPARISON OF LABOR MARKET OUTCOMES OF JOB TRAINING PROGRAMS

Many reasons are given for the current efforts to make faith-based providers a larger part of the government-funded social safety net. The most prominent is a belief that religious providers are more effective than their secular counterparts. This is a belief that has never been tested—indeed, there is comparatively little research on the efficacy of social welfare programs in general. In this study, we compare the labor market outcomes of job-training programs conducted by secular and religious organizations. Note that this question has normative implications. If faith-based organizations (FBOs) are found to be more effective, then current outreach programs can be justified. If, on the other hand, FBOs are found to be no more or less effective than secular organizations, efforts to involve more of them as government contractors will have to be justified on other grounds.

There is relatively little research in the area of provision of social services by FBOs. Chaves and Tsitsos (2001) examine what social services religious organizations provide and how they do it. Kramer, Nightingale, Trutko, Spaulding, and Barnow (2002) ask similar questions, but in the context of provision of employment-related services. Monsma and Mounts (2002) examine how faith-based welfare-to-work programs differ from their secular counterparts in terms of funding from government and services offered. We have not been able to find, however, any published literature that examines differences in outcomes of clients who receive social services from faith-based versus secular providers. Perhaps this lack of literature is not surprising since there is comparatively little evidence on the consequences of the differing organizational attributes of for-profit and nonprofit providers for social welfare outcomes. (However there is a great deal of literature about their differences in other dimensions [Heinrich, 2000]). In the context of nonprofit versus for-profit providers, Salamon (1993) and Weisbrod (1989) suggest that the lack of empirical research on this subject is due mainly to problems associated with measuring outcomes, particularly those of social welfare programs, where quality is not easily quantified and multiple objectives and constituencies frequently exist.

These arguments are equally valid in examinations of differences between faith-based and secular providers of services. Job training programs arguably have the most easily quantifiable outcomes with well-defined objectives. There also is considerable literature on evaluations of the efficacy of such programs (Bloom et al., 1997; and Heckman, Lalonde, & Smith, 1999). Consequently, a comparison of job

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training programs provided by faith-based and secular providers of social services is a natural place to embark on such research.

Methods

The ideal study design would involve randomly assigning individuals into training programs and observing their outcomes over an extended period of time post training. Unfortunately, we were not able to conduct a randomized trial. Instead, we had available to us observational data of individuals placed into job training programs over a two-year period. Nevertheless, if we thought that caseworkers were assigning individuals randomly into faith-based and secular programs, then we could use statistical methods appropriate for randomized designs. If we thought that caseworkers were not assigning individuals randomly, but that they used information which was irrelevant to the client's productivity, then again, statistical methods for randomized designs would be appropriate. For example, suppose that caseworkers assigned each client to the program closest to the client's home. In this instance, caseworkers did not assign clients randomly, but their assignment method was not directly related to the productivity of the client. If the caseworker made a judgment regarding the client's ability to undertake job training and to have desirable labor market outcomes prior to selecting an appropriate job training program, then methods for randomized designs would be inappropriate.

In the data available to us, which consist of real-world placements of clients by caseworkers whose mandate includes "appropriate" placement of clients, it is reasonable to expect that caseworkers used all information available to them before choosing a placement for a particular client. Presumably, this information included productivity-related information, e.g., education, prior job-related skills, and motivation. Thus, in our sample, individuals were not randomly assigned to providers of each type, rather the caseworkers selected the provider type based on the client information they were provided.

Assignment to or selection of a type of provider is, in general, based on two types of information: observed and unobserved. Statistical methods to control for selection based on observable information are straightforward. Education, for example, might be considered observed information. Statistical methods to control for selection based on unobservable factors are far more complex. Motivation, for example, is unobserved by the analyst but was observed by the caseworker at the time of placement. Prior job-related skills is observable information, but was not included in the data set available to us, hence it will be treated like unobservable data in this analysis.



There is considerable econometric literature on statistical methods that correct for selection based on unobservable information. This was first described in seminal work by Heckman (1978, 1979) and later updated and summarized (Heckman, 1990). A large body of work in economics uses these methods, and they have been shown to be important in estimates of job training impacts on labor market outcomes in other contexts, as well as in numerous other applications. Note that these methods apply statistical fixes to the problem of selection bias. Randomized trials are still preferable when feasible.

The method is implemented as follows. First we use a probit regression to determine the process by which treatment (assignment to faith-based providers in our case) is assigned. Next, we use these estimates to calculate a statistical term known as the *Mills Ratio*. Finally, the inverse of the Mills Ratio is included as an additional covariate in the outcome regressions. The significance of the inverse Mills Ratio is indication of selection effects. In principle, the process by which treatment is assigned can have exactly the same covariates as the process by which the outcome is determined. In practice, such models using statistical fixes are very poorly identified, i.e., parameter estimates are unreliable. The latest practice is to identify the outcome processing some variables that enter the treatment regression but not to enter the outcome regressions, thus distinguishing the treatment process from the outcome process. Estimates from such models are quite reliable. We use this modified method.

Data

The data set was compiled from three sources: financial management reports, extracts from the Indiana Client Eligibility System (ICES), and monthly job placement reports submitted by the counties. We used financial management reports to identify the provider of job training services. ICES contains basic demographic information for clients: sex, age, race, education levels, and the identity of the case-worker. We used monthly job placement reports to identify clients who were placed into jobs, their wage rates, and hours worked.

Providers of job training services were categorized as faith-based or secular in the following way. We used surveys of providers to measure eight dimensions related to the influence of faith in the organization (Bielefeld, Littlepage, & Thelin, 2002). Organizations scoring positively on one or more dimensions were classified as faith-based. We considered only clients receiving services in Marion and Lake counties, the only two counties that had faith-based service providers at the time of data collec-



tion. After appropriate cleaning of the raw data files, including manual verification of certain data elements on a case-by-case basis, the sample suitable for analysis contained 2,830 observations.

Our data included information on whether or not the individual was placed after training and, if placed, the individual's wage rate, hours worked, and whether or not health insurance was offered. These are our outcome measures. The main control variable of interest is a dummy variable for whether the client was placed by the caseworker to obtain job training services from a faith-based provider. Other control variables include a dummy variable for whether the client lives in Marion County (as opposed to Lake County), gender, race (two dummy variables for White and African American), and education (a dummy variable for whether the client has at least 12 years of education).

We identify the caseworker via a scrambled identifier. Each caseworker with a sufficient number of clients is assigned a dummy variable. Although not specifically about the client, this information is important for the Heckman techniques because it potentially affects the placement of the client with faith-based or non-faith-based providers. To the extent that caseworkers have their own preferences for one type of provider over the other, or elicit types of information from clients that they use in determining placement (information that we do not observe), the dummy variables for caseworkers provide a "black-box" approach to statistically control for such effects. This information is used in a placement model which is needed for the statistical methods that correct for selection bias.

Our models for placement and outcomes also include the following client characteristics: a dummy variable for whether the client lives in Marion County (as opposed to Lake County), gender, race (two dummy variables for White and African American), and education (a dummy variable for whether the client has at least 12 years of education). These controls are important in a statistical sense because they are potential determinants of placement and outcomes. However, we refrain from providing interpretation of these covariates because each is simply a proxy for complex socioeconomic and environmental descriptors that we cannot disentangle, especially because we wish to focus on the effects of placement.

The period during which we collected our sample coincides with an initiative by the state's Family and Social Services Administration (FSSA) to encourage religious social service providers to contract with the state to provide job training and other social services to welfare clients. Their program, called FaithWorks, succeeded in adding six new provider organizations to the existing set for welfare clients.



Because these six providers are new to the welfare landscape (although some had been providing social services for some time), differences between them and existing religious providers in the data set could contaminate the estimated effect of religious providers. Therefore, we conducted our analysis a second time without them. The sample size in this case is 2,397 clients—the number that were left when the new providers’ clients were removed from the study.

Characteristics of both samples are reported in Table 4.1 under the columns “with FaithWorks” and “without FaithWorks.” In the full sample (with FaithWorks), 36 percent of clients who engaged in job training were placed in jobs subsequent to training. Those who were placed earned an average of \$6.87 per hour and worked an average of 31.4 hours per week. Fifteen percent of these individuals were offered health insurance plans. These characteristics do not change substantially when FaithWorks providers are removed from the sample. In this subsample (without FaithWorks), 32 percent of clients received job training. Those who were subsequently placed into jobs earned an average of \$6.86 per hour and worked 31.6 hours per week. Fifteen percent of these individuals were offered health insurance. All the clients were disproportionately female and African American. A little more than one-half of the clients had at least 12 years of schooling.

Table 4.1: Summary Statistics

Variable	Definition	With FaithWorks			Without FaithWorks		
		<i>n</i>	Mean	Std Dev	<i>n</i>	Mean	Std Dev
placed	= 1 if the client was placed into a job; 0 otherwise	2,830	0.36	0.48	2,397	0.32	0.48
wage	wage rate in \$ per hour	1,012	6.87	2.09	859	6.86	2.14
hours	hours worked per week	1,014	31.41	9.21	859	31.56	9.35
ins-offer	= 1 if health insurance was offered; 0 otherwise	1,016	0.15	0.35	860	0.15	0.36
faith-based	= 1 if the job training provider was a FBO; 0 otherwise	2,830	0.32	0.47	2,397	0.19	0.40
female	= 1 if the client was female; 0 otherwise	2,830	0.69	0.46	2,397	0.69	0.46
black	= 1 if the client was African American; 0 otherwise	2,830	0.70	0.46	2,397	0.68	0.46
white	= 1 if the client was White, Non-Hispanic; 0 otherwise	2,830	0.20	0.40	2,397	0.22	0.41
marion	= 1 if the client lived in Marion County; 0 otherwise	2,830	0.37	0.48	2,397	0.40	0.49
highschool	= 1 if the client has at least 12 years of schooling; 0 otherwise	2,830	0.55	0.50	2,397	0.58	0.49



Results

We used probit regressions to estimate the determinants of assignment to faith-based providers with and without FaithWorks providers. In addition to client characteristics described in Table 4.1, the models contain dummy variables for the 47 and 34 caseworkers in the “with FaithWorks” and “without FaithWorks” samples, respectively. There are considerably more caseworkers in our sample, but we selected only those caseworkers with frequencies of at least 0.5 percent to distinguish them individually using dummy variables. All other caseworkers are grouped together in the baseline category. Estimates from these models are reported in Table 4.2. We have chosen to report marginal effects of covariates, rather than parameter estimates whose magnitudes cannot be interpreted, along with their standard errors and t-statistics in Table 4.2. Marginal effects describe the difference in the probability of the outcome with respect to a small change in the covariate in the case of continuous variables, or a change of the variable from 0 to 1 in the case of dummy variables.

We have not reported estimates for individual caseworker variables because these are not interpretable. However, it is important to note that the estimates of caseworker effects are jointly significant. The statistics for the null hypothesis that there is no caseworker effect (or in other words, that all caseworkers are identical in their propensities to assign clients to faith-based providers) are highly significant. Thus, caseworkers are not homogeneous; they do differ in their propensities to assign clients to faith-based providers, *ceteris paribus*. Note that our model treats caseworkers as a black box, so it is not possible to learn anything about why they differ, or what unobserved (to us) client characteristics they use in making their decisions. Table 4.2 shows that African Americans are significantly more likely to receive job training services from religious providers. The other variables generally are insignificant.

We also estimated outcome regressions for both samples and reported the findings in Tables 4.3–4.6. Table 4.3 shows results of probit regressions describing the determinants of whether or not a client was placed into a job. Tables 4.4–4.6 describe wages, hours worked, and whether health insurance was offered, each conditional on being placed into a job.

There appears to be no significant difference in placement rates between faith-based and secular providers of job training services. Clients who live in Marion County are more likely to be placed in a job than Lake County clients, reflecting greater demand for labor relative to Lake County. Women, Blacks, and those with at least 12 years of schooling also are significantly more likely to be placed. The coeffi-

Table 4.2: Probit Regression of Assignment to a Faith-Based Provider of Job Training

Variable	With FaithWorks		Without FaithWorks	
	Marginal	Std. Error	Marginal	Std. Error
marion	0.01	0.02	0.09*	0.02
female	0.03	0.02	0.02	0.02
white	-0.06 ⁺	0.03	0.02	0.04
black	0.08*	0.03	0.12*	0.03
highschool	0.03 ⁺	0.02	0.00	0.02
χ^2 test of case-worker effect	112*	(47 d.f.)	84*	(34 d.f.)
Pseudo R ²	0.05		0.07	

Notes: *Marginal* denotes the change in the probability of the outcome with respect to a small change in the covariate in the case of a continuous variable or as the dummy variable changes from 0 to 1.

* Statistically significant at the 5 percent level.

⁺ Statistically significant at the 10 percent level.

Table 4.3: Probit Regressions of Placement into a Job

Variable	With FaithWorks		Without FaithWorks	
	Marginal	Std. error	Marginal	Std. error
faith-based	0.08	0.09	0.17	0.12
marion	0.05*	0.02	0.04*	0.02
female	0.20*	0.02	0.19*	0.02
white	0.01	0.04	0.02	0.04
black	0.07*	0.03	0.08*	0.04
highschool	0.05*	0.02	0.04 ⁺	0.02
inversemills	-0.05	0.06	-0.10	0.06
Pseudo R ²	0.04		0.04	

Notes: *Marginal* denotes the change in the probability of the outcome with respect to a small change in the covariate in the case of a continuous variable or as the dummy variable changes from 0 to 1.

inversemills is a variable denoting the Inverse Mills Ratio calculated on the basis of the probit model for faith-based reported in Table 4.2. The Inverse Mills Ratio corrects for potential bias in estimates due to selection (non-random assignment) into type of provider of job training.

* Statistically significant at the 5 percent level.

⁺ Statistically significant at the 10 percent level.



cient on the inverse Mills Ratio is not significant, suggesting that selection based on unobservables may not be an important factor in job placement.

Among those who are placed in jobs, wages are not different significantly for clients who received training from faith-based providers compared with those who received training from secular providers (see Table 4.4). Placed clients who live in Marion County earn substantially more per hour than Lake County clients (\$1.16 to \$1.24 more per hour, as do clients with at least 12 years of education.

Clients of faith-based providers work significantly fewer hours than those of secular providers (see Table 4.5). This effect, from 5.3 to 5.9 hours less per week, is substantial. In this case, the significant “treatment” effect is accompanied by a significant selection-based-on-unobservables effect. Clients who live in Marion County work significantly more hours. All other control variables are insignificant.

In Table 4.6 (see page 64), we report estimates from probit regressions of whether or not health insurance was offered at the job. Here, as in hours worked, we find that clients of faith-based providers are significantly and substantially less likely to be offered health insurance plans. Once again, the Marion County dummy variable is the only control variable that is significant across samples.

Conclusions

In this study we have examined the issue of whether labor market outcomes of job training programs provided by faith-based organizations are different from those of secular job training providers. We have controlled, as best possible, for the possibilities of selection on observable and unobservable characteristics into training programs provided by faith-based and secular organizations. We found that faith-based and secular providers have the same rates of placement into jobs and that the jobs have similar wages. However, we also found that clients who received training from faith-based providers and were placed into jobs work substantially fewer hours per week, and they are less likely to be offered health insurance than placed clients of secular providers. These findings suggest that faith-based providers of job-training services may have less access to full-time job opportunities for their clients compared with secular providers.

We have estimated our models for two data samples, one of which excludes FBOs that received government funding only recently as a result of a recruitment initiative targeted toward such organizations. We found that our results are robust to choice of sample. (That is, we used two data samples, and when we analyzed each, results were quite similar for the two samples.) This suggests that differences

Table 4.4: Regressions of Hourly Wages

Variable	With FaithWorks		Without FaithWorks	
	Coeff.	Std. error	Coeff.	Std. error
faith-based	0.44	0.55	-0.43	0.44
marion	1.16*	0.13	1.24*	0.15
female	-0.39 ⁺	0.20	-0.33	0.23
white	0.19	0.34	0.25	0.40
black	-0.05	0.30	0.06	0.36
highschool	0.65*	0.13	0.62*	0.14
inversemills	-0.25	0.35	0.24	0.28
R ²	0.	10	0.	10

Note: *inversemills* is a variable denoting the Inverse Mills Ratio calculated on the basis of the probit model for faith-based reported in Table 4.2. The Inverse Mills Ratio corrects for potential bias in estimates due to selection (non-random assignment) into type of provider of job training.

* Statistically significant at the 5 percent level.

⁺ Statistically significant at the 10 percent level.

Table 4.5: Regressions of Hours Worked per Week

Variable	With FaithWorks		Without FaithWorks	
	Coeff.	Std. error	Coeff.	Std. error
faith-based	-5.89*	2.55	-5.27*	2.57
marion	3.64*	0.58	3.78*	0.66
female	-0.17	0.79	-0.71	0.86
white	-1.65	1.27	-1.22	1.45
black	-0.72	1.13	-0.41	1.34
highschool	1.08 ⁺	0.58	0.87	0.63
inversemills	3.43*	1.60	2.94 ⁺	1.55
R ²	0.04		0.04	

Note: *inversemills* is a variable denoting the Inverse Mills Ratio calculated on the basis of the probit model for faith-based reported in Table 4.2. The Inverse Mills Ratio corrects for potential bias in estimates due to selection (non-random assignment) into type of provider of job training.

* Statistically significant at the 5 percent level.

⁺ Statistically significant at the 10 percent level.



between these “new” faith-based providers and older, more established ones do not matter for labor market outcomes. In other words, there is no evidence that the new providers are substantially different (better or worse) than older faith-based providers.

These findings, although robust within the data samples we have used, should be treated with some caution for two reasons. First, in spite of our careful statistical treatment of self-selection, our study does not have the same validity as an experimental study. Second, our data are from only two counties in Indiana, so obvious questions of external validity can be raised. Nevertheless, we do believe our results are plausible counter arguments to the recent political rhetoric.

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Table 4.6: **Probit Regressions of Health Insurance Offered at Job**

Variable	With FaithWorks		Without FaithWorks	
	Marginal	Std. error	Marginal	Std. error
faith-based	-0.13 ⁺	0.07	-0.16*	0.06
marion	0.09*	0.02	0.10*	0.03
female	0.03	0.03	0.03	0.03
white	0.02	0.05	0.06	0.07
black	0.02	0.05	0.06	0.05
highschool	0.04 ⁺	0.02	0.03	0.02
inversemills	0.09	0.06	0.12 ⁺	0.07
Pseudo R ²	0.02		0.03	

Notes: *Marginal* denotes the change in the probability of the outcome with respect to a small change in the covariate in the case of a continuous variable or as the dummy variable changes from 0 to 1.

inversemills is a variable denoting the Inverse Mills Ratio calculated on the basis of the probit model for faith-based reported in Table 2. The Inverse Mills Ratio corrects for potential bias in estimates due to selection (non-random assignment) into type of provider of job training.

* Statistically significant at the 5 percent level.

⁺ Statistically significant at the 10 percent level.



ORGANIZATIONAL ANALYSIS: THE INFLUENCE OF FAITH ON IMPACT SERVICE PROVIDERS

This article presents results from interviews of IMPACT providers in Indiana. IMPACT is funded by the Temporary Assistance for Needy Families (TANF) block grant, and it contracts for employment-based services including assessment; education; job training; job readiness; and job search, development, and placement. IMPACT contracts with newly formed and traditional faith-based providers as well as with non-faith-based providers to deliver these services.

In addition to the analysis presented here, we have two separate analyses that used data collected from the interviews. In *The Role of Faith-Based Providers in a Social Service Delivery System*, presented at the 2002 Association for Research on Nonprofit Organizations and Voluntary Action Annual Meeting (ARNOVA) in Montreal, Canada, we explore the degree to which faith can influence service providers and the role of these providers in service delivery. In *Management Challenges of Faith-based Providers of IMPACT Services* (Bielefeld, Littlepage, & Thelin, 2003), presented at the Independent Sector's 2003 Research Forum, we assess the capacity of faith-influenced organizations to provide complex social services and contribute to the development of measurement tools to assess their effectiveness.

Both of these papers are in the process of being edited for submission to academic journals, but are available upon request.

Methods

As part of our research, we conducted a two-part survey (mailed and then in-person) with IMPACT provider administrators to assess a variety of operational factors (see Appendix B).

We designed the provider questionnaire to gather data on a number of dimensions deemed important for arriving at conclusions regarding the efficacy of service provision as well as other topics pertinent for examining the effects of Charitable Choice. Part I was mailed before the interview, and Part II (see Appendix B) guides the interview process. We developed these factors and specific questions from the literature on organizational structure and process, the literature and conference presentations on Charitable Choice and faith-based service provision, and other ongoing nonprofit surveys.¹

We measured a set of basic factors for the organization such as the year of its founding, organizational auspice (nonprofit, for-profit, government), organiza-

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¹ It will be interesting to compare results of this survey and others. This will be done when final data collection is complete.



tional affiliation with others, geographic focus, mission, and most important programs or activities. Governance was measured in terms of both the board of directors and the executive director. Human resource questions included both paid employees and volunteers.

We measured the organization's capacity to deliver services in several ways. We listed 31 factors that could pose difficulties for organizational functioning, asking whether these posed major, minor, or no challenges for the organization. These were measured for the organization as a whole and separately for the organization's IMPACT program. In addition, we asked about 17 factors that would enhance organizational capacity, including technology, formal procedures, and financial reserves. In terms of financial information, we asked about revenues, expenditures, assets, and liabilities. In addition, we asked about changes in financial indicators in the last three years. Revenues were further broken down by source and changes in these sources in the last three years.

The relative position of the IMPACT program in the organizations was assessed by a series of questions about their non-IMPACT services. These included: the types of non-IMPACT services, the number of people receiving these services, number of employees used to deliver them, whether these services were targeted to particular populations, recent changes in demand for these services, and the organization's responses to these changes.

A number of background factors for evaluating the organization's IMPACT program were assessed, including whether there had been a previous contract with IMPACT, whether the services currently being provided under the IMPACT program had been previously provided (either under an IMPACT contract or by means of a different funding arrangement), and the reason the organization applied for the current IMPACT contract. We asked a number of detailed questions about the organization's IMPACT program. In addition, providers who had a religious orientation (explained further below) were asked an additional series of questions. IMPACT questions asked of all providers included: what specific services are provided, number of paid employees used to provide IMPACT services, number of volunteers used and tasks volunteers performed, professional credentials of staff, percent of contract delivered, affect of program on a number of organizational factors and mission, technical assistance received, experience with referral system, and problems with IMPACT payments.

In addition, we asked about whether other, non-contract, services were provided and if these services were reimbursed, whether values were promoted during service provision, whether the organization had other goals for clients besides getting a job



and the extent to which other goals were achieved, whether the organization engaged in client advocacy, and if there were any unintended or unanticipated effects. A series of questions assessed the degree of interactions with other organizations or community groups in the delivery of IMPACT services. This included details of the types of organizations and both collaborative and competitive relationships.

Besides exploring details about the characteristics of each organization's 2000-2001 IMPACT program with the questions described above, we felt it important to measure the degree to which religion played a part in the organization. We asked if the organization provided funds or support to any religious organizations; was affiliated with any religious organizations or faith traditions; desired, requested, or required staff or volunteers to share the same religious belief or faith; used religion or faith as part of any services it provided; made organizational decisions guided by prayer or religious texts, documents, or periodicals; or used religious or faith criteria to assign staff to positions. If an affirmative response was given to any question in addition to the funding question, we considered the organization to have a religious or faith orientation.

We then asked these providers a set of questions to assess the degree to which their faith orientation influenced their sense of identity and their religious rationale for becoming involved in IMPACT. We asked about a number of consequences that might have followed from receiving government funding. These included whether they felt they had to curtail any religious practices because of government money, whether government officials had ever questioned their religious practices, whether they had received any related criticism or lawsuits, or whether they had encountered any issues with clients. Other questions included whether clients attended religious activities or joined the church, any advantages or disadvantages they perceived that followed from their religious orientation, if they engaged in expressions of faith or personal testimony, and if there were any consequences to accepting government funding for their affiliated religious body.

For this report, we will provide selected findings from the extensive data set we are compiling using the wide range of indicators outlined above. We will provide an overview of the provider system, a description of the degree to which providers are influenced by faith, and a comparison of faith-influenced and non-faith-influenced providers on a number of important organizational characteristics. We will be gathering more data over the last year of the study, and in subsequent analyses and publications we will use this data to focus in more detail on the implications of the findings presented here.



Description of Providers

For this project, we attempted to interview all providers from three counties in Indiana (Lake, Marion, and Miami) having IMPACT providers that were either participants in a program designed to reach out to faith-based organizations by providing technical assistance and capacity building (FaithWorks) or who self-identified as faith-based. As Table 5.1 illustrates, 3 providers were in Miami County, 15 in Lake County and 16 in Marion County. Twenty-three of the providers are nonprofit, 8 are for-profit and 3 are government entities. As Table 5.1 illustrates, 1 nonprofit and 3 for-profit organizations were IMPACT providers in these counties who did not agree to be interviewed.

Table 5.1: 2000-2002 Impact Providers

Type of Organization	County	Interviewed	Declined	Total
Nonprofit	Lake	9	1	10
	Marion	11		11
	Miami	2		2
For-profit	Lake	2	1	3
	Marion	2	2	4
	Miami	1		1
Government Entity	Lake	2		2
	Marion	1		1
	<u>Miami</u>	<u>0</u>		<u>0</u>
Total		30	4	34

Degree to Which Faith Influences Providers

In research on faith-based organizations, a major issue is how to define the term “faith-based” (*Finding Common Ground: 29 Recommendations of the Working Group on Human Needs and Faith-Based and Community Initiatives*, 2002; Chambre, 2001; Jeavons, 1998; and Smith & Sosin, 2001). It is, consequently, clearly important to measure the degree to which religion plays a part in the organization. The state of Indiana classifies providers as faith-based or not depending on two factors: chiefly self-identification and/or participation in FaithWorks. This simple binary distinction is inadequate, and numerous researchers have pointed out that thinking of the degree of religiosity as a dimension is more useful (*Finding Common Ground: 29 Recommendations of the Working Group on Human Needs and Faith-Based and Community Initiatives*, 2002; Monsma & Mounts, 2002; Jeavons, 1998; Smith & Sosin, 2001; Green & Sherman, 2002). Table 5.2 presents a comparison of the indicators used by recent studies in their assessment of the role of religion in service provision.



Based on this earlier work, especially Jeavons, we asked our respondents six screening questions related to the influence of faith on their organizations (measuring the first six dimensions in Table 5.3). As we expected, we found variations in the degree to which faith influenced the providers. The findings represent 30 completed interviews.

Of these 30 providers, we categorized 17 as not influenced by faith (NFI). Respondents who answered yes to at least one of the first six questions above were given a series of fol-

Table 5.2: A Comparison of Dimensions and Indicators Used in Identification of Faith-Based Organizations

Dimensions and Indicator	Jeavons 1998	Smith & Sosin (2001)	Finding Common Ground (2002)	Green & Sherman (2002)	Monsma & Mounts (2002)	Bielefeld, Littlepage & Thelin (2002)
Formal/Informal Religious Affiliation						
Religious name	X					
Religious authority coupling		X				
Affiliated with religious agency			X			X
Founding by religious organization			X			
Religion in Mission/Governance						
Mission statement explicitly religious			X	X		
Establishing separate 501(c)(3) would be a problem			X			
Religious criteria for board	X		X	X		
Senior management/other staff share faith	X		X	X	X	X
Religion in Funding						
Financial support/resource dependency	X	X	X			X
Reimbursement for providing "entitlement" services			X			
Religion in Structure and/or Process						
Percent of participants in organization holding religious conviction	X					
Religious culture		X				
Religious symbols or pictures			X		X	X
Opening or closing sessions with prayer					X	X (meals)
Prayer or texts guide decisions	X					X
Faith criteria used to assign staff	X			X	X	X
Using religious values in motivating staff					X	
Partners with religious organizations	X					
Religion in Services to Clients						
Religion or faith a part of services	X		X	X		X
Voluntary religious exercises for clients				X	X	X
Required religious exercises for clients					X	X
Use religious values to encourage attitude change			X	X	X	
Encourage clients to make religious commitments				X	X	X
Preference to clients in religious agreement				X	X	X



Table 5.3: Dimensions and Questions Used in Defining Faith Influence

Dimension	Question
1. Provide support	Organization provides funds or support to any religious organizations
2. Religious affiliation	Organization affiliated with any religious organizations or faith traditions
3. Staff and volunteers	Desired, requested, or required that staff and volunteers share the same religious belief or faith
4. Services	Religion or faith part of any services provided
5. Decision making	Organizational decisions guided by prayer or religious texts, documents, or periodicals
6. Staff assignments	Religious or faith criteria used to assign staff to positions
7. Visible religiousness	Yes to any of these: religious leader on staff, efforts to encourage clients to make personal religious commitments, required religious exercises, and spoken prayers at meals
8. Implicit religiousness	Yes to any of these: religious symbols or pictures in the facility, generalized spirit of love among staff, voluntary religious exercises, informal references to religious ideas by staff to clients, and staff who are members of the congregation

low-up questions to measure two additional dimensions—visible religiousness and implicit religiousness (the last two dimensions in Table 5.3). An organization was given one point for each affirmative response to the first six questions and an additional point for answering yes to any of the questions included in either the visible or the implicit religiousness dimensions. A total of eight points were possible.

We categorized organizations that had up to four points as moderately faith influenced (MFI). Those organizations that had more than four points were categorized as strongly faith influenced (SFI). Of those who were found to have a faith influence, six were found to have a moderate faith influence and seven as having a strong faith influence. As Table 5.4 illustrates, the SFI organizations are, on average, much smaller and newer organizations than the NFI or the MFI organizations.

Table 5.5 illustrates how MFI and SFI providers answered the faith influence questions. It shows that religion plays a much larger role in SFI providers. They had higher percentages on all of the dimensions measured. For example, all of the SFI organizations use prayer to guide organizational decisions, while only one-third of the MFI do. Also, almost half of SFI organizations have staff and volunteers who share religious beliefs and they use religious criteria to assign staff, while none of the MFI do so. As the table indicates, these are significant differences between SFI and MFI organizations.



Table 5.4: Faith Influence of IMPACT Providers by Type of Organization

Type of Organization	Faith Influence	Number of Organizations	Average Age of Organizations	Average Number of Employees
Nonprofit	NFI	13	37	39
	MFI	3	64	292
	SFI	6	10	2
	Subtotal	22	33	63
For-profit	NFI	1	6	20
	MFI	3	3	5
	SFI	1	23	1
	Subtotal	5	8	7
Government Entity	NFI	3	62	250
	MFI	0		
	SFI	0		
	Subtotal	3	62	250
Total Sample		30	33	126

Note: NFI = No Faith Influence
MFI = Moderate Faith Influence (Score of 1 – 4 on Faith Influence Questions)
SFI = Strong Faith Influence (Score of 5 – 8 on Faith Influence Questions)

Table 5.5: Affirmative Responses to Faith Influence Questions

Question/Dimension	% MFI	% SFI
Funds or support to religious organizations	33%	43%
Affiliated with religious organization or faith tradition	50%	71%
Staff and volunteers share religious belief or faith	0%	43%*
Religion or faith is a part of services	50%	57%
Prayer, etc., guides organizational decisions	33%	100%*
Religious or faith criteria are used to assign staff	0%	43%*
Visible religiousness	67%	100%
Implicit religiousness	83%	100%

* Approximately significant at .05 level using Gamma



It should be noted that the categorization of faith influence is dependent upon the current director's practices and perceptions of the organization. This could lead to change in the categorization of an organization if leadership changes. An example of this is that a traditional provider with a historic religious affiliation in one part of Indiana is categorized as having moderate faith influence, while in another part of Indiana, it is categorized as not having any faith influence.

In addition to asking whether organizations engage in the activities listed in Table 5.3, we also asked if they would like to engage in these activities, but feel that they cannot legally. Interestingly, while many SFI organizations displayed religious symbols and/or pictures in their facilities and prayers at meals, one provider felt that they would like to have religious symbols but thought that they could not do so legally, while two would like to have spoken prayers but thought that it would not be legal. In addition, one organization stated that it would like to give preference to clients who agree with their religious beliefs but knows that is illegal.

Most faith-influenced organizations have not felt that they have had to change their religious practices or been questioned about them. Most of these providers also said that there were positive consequences for their congregation because of their involvement in IMPACT. Some of these comments included:

"Has given congregation reason to get off the pews and serve the community."

"Clients have become members, members have become staff."

"A chance to minister to the students."

"People are attracted because of the community outreach."

"Fits with our programs."

The only slightly negative comment to the question about consequences was:

"scheduling the use of facilities."

Comparison of Provider Characteristics

In this section of the paper we will compare no, moderate, and strong faith-influenced providers on characteristics that can be expected to have important impacts on organizational functioning and service delivery. We will consider organizational size in terms of staff, revenues, and income from IMPACT. In addition, we will examine the specific services provided. Finally, we will explore factors that may enhance or retard provider efficacy, including issues in the contracting process, management challenges, the use of volunteers, the role of values, and the availability of community networks.



Employees

Table 5.6 shows that both the MFI and SFI organizations tend to be smaller than NFIs in terms of staff size. Overall, more than half of all organizations employ fewer than 15 staff (full-time and part-time). Roughly one-fifth have more than 50 staff members. Among the SFI, 50 percent have 5 or fewer employees and the remaining 50 percent between 6 and 15 staff members. None of the SFI providers have staff membership larger than 15. Nearly 60 percent of NFI organizations employ staffs of 16 people or more.

The mean number of employees providing IMPACT services also varied. SFI providers had the fewest, with 3.7, followed by MFI providers with 6.5. NFI providers had the most, with 8.4. All of the staff providing IMPACT services among NFI and MFI organizations possess professional credentials used in the delivery of services. Slightly fewer, 86 percent, of staff members in SFI organizations have such credentials.

Table 5.6: Staff Size per Type of Organization

Employees (full-time & part-time)	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
1–5	18%	33%	50%
6–15	24%	33%	50%
16–50	35%	0%	0%
>50	24%	33%	0%
Mean number of staff involved in IMPACT service provision and administration	8.4	6.5	3.7
Staff providing IMPACT services have professional credentials used in service delivery	100%	100%	86%

Revenues

As shown in Table 5.7 (see page 74), the majority of SFI organizations report annual revenues between \$0 and \$500,000 (60 percent of SFI providers), with 40 percent reporting annual revenues of \$100,000 or less. More than 70 percent of NFI organizations report revenue over \$1 million, and all of the MFI providers indicate annual revenue over \$500,000.



Table 5.7: Ranges of Annual Revenue per Type of Organization

Annual Revenue	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
\$0 – \$100,000	0%	0%	40%
\$100,001 – \$500,000	18%	0%	20%
\$500,001 – \$1,000,000	12%	50%	20%
Over \$1,000,000	71%	50%	20%

IMPACT Contracts

The average size of organizations' IMPACT contracts varies from around \$191,000 for SFI providers to over \$266,000 for NFI organizations (see Table 5.8). The 2002 contracts for MFI organizations are 19 percent smaller than NFI providers. The average size of the SFI contracts is approximately 11 percent smaller than those of MFI organizations and approximately 28 percent smaller than NFI organizations.

Table 5.8: Size of IMPACT Contracts by Faith Influence

	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
Average size of 2002 IMPACT contracts	\$266,788	\$215,474	\$191,575

Thirty-five percent of all organizations' annual revenues are derived from their IMPACT contracts (see Table 5.9). Of the faith-influenced organizations, 38 percent of annual revenue for MFI providers comes from IMPACT, and 75 percent of annual revenue for SFI organizations comes from IMPACT—nearly twice the percentage as the moderate category and more than three times as much as the NFI.

Table 5.9: Percentage of Total Annual Revenue from IMPACT Contracts

	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
Average percent of annual revenue from IMPACT contract	24%	38%	75%
Revenue from IMPACT			
Less than 10%	67%	20%	0%
10% to 25%	7%	20%	25%
26% to 50%	7%	40%	0%
51% to 99%	13%	0%	25%
100%	7%	20%	50%

Of all organizations in the sample, 46 percent receive less than 10 percent of their total annual revenue from IMPACT contracts. Among SFI organizations, 50 per-



cent receive 100 percent of their total annual revenue from IMPACT, and 75 percent of these organizations received more than 50 percent of annual revenues from IMPACT dollars. Among NFI providers, 67 percent receive less than 10 percent of their total annual revenue from IMPACT contracts and 20 percent rely on IMPACT for 50 percent or more of their total annual revenue. The MFI organizations are more varied in their reliance on IMPACT dollars—one-fifth receive less than 10 percent of total annual revenue, one-fifth receive 100 percent, and 60 percent receive between 10 and 50 percent of revenue from IMPACT.

Services

Organizations may contract with IMPACT to provide a variety of services.

Organizations were asked which services in the seven broad categories listed below they provide through their IMPACT contract:

1. Job search (includes contacting employers, job application, resume preparation, job-seeking training)
2. Job readiness (includes activities which prepare a participant for work such as learning job coping skills, understanding workplace expectations, family life skills)
3. Job training (includes vocational and computer skills training)
4. Case management (coordination of additional services such as transportation, childcare, housing, education)
5. Education (includes basic education, ESL, GED preparation)
6. Assessment of skills, support system, and barriers to employment
7. Miscellaneous (includes parenting, teen pregnancy prevention, small business assistance, workplace mediation)

Each category (except case management) had several items included in it. The number of items in each category is shown in parentheses next to the category. Survey results suggest that MFI organizations provide a broader range of services than the NFI or SFI organizations (see Table 5.10). MFI providers contract for an average of 30 types of services within the seven categories. The SFI organizations, on average, contract for all seven categories of service provision, but fewer within each category.



Table 5.10: Mean Number of IMPACT Services Provided by Service Category

Number of Services in Category	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
Job training (2)	0.6	0.8	0.3
Job readiness (16)	9.8	9.7	9.2
Job search, development, and placement (10)	6.4	8.0	3.8
Assessment (9)	4.8	8.3	3.8
Education (3)	0.8	1.0	0.8
Case management (1)	0.8	0.8	0.5
Miscellaneous (5)	0.9	1.3	1.0
All IMPACT Services (46)	24.2	30.0	19.5

Many of the organizations had provided these services before they received IMPACT funding. Over two-thirds of the MFI organizations indicated that services currently funded by IMPACT were previously provided under some other funding arrangement (see Table 5.11). Roughly one-third of SFI providers report other funding sources for previous employment-based services that are not provided under IMPACT.

Table 5.11: Previous Funding for Current IMPACT Services

	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
Employment-based services provided under some other funding arrangement prior to IMPACT	47%	67%	29%

In addition, the majority (87 percent) of all organizations provide social services other than those outlined in their IMPACT contract (see Table 5.12). More than 90 percent of NFI organizations provide other services—83 percent of MFI providers, and just over 70 percent of SFI organizations. More than half of all organizations indicate that these services are reimbursed through other outside sources of support. However, only 17 percent of the SFI providers report such reimbursement, compared with 60 percent of MFI and 63 percent of NFI providers.



Table 5.12: Non-IMPACT Social Services Provided by the Organization

	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
Provides other social services to clients	94%	83%	71%
Other services are reimbursed in some way	63%	60%	17%

Contract Performance

SFI providers have encountered the most issues in regard to their contract performance. Among the SFI organizations, the average percent of IMPACT contracts that was expected to be spent is 70 percent, roughly 15 percent less than for MFI or NFI providers. As Table 5.13 illustrates, 43 percent of SFI organizations experienced problems with the payment process, such as late payments, compared with 17 percent of MFI and only 6 percent of NFI providers. This is in spite of the fact that almost all SFI providers (86 percent) had received technical assistance, either from FaithWorks or IMPACT staff in carrying out their contract. In comparison, 71 percent of NFI providers and only 33 percent of MFI providers received such technical assistance.

Table 5.13: Contracting and Payment Issues

	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
Mean percent of IMPACT contract expected to be delivered by end of contract year	84%	85%	70%
Received technical assistance in carrying out contract	71%	33%	86%
FaithWorks participants	0%	17%	71%
Experienced problems with the payment process	6%	17%	43%

One hundred percent of all SFI providers have contracted with IMPACT for five years or less; possibly a reflection of the state's recent, proactive efforts to involved more FBOs in social service provision (see Table 5.14, page 78). Fifty percent of MFI organizations have been contracting for six to twelve years.



Table 5.14: Organizations' Experience Contracting with IMPACT

Number of Years Contracting with IMPACT	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
1 to 2 years	13%	17%	17%
3 to 5 years	47%	33%	83%
6 to 12 years	40%	50%	0%

Management Challenges

A number of factors are commonly used to assess organizational capacity (Poole, Ferguson, DiNitto, & Schwab, 2002). In the survey, we build upon previous work and ask managers to identify challenges related to 31 factors relevant to the organization's technology, written policies, evaluation and reporting, recruitment and training, and financial health. We asked providers to report whether each of the 31 factors was an organizational and/or IMPACT challenge. We then combined those factors into three indices of management challenges: mission and governance, external relations, and internal operations.

Table 5.15 shows a number of patterns. Overall, MFI organizations reported the fewest management challenges. For 19 of the 31 measures, the percent of MFI organizations reporting a challenge was lower than the percent of NFI and SFI organizations. In addition, in no cases was the MFI percentage the highest compared with the other two types.

An interesting pattern emerges when comparing the challenges of NFI and SFI organizations. In terms of Mission and Governance, SFI organizations were more likely than NFI organizations to report challenges in recruiting and keeping effective boards and in managing board/staff relations. However, they indicated fewer challenges in achieving their missions. For external relations, SFI organizations reported more challenges with strategic planning, delivering high quality services, and attracting new clients. They indicated fewer challenges in identifying and targeting results, good relations with other organizations, and measuring program outcomes.

Finally, for internal operations, SFI providers reported more challenges recruiting/keeping qualified staff, dealing with disputes, and managing their facilities. They reported fewer challenges managing programs, communicating internally, maintaining good internal working relations, anticipating financial need, obtaining funding, and using information and other technology.

In summary, MFI organizations exhibit management strengths across our spectrum of factors. SFI organizations, on the other hand, seem to have both management strengths and weaknesses compared with their NFI counterparts. Strengths appear



most frequently in internal operations. Future analyses will examine this pattern in more detail and incorporate other factors that might account for this pattern.

Table 5.15: The Effect of Faith Influence on Management Challenges

Management Challenges	Faith Influence			Difference (SFI-NFI)
	None (NFI)	Moderate (MFI)	Strong (SFI)	
Mission and Governance				
Clearly defining our mission	12%	0%	17%	5%
Achieving our mission	35%	17%	17%	-19%
Recruiting/keeping effective board	18%	0%	50%	32%
Smooth functioning board	12%	0%	17%	5%
Managing board/staff relations	24%	0%	50%	26%
External Relations				
Obtaining adequate information	59%	17%	50%	-9%
Identifying & targeting results	47%	33%	33%	-14%
Strategic planning process	41%	33%	67%	25%
Implementing plans	41%	33%	33%	-8%
Delivering high quality services	24%	17%	50%	26%
Meeting the needs of current clients	53%	33%	67%	14%
Attracting new clients	53%	50%	83%	30%
Enhancing visibility & reputation	65%	0%	67%	2%
Developing/maintaining good relations with other organizations	29%	0%	17%	-13%
Measuring program outcomes	35%	33%	17%	-19%
Internal Operations				
Recruiting/keeping qualified administrators	12%	0%	0%	-12%
Recruiting/keeping qualified staff	35%	0%	50%	15%
Recruiting/keeping qualified and reliable volunteers	29%	33%	33%	4%
Managing human resources	35%	0%	33%	-2%
Managing our programs	35%	17%	17%	-19%
Communicating internally	53%	33%	17%	-36%
Developing and using teamwork	41%	0%	33%	-8%
Developing/sustaining good working relationships in the organization	47%	17%	17%	-30%
Dealing with disputes in the organization	24%	0%	33%	10%
Reorganizing structure if needed	35%	17%	33%	-2%
Anticipating financial needs	59%	33%	33%	-25%
Obtaining funding or other financial resources	88%	50%	67%	-22%
Financial management and accounting	35%	0%	33%	-2%
Managing the facilities/space	24%	17%	50%	26%
Using information technology effectively	53%	33%	33%	-20%
Using technology for service provision	53%	17%	17%	-36%



Service delivery

In terms of the way services are provided, it has been held by some advocates of Charitable Choice that organizations in which faith plays a role have a number of advantages over secular providers (see Sherman, 2003, for a recent statement). For example, they may have access to more volunteers and more dedicated volunteers. In addition, they may be more likely to promote a holistic outlook and stress values, which makes it more likely that clients will undergo personal transformations—further enhancing their prospects of success. Finally, they are more likely to be community-based, and hence, able to use networks more effectively. We examine some of these factors below.

Volunteers

The majority of organizations in all three categories employ volunteer labor (see Table 5.16). Eighty-three percent of MFI providers use volunteers, although fewer, 40 percent, have volunteers engaged in the provision of IMPACT services. Just over 70 percent of NFI organizations use volunteers compared with 57 percent SFI organizations. Among the latter, however, three-quarters use volunteers in IMPACT programs.

Table 5.16: Use of Volunteers

	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
Organizations use volunteers	71%	83%	57%
Organization has volunteers involved in IMPACT service provision	67%	40%	75%

Values and Expectations

In response to our question about whether the organization promotes values as part of IMPACT service provision, the majority of all providers indicate that they do (see Table 5.17). All MFI organizations indicate they do so, compared with 86 percent of SFI. A substantial majority (82 percent) of NFI organizations promote values as part of service provision.



Table 5.17: Promotion of Values

	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
Promote values as part of IMPACT services	82%	100%	86%

In addition, values were expressed in terms of the expectations staff had about the benefits clients were to receive from their programs. Overall, nearly all providers (93 percent) would like their clients to achieve goals beyond employment (see Table 5.18). Among the faith-influenced organizations, 100 percent conveyed this expectation. Some of the goals cited by all providers include:

- Lifestyle change
- Improved self-worth and empowerment
- Greater stability
- Setting and meeting personal goals
- Better parenting and family values
- Achieving educational goals
- Addressing and overcoming barriers
- Self-sufficiency
- Personal discipline

Table 5.18: Provider Expectations of Their Clients

	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
Would like IMPACT clients to achieve other goals, besides finding employment	88%	100%	100%

Service Area

Providers were asked to identify geographic service areas by estimating the percentage of clients served from (1) the neighborhood, (2) within a five-mile radius, and (3) greater than five-mile range. As Table 5.19 illustrates, among the three categories, SFI providers report the highest percentage of clients from the neighborhood. Close to one-third (28 percent) of SFI clients come from within one mile of these organizations. While 11 percent of SFI clients are from outside the area (more than five miles) nearly one-third of NFI clients come from the same vicinity.



Table 5.19: Mean Percent of Clients Served (by Geographic Proximity)

	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
Neighborhood (within 1 mile)	12%	2%	28%
Organizations' area of the city (within 1 to 5 miles)	50%	56%	61%
Outside organizations' area of the city (more than 5 miles)	29%	22%	11%

Networks

As Table 5.19 shows, 83 percent of MFI organizations in the sample report some type of formal affiliation with other organizations, and more than half of both NFI (59 percent) and SFI (57 percent) organizations report such associations.

Organizations were asked to report the type and number of organizations that they routinely interact with to deliver IMPACT services: nonprofits, for-profits, government organizations, religious bodies, religious or faith-based organizations, and others. In addition, they were asked to indicate the type of interaction with each, whether they: give or receive funding or resources, collaborate for purposes of service provision, are competitors, interact on policy or regulatory issues, serve together on coalitions or task forces, or subcontract with them.

Preliminary results suggest that MFI providers are part of a larger network, with an average of 8.5 ties to other organizations per provider. SFI organizations appear to be the least connected; perhaps this is an indication of fewer years experience contracting with IMPACT.

Table 5.20: Networks and Effects of IMPACT Participation

	No Faith Influence (NFI)	Moderate Faith Influence (MFI)	Strong Faith Influence (SFI)
Organization formally affiliated with other organization(s)	59%	83%	57%
Average number of ties to other organizations	6.3	8.5	4.8
Relations with other organizations changed as a result of IMPACT contract	47%	17%	50%
Contracting with IMPACT led to other community involvements	35%	33%	67%
Contracting with IMPACT affected organization's mission	18%	33%	57%



Interestingly, contracting with IMPACT has had consequences for provider networks. About half of NFI and SFI providers indicated that their relations with other organizations had changed because of their contracting with IMPACT. In addition, a majority of SFI organizations, 67 percent, indicate that contracting with IMPACT has led to other community involvements, while just over one-third of both NFI and MFI providers specify such outcomes. It appears, therefore, that contracting has led to an expansion of SFI networks.

More than half of SFI organizations report that contracting with IMPACT has even affected their primary mission. One-third of MFI organizations report the same and nearly one-fifth of NFI providers indicate some type of mission change. The majority of comments from providers reflect positive outcomes, as listed below:

- Broadened mission to include welfare
- Strengthened organization's mission
- Helps us fulfill our mission by enabling us to reach more people
- Increased and broadened services
- Networking with IMPACT staff has empowered our staff

Summary of Findings

- The majority of SFI organizations report annual revenues between \$0 and \$500,000 (60 percent of SFI providers), with 40 percent reporting annual revenues of \$100,000 or less. More than 70 percent of NFI organizations report revenue over \$1 million, and all of the MFI providers indicate annual revenue over \$500,000.
- Thirty-five percent of all organizations' annual revenues are derived from their IMPACT contracts. Of the faith-influenced organizations, 38 percent of annual revenue for MFI providers comes from IMPACT and 75 percent for SFI organizations—nearly twice the percentage as the moderate category and more than three times as much as the NFI.
- Half of the SFI providers receive 100 percent of their funding from IMPACT compared with 7 percent of the NFI providers.
- MFI organizations provide a broader range of services than the NFI or SFI organizations.
- More than 90 percent of NFI organizations provide other services—83 percent of MFI providers, and just over 70 percent of SFI organizations. More than half of all organizations indicate that these services are reimbursed



through other outside sources of support. However, only 17 percent of the SFI providers report such reimbursement, compared to 60 percent of MFI and 63 percent of NFI providers.

- Of SFI organizations, 43 percent experienced problems with the payment process, such as late payments, compared with 17 percent of MFI and only 6 percent of NFI providers. This is in spite of the fact that almost all SFI providers (86 percent) had received technical assistance, either from FaithWorks or IMPACT staff, in carrying out their contract. In comparison, 71 percent of NFI providers and only 33 percent of MFI providers received such technical assistance.
- MFI organizations exhibit management strengths across our spectrum of factors. SFI organizations, on the other hand, seem to have both management strengths and weaknesses compared with their NFI counterparts. Strengths appear most frequently in internal operations.
- Just over 70 percent of NFI organizations use volunteers compared with 57 percent of SFI organizations. Among the latter, however, three-quarters use volunteers in IMPACT programs.
- SFI providers report the highest percentage of clients from the neighborhood. Nearly one-third (28 percent) of SFI clients come from within one mile of these organizations. While 11 percent of SFI clients are from outside the area (more than 5 miles), nearly one-third of NFI clients come from the same vicinity.
- A majority of SFI organizations, 67 percent, indicate that contracting with IMPACT has led to other community involvements, while just over one-third of both NFI and MFI providers specify such outcomes.
- More than half of SFI organizations report that contracting with IMPACT has affected their primary mission. One-third of MFI organizations report the same and nearly one-fifth of NFI providers indicate that their mission has been affected. The majority of comments from providers about mission change reflect positive outcomes.



The Next Steps

We plan to recontact the providers surveyed for this analysis. If they do not receive IMPACT funding in 2003, we want to determine the effect on their programs and their organizations. As illustrated above, several SFI organizations were heavily dependent upon these funds. If they did receive IMPACT funding, we will ask several follow-up questions to determine any changes. We also will select several organizations from among this group for qualitative case studies to obtain more in-depth information on how services may be affected by the level of faith influence in the organization.

In addition to the organizational interviews, when the organizations agreed, we asked them to distribute pre- and post-surveys to clients of their program. Clients were given a grocery gift certificate as an incentive to participate. The client pre-survey included basic questions about the service provider: prior knowledge of provider, perceived choice of provider, prior job training; and basic demographic information, such as education level, gender, age, number of children and ages, and race/ethnicity.

In the client post-survey, we asked about duration of participation in program; services received; client's perceptions of the service provider and program (e.g., comfort level, expectations, program effectiveness in securing employment, and religion as part of services received); outcomes (e.g., current employment status); and barrier/facilitators (e.g., access to transportation, telephone, and childcare); and personal problems (e.g., need to care for a family member).

In both the pre- and post-surveys, we asked about participation in religious services, praying and reading religious texts, perceived level of control in personal life, and self-image. Results of these surveys will be included in our final report. A copy of the survey instruments is included in Appendix C.

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CONSTITUTIONAL ISSUES

The First Amendment to the U.S. Constitution has long been interpreted to prohibit the use of tax dollars to support religious organizations or for religious purposes. However, what constitutes support, or a religious purpose, is often unclear. The Supreme Court has never ruled that government may not purchase secular goods or services from religious entities, and to take such a position would raise serious equal protection and free exercise concerns. Historically, however, the court has refused to allow the flow of direct government aid (as opposed to vouchers) to organizations deemed to be “pervasively sectarian.”¹ These are organizations whose religious character so permeates their service delivery as to make it impossible to divorce sacred from secular for purposes of funding the latter.

Charitable Choice legislation raised a number of constitutional issues, among them:

- Are some social service programs so “drenched” with religion that they cannot constitutionally receive government funds?
- Do some state outreach programs intended to encourage FBO participation unconstitutionally favor religious organizations over secular ones?
- What is the effect of state constitutional prohibitions on the transfer of public funds to religious organizations? These provisions are often stricter than the First Amendment.
- Are some otherwise constitutional programs being delivered in an unconstitutional manner?
- What are the “constitutional capacities” of state program officials and those who manage FBOs?

These questions arise during an unsettled time in Establishment Clause jurisprudence. Recent Supreme Court decisions, especially the decision allowing educational voucher programs to include parochial schools, signal a retreat from the “pervasively sectarian” standard which had long marked the line between permissible and impermissible government support.

Undoubtedly, one of the most contentious issues raised by Charitable Choice was the provision in Section 104 explicitly exempting FBOs from federal and state anti-discrimination laws. In many states, the exemption from civil rights laws enjoyed by religious organizations is considered to have been waived when such organizations are engaged in government contracting; those states acknowledge

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¹ *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973).



that religious organizations have a First Amendment right to hire and fire based upon religious principles, but draw the line when use of government dollars is involved.

Project researchers have published several academic articles and other commentaries analyzing the constitutional questions raised by the legislation (see Appendix E, F, and G) and others are in various stages of preparation. We also have monitored lawsuits and other legal developments likely to impact implementation of Charitable Choice. Since 1996, several cases have been brought that—either directly or indirectly—bear on the constitutionality of Charitable Choice legislation. Perhaps the most widely reported, *Zelman v. Simmons-Harris* (2002), involved the constitutionality of educational vouchers. The court ruled that voucher programs passed constitutional muster if—and this is critical for Charitable Choice programs—the beneficiaries are provided with a genuine, meaningful choice between religious and secular programs. Of course, with the possible exception of day care, few state-supported social service programs currently employ vouchers.

In one of the first legal challenges to Charitable Choice, in 2000, the federal court for the western district of Wisconsin ruled in *Freedom from Religion Foundation, Inc. v. McCallum(I)* that direct state support of a religious residential drug treatment center was unconstitutional. However, in the wake of *Zelman*, that same Wisconsin court upheld indirect support of the program in *Freedom of Religion v. McCallum(II)*, based upon the existence of meaningful beneficiary choice. In 2002, in *ACLU v. Foster*, a federal district court in Louisiana struck down a program where state monies had paid for a religiously-intensive teen abstinence program. And in *American Jewish Congress v. Bost*, the district court for the southern district of Texas agreed that public funds had been spent for an unconstitutional purpose, but refused to order the FBO to reimburse the state for the misspent public dollars. On appeal, the U.S. Court of Appeals for the Fifth Circuit returned the case to the district court for a determination whether reimbursement should be ordered after a showing of an Establishment Clause violation.

Two very important cases still in the courts do not involve direct challenges to Charitable Choice, but raise squarely the constitutional propriety of contractor discrimination in hiring when the positions in question are funded by government contracts. *Pedreira v. Kentucky Baptist Children's Home* involved the discharge of an otherwise qualified counselor because she was lesbian. The Kentucky Baptist Children's Home receives the bulk of its budget from the state of Kentucky. In *Bellmore v. United Methodist Children's Home*, a facility receiving a majority of its support from



the state of Georgia was sued for refusing to hire a highly qualified Jewish psychologist, and for firing a lesbian employee. The claim asserts that both actions were based upon the religious beliefs of the institution and represented institutional policy. The resolution of these cases will impact the Charitable Choice exemption of faith-based contractors from civil rights laws. (The cases also raise less obvious but equally important state action issues which also have implications for Charitable Choice. Those issues are discussed in some detail in *When Is Private Public? State Action, Privatization and Public-Private Partnerships*, in Appendix E).

The existence of these open issues raises substantial concerns for those who must make the Charitable Choice law work. During the first years of the project, project researchers spent considerable time looking at the implications of these constitutional ambiguities for public managers, and the results of that line of inquiry can be found in Appendix F in *Government Shekels or Government Shackles: The Administrative Challenges of Charitable Choice*.

Finally, the project has undertaken two empirical investigations of the constitutional competency of those involved in managing FBO social service delivery. We sent a questionnaire to the leadership of every congregation in South Bend, Indiana, to determine the “constitutional competence” of such leaders; the questionnaire used is included in Appendix D. The results were troubling. The 103 respondents (a 30 percent response rate) displayed a lack of understanding of even the most basic constitutional principles. Of the 103 respondents, 75 disagreed with the statement: “The First Amendment and other provisions of the Bill of Rights apply only to government action.” This was particularly disheartening. The concept of state action—the principle that the Bill of Rights constrains only action by government or its agents—is basic to any understanding of the operation of American constitutional principles. Worse, considering the context within which the question was asked, 70 respondents disagreed with the statement: “If a congregation has a contract with government to provide services, the congregation may not include religious instruction or prayer as part of the services funded under the contract.” This response suggests that concerns about use of public funds for sectarian proselytizing may be well founded.

The average score on the 11 item survey was 7.33 or 66.6 percent, hardly the “exam” score one might seek for organizations being asked to oversee the proper expenditure of significant tax dollars. Clearly, leaders of religious congregations are *not* familiar with the constitutional limitations that constrain the use of public funds for faith-based social services.



The second empirical study, which has just begun, attempts to assess the degree of constitutional knowledge held by those governmental middle-managers charged with overseeing the bid process and contractor compliance. Results will be included in this project's final report.



Section III

Preliminary Conclusions





PRELIMINARY CONCLUSIONS

To call this section “Conclusions” is arguably misleading; rather, our results thus far highlight the substantial questions remaining and the need for additional research.

What *can* we conclude from the data collected thus far?

The different states in our study have taken very different approaches to implementation of Section 104. It is reasonable to assume that the political culture and religious landscape of any given state, together with its governance structure and contracting regime, will determine its approach to Charitable Choice, and that the responses will not be uniform across the states.

If the states in our study are representative, relatively few new faith-based providers have decided thus far to become government contractors in response to Charitable Choice. Even in Indiana, which has actively recruited religious organizations and has committed significant resources to that effort, of the organizations that participated in the technical assistance program, only six new providers began contracting with the state in 2001. Our research suggests that even those religious organizations that provide social services retain a considerable reluctance to partnering with government.

In Indiana, in a comparison of the outcomes of job training and placement efforts of faith-based and secular organizations, secular organizations had somewhat better results. Persons trained and placed by secular organizations garnered more hours of work; they were also more likely to get jobs offering health insurance benefits. It is important to note, however, that the religious organizations in this study tended to be relatively new to government contracting. They were also much smaller than the secular contractors. While the analysis is controlled for these variables, it is still possible that with increased experience, the gap between the two types of organizations would narrow or disappear. Furthermore, this study says nothing about comparative efficacy of other types of social service provision. It is entirely possible that a study of drug treatment programs or fatherhood programs, for example, would yield different results. However, such programs also present additional constitutional difficulties.

Strongly faith-influenced (SFI) organizations are generally smaller, with less revenue and fewer employees than both moderately faith-influenced (MFI) providers and organizations not influenced by faith (NFI). They are also more reliant on revenue derived from IMPACT contracts, with half of them receiving all of their

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funding from IMPACT contracts. MFI organizations provide a broader range of services than the NFI or SFI organizations. Most organizations provide other services, but SFIs are much less likely to be reimbursed for them. Even though most SFI providers received technical assistance, almost half experienced problems with the payment process. MFI organizations exhibit management strengths across our spectrum of factors. SFI organizations, on the other hand, seem to have both management strengths and weaknesses compared with their NFI counterparts. Most organizations use volunteers, but SFIs are much more likely to use their volunteers for IMPACT programs. SFI providers report the highest percentage of clients from the neighborhood. SFI organizations were much more likely to report that contracting with IMPACT has led to other community involvements. More than half of SFI organizations report that contracting with IMPACT has positively affected their primary mission.

The constitutional landscape remains hazy, at best. It is likely that contested provisions of Charitable Choice—including but not limited to the exemption of religious providers from anti-discrimination laws—will eventually be settled by the Supreme Court. Even portions of the law that appear to be facially constitutional, however, may be challenged if improperly applied. Our research suggests that states do not have the resources to monitor providers for constitutional compliance, and that many, if not most, congregational leaders do not have sufficient constitutional competence to ensure constitutionally appropriate program implementation.

This report is based on two years of data. During the final project year, we will continue to gather and analyze data, and it is very possible that these initial conclusions will be modified as both states and providers become more familiar with the contours of this law and the complexities of government contracting with faith-based organizations.

While our analysis of comparative efficacy is, to the best of our knowledge, the first such effort, it is important that it not be taken as definitive. We limited our analysis to one type of program in one state. Broad conclusions about Charitable Choice as a public policy must await many other such inquiries—in other states, and in other program areas. We do believe, however, that these first efforts at analysis point the way for future research.



**SECTION 104
IN ITS ENTIRETY**

SEC. 104. SERVICES PROVIDED BY CHARITABLE, RELIGIOUS, OR PRIVATE ORGANIZATIONS.

(a) IN GENERAL-

(1) STATE OPTIONS- A State may-

(A) administer and provide services under the programs described in subparagraphs (A) and (B)(i) of paragraph (2) through contracts with charitable, religious, or private organizations; and

(B) provide beneficiaries of assistance under the programs described in subparagraphs (A) and (B)(ii) of paragraph (2) with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations.

(2) PROGRAMS DESCRIBED- The programs described in this paragraph are the following programs:

(A) A State program funded under part A of title IV of the Social Security Act (as amended by section 103(a) of this Act).

(B) Any other program established or modified under title I, II, or VI of this Act, that-

(i) permits contracts with organizations; or

(ii) permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries, as a means of providing assistance.

(b) RELIGIOUS ORGANIZATIONS- The purpose of this section is to allow States to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers, or other forms of disbursement under any program described in subsection (a)(2), 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 assistance funded under such program.

(c) NONDISCRIMINATION AGAINST RELIGIOUS ORGANIZATIONS- In the event a State exercises its authority under subsection (a), religious organizations are eligible, on the same basis as any other private organization, as contractors to provide



assistance, or to accept certificates, vouchers, or other forms of disbursement, under any program described in subsection (a)(2) so long as the programs are implemented consistent with the Establishment Clause of the United States Constitution. Except as provided in subsection (k), neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character.

(d) RELIGIOUS CHARACTER AND FREEDOM-

(1) RELIGIOUS ORGANIZATIONS- A religious organization with a contract described in subsection (a)(1)(A), or which accepts certificates, vouchers, or other forms of disbursement under subsection (a)(1)(B), shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) ADDITIONAL SAFEGUARDS- Neither the Federal Government nor a State shall require a religious organization to—

(A) alter its form of internal governance; or

(B) remove religious art, icons, scripture, or other symbols; in order to be eligible to contract to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, funded under a program described in subsection (a)(2).

e) RIGHTS OF BENEFICIARIES OF ASSISTANCE-

(1) IN GENERAL- If an individual described in paragraph (2) has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program described in subsection (a)(2), the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider that is accessible to the individual and the value of which is not less than the value of the assistance which the individual would have received from such organization.

(2) INDIVIDUAL DESCRIBED- An individual described in this paragraph is an individual who receives, applies for, or requests to apply for, assistance under a program described in subsection (a)(2).



- (f) EMPLOYMENT PRACTICES- A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1a) regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a)(2)
- (g) NONDISCRIMINATION AGAINST BENEFICIARIES- Except as otherwise provided in law, a religious organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in subsection (a)(2) on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.
- (h) FISCAL ACCOUNTABILITY-
- (1) IN GENERAL- Except as provided in paragraph (2), any religious organization contracting to provide assistance funded under any program described in subsection (a)(2) shall be subject to the same regulations as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.
- (2) LIMITED AUDIT- If such organization segregates Federal funds provided under such programs into separate accounts, then only the financial assistance provided with such funds shall be subject to audit.
- (i) COMPLIANCE- Any party which seeks to enforce its rights under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.
- (j) LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES- No funds provided directly to institutions or organizations to provide services and administer programs under subsection (a)(1)(A) shall be expended for sectarian worship, instruction, or proselytization.
- (k) PREEMPTION- Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.





IMPACT PROVIDER SURVEY, PART I

Name of organization _____
 Contact person _____
 County _____

Thank you for agreeing to help us with this important project. We look forward to meeting you and your staff. Please complete Part I and return it in the enclosed envelope. We will contact you to make an appointment to complete Part II during a site visit.

1) What is your organization’s mission? **(OR ATTACH A COPY OF THE MISSION STATEMENT IF AVAILABLE.)**

2) Has the mission changed in the last five years? yes no don’t know
 (IF YES) In what way and why?

3) What is the geographic area currently served by your organization? Please estimate the percentage of your clients that come from these geographic areas.

	Percent of Clients
Neighborhood (within 1 mile)	_____
Your area of the city (1-5 miles)	_____
Outside your area of the city (more than 5 miles)	_____
Don’t know	_____

4) Which of the following have occurred in your organization because you receive IMPACT funds? **(CHECK ALL THAT APPLY.)**

1. Expanded services and programs
2. Hired staff with higher qualifications
3. Used fewer volunteers and more professional staff
4. Put more time and effort into paperwork
5. Provided more effective services
6. Provided less effective services
7. Avoided having to close down
8. Became more bureaucratic and allowed less flexibility and creativity
9. Changed your priorities to meet government requirements or priorities
10. Became involved in lobbying legislators and government agencies
11. Received fewer private gifts and volunteer hours
12. Received more private gifts and volunteer hours
13. Other, please specify: _____



5) Please check all of the services that your organization PROVIDES DIRECTLY under its current IMPACT contract.

Job Training

- Vocational Training
- Computer Skills Training

Job Readiness

- Problem Solving
- Workplace Expectation
- Anger Management
- Time Management
- Customer Service Skills
- Personal Hygiene/Grooming
- Stress Management
- Alcohol Treatment
- Conflict Resolution
- Cultural Diversity
- Communication
- Budgeting/Money Management
- Social Skills
- Self-Image
- Drug Treatment
- Mental Health Treatment

Job Search, Development, and Placement

- Steps in Job Search Process
- Telephone Etiquette
- Assistance with Job Application
- Provide Access to Job Search Materials (computer, newspaper, magazines)
- Work Experience Site Placement
- Expectations of Job Search Process
- Resume Preparation
- Where to Search for Jobs
- Job Fairs
- Interview Techniques

Assessment

- Education
- Skills and Interests
- Health
- Barriers
- Personality
- Work Experience
- Family Problems
- Chemical Dependency
- Life Skills

Education

- Basic Education
- GED Preparation
- English as a Second Language (ESL)

Case Management

- Coordination of Additional Services for Client (transportation, childcare, housing, health, education)

Miscellaneous

- Teen Pregnancy Prevention
- Homeownership Assistance
- Parenting
- Small Business Assistance
- Mediate Conflicts between Employers and Clients

Others

(Please Specify) _____



6) Please rank (1, 2, 3, . . .) these EXTERNAL FACTORS in terms of their overall importance to your organization.
RANKS CAN BE TIED. MARK "1" FOR MOST IMPORTANT. LEAVE THE ITEM BLANK IF IT IS NOT IMPORTANT.

Rank

- _____ General Public
- _____ Community Leaders
- _____ Congregations/Religious Leaders
- _____ Private Sector Donors (foundations, individuals, businesses)
- _____ Private Sector Payers/Businesses
- _____ Media
- _____ Politicians
- _____ Government Funders
- _____ Government Regulators
- _____ Legislative Bodies
- _____ Professional Organizations of Staff
- _____ Associations of Clients
- _____ Other

7) What is your total number of full-time paid employees? _____ Part-time _____

Of these employees, what is the full-time equivalent (FTE) number of employees who are dedicated to the following tasks?

_____ Administering/supporting the IMPACT contract?

_____ Providing service under the IMPACT contract?

8) Check the boxes to indicate the types of NON-IMPACT services your organization provides. Next, in the second column, rank (1, 2, 3, . . .) the services that you checked in order of your organization's priorities (**1 = MOST IMPORTANT**). **YOU MAY TIE RANKS IF YOU WISH.**

Provide Rank

- _____ Arts, Culture, and Humanities (visual, performing, media, historical, facilities)
- _____ Educational (instruction, libraries or facilities, student or other support services)
- _____ Health (general/rehabilitative, mental health and crisis, disease treatment)
- _____ Crime or Delinquency Prevention
- _____ Employment Training or Procurement
- _____ Food, Agriculture or Nutrition
- _____ Housing or Shelter (development, search, temporary housing, home owners)
- _____ Public Safety, Disaster Preparedness or Relief (flood, fire, search & rescue)
- _____ Youth Development (boys/girls clubs, adult-child matching, service clubs)
- _____ Children and Youth Services (adoption, foster care, day care)
- _____ Family Services (parent education, single parents, family violence, homemaker)
- _____ Personal (financial counseling, individual development, self-help)
- _____ Emergency Assistance (food, clothing, cash, traveler's aid, victim's services)
- _____ Residential Custodial (half & group homes, hospice, senior continuing care)
- _____ Independence of Specific Groups (seniors, dev. disabled, women, homeless)
- _____ Neighborhood or Community Improvement, Capacity Building
- _____ Civil Rights, Social Action, Advocacy
- _____ Philanthropy, Volunteerism or Grant making
- _____ Public Services (public administration, veterans, utilities, consumer protection)
- _____ Religion or Spiritual Development
- _____ Other _____



9a) Please list below the organizations that you routinely interact with to deliver IMPACT services.

Check the column that indicates the type of interaction for each. If you need more room, please attach a separate sheet.

Name of Organization	Give or receive funding or resources	Collaborate re: service provision	Competitor	Policy or regulatory issues	Coalitions or task forces	Sub-contract to
Nonprofits:						

For-Profits:						

Government Organizations:						

Religious Bodies:						

Other Religious or Faith-Based organizations:						

Others (list):						

9b) Has contracting with IMPACT led to any other community involvements?

yes no don't know

IF YES, what are these involvements?

9c) For those organizations you checked as your COMPETITOR, does your organization compete with those groups for any of the following reasons? **(CHECK ALL THAT APPLY FOR EACH TYPE OF COMPETITOR.)**

We regularly compete with these other organizations (listed in 9a)

For the purposes of	Religious nonprofits	Secular nonprofits	Business	Government
Obtaining financial resources	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recruiting staff/volunteers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recruiting board members	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Attracting clients/members	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Delivering programs/services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9d) Has contracting with IMPACT changed your organization's relations with other organizations or groups? **(PLEASE CHECK ONE.)**

yes no don't know

IF YES, how? _____



10) To what extent do the following types of activities currently pose significant challenges for your IMPACT program?
 To what extent do the following types of activities currently pose significant challenges to your organization?

Activity	IMPACT challenge?			Organization challenge?		
	Yes	No	Major	Minor	No	Don't know
Clearly defining our mission	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Achieving our mission	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Obtaining adequate information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Identifying and targeting results	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strategic planning process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Implementing plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Delivering high quality program/services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Meeting the needs/interests of current clients	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Attracting new clients	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Enhancing our visibility and reputation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Developing/maintaining good relations with other organizations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recruiting/keeping effective board members	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Having a smoothly functioning board	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recruiting/keeping qualified administrators	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recruiting/keeping qualified service staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recruiting/keeping qualified and reliable volunteers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Managing human resources (staff and volunteers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Managing or improving board/staff relations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Managing our programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Measuring program outcomes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Communicating internally	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Developing and using teamwork	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Developing/sustaining good working relationships in the organization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dealing with disputes in the organization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Organizing or reorganizing our structure when we need to	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anticipating financial needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Obtaining funding or other financial resources	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial management and accounting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Managing the facilities/space we use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Using information technology effectively	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Using technology for service provision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



11) Does your organization have any of the following? **(CHECK ALL THAT APPLY.)**

- A Web site for your organization (Please list address) _____
- An e-mail address for your organization (Please list address) _____
- Computers available for key staff/volunteers
- Internet access for key staff/volunteers
- Computerized financial records
- Computerized program/member records
- Written governance policies or by-laws
- Written conflict of interest policy
- Written personnel policies
- Written job descriptions
- Formal periodic evaluations
- Formal volunteer recruitment program
- Formal volunteer training program
- Reserves dedicated to capital improvement
- Reserves dedicated to maintenance/equipment
- A recent audited financial statement
- An annual report produced within the last year

12a) What is your fiscal year? Calendar year Other (SPECIFY) _____

12b) Organization's annual revenues for the most recently completed fiscal year: please check one.

- \$0-\$100,000 \$100,001-\$500,000 \$500,001-\$1,000,000 Over \$1,000,000

12c) To what extent have your organization's financial indicators changed significantly (by 25 percent or more), moderately (by 10-25 percent), or about the same over the last three years? **CHECK THE BEST RESPONSE FOR EACH FINANCIAL INDICATOR.**

Financial Indicator	Increased significantly (>25%)	Increased moderately (10-25%)	About the same	Decreased moderately (10-25%)	Decreased significantly (>25%)
Total revenues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Total expenditures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Total assets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Total liabilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

13) During the most recently completed fiscal year, approximately what percentages of your organization's revenues came from the following sources: (WRITE "0" IF NO SUCH REVENUE.)

Types of revenues	% of revenues
1. IMPACT contract	_____ %
2. Other government or public agencies	_____ %
3. Donations and gifts (e.g., United Way, foundations, individuals, corporations)	_____ %
4. Special events	_____ %
5. Dues /membership fees	_____ %
6. Private sale of goods and services (non-government)	_____ %
7. Religious denomination organizations	_____ %
8. Endowment, investment, and other sources	_____ %
TOTAL (should add to 100%)	_____ %



14) Over the last three years, to what extent has the amount of funding your organization received changed significantly (by 25 percent or more), moderately (by 10-25 percent) or not at all?

Type of Revenue	Increased significantly (>25%)	Increased moderately (10-25%)	Stayed the same	Decreased moderately (10-25%)	Decreased significantly (>25%)	Not Applicable
IMPACT contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other government or public agency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
All donations and gifts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
special events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dues, membership fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private sale of goods & services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Religious denomination organizations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Endowment, dividends, investment interest, other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>





IMPACT PROVIDER SURVEY, PART II

Name of organization _____
Contact person _____
County _____

THANK YOU FOR TAKING TIME TO TALK TO US. YOUR INFORMATION WILL HELP US UNDERSTAND HOW THE IMPACT PROGRAM IS WORKING IN INDIANA. WE'D LIKE TO START BY ASKING YOU SOME BASIC QUESTIONS ABOUT YOUR ORGANIZATION.

1. In what year was your organization founded? _____

2. Is your organization nonprofit, for-profit, or a government agency?
- Nonprofit **(If they ask, that means exempt from corporate taxes.)**
 - For-profit
 - Government: **CHECK ONE:** federal state city county

IF NONPROFIT OR FOR-PROFIT

Is your organization formally incorporated? yes no don't know

IF YES, in what state? _____

IF NONPROFIT

Are you a 501(c)(3)? (If they ask, that means donations are deductible.) yes no don't know

IF NO, what type of nonprofit are you? (IRS classification) _____

3. Has your organization ever changed its formal status? yes no don't know

IF YES, when and why?

4. Is your organization formally affiliated with any other organization? yes no don't know

IF YES, please describe your affiliation:

5. What are your organization's three or four most important programs or activities this current fiscal year?

1. _____

2. _____

3. _____

4. _____

6. Has the geographic focus of the organization changed in the last 3 years?

yes no don't know

IF YES, in what way? Why?

7. Do you expect your geographic focus to change in the next 2 years?

yes no don't know

IF YES, in what way? why?



RELIGIOUS ORGANIZATIONS ARE INCREASINGLY BECOMING INVOLVED IN SERVICE DELIVERY. WE'D LIKE TO ASK SOME QUESTIONS REGARDING YOUR ORGANIZATION'S INVOLVEMENT WITH RELIGION.

8. Do you provide funds or any other support to any religious organizations?

- yes no don't know

IF YES, which organizations and what kind of support?

9. Is your organization affiliated with any religious organization or faith tradition? By this we mean: are you a subsidiary or headquarters of a religious organization or do you have any joint operations or formal sharing of personnel or programs with a religious organization?

- yes (**SPECIFY** _____) no don't know

If a church: What is the size of the congregation? _____

10. Does the organization desire, request, or require that staff and volunteers share the same religious belief or faith?

- yes no don't know

IF YES, is it desired, requested or required? (CHECK ONE)

11. Is religion or faith a part of any of the services that you provide?

- yes no don't know

IF YES, which services? _____

IF YES, how is it a part? _____

12. When making organizational decisions, is your organization guided by prayer or religious texts such as the Bible or Koran or other religious documents, periodicals or reports?

- yes no don't know

13. Are any religious or faith criteria used to assign staff to positions?

- yes no don't know

If the respondent answered yes to any questions between numbers 9 and 13, HAND THEM A COPY OF QUESTIONS 14 AND 15, then ask them questions 15 to 24, otherwise skip to question 25.

14. (FBO) To what extent does each of the following characteristics contribute to your organization's religious or faith identity?

CIRCLE THE BEST RESPONSE FOR EACH ITEM.

Characteristic	Contribution to Identity		
	Major Factor	Minor Factor	Irrelevant Factor
a. Operating under the oversight of a religious body (such as a church, synagogue or mosque) or organization	1	2	3
b. Affiliated with, but not controlled by a religious body	1	2	3
c. Board Members affiliated with a religious body	1	2	3
d. Founded by a religious body	1	2	3
e. Mission founded on religious values	1	2	3
f. Using space owned by a religious body/organization	1	2	3
g. Operating joint programs with a religious organization.	1	2	3
h. Religious character or preference of our clients	1	2	3



15. (FBO) In light of your receipt of government funds, indicate whether your agency either (1) does it (2) would like to do it, but feel you legally cannot do it; (3) has no desire to do it.

<u>Practice</u>	<u>Do this</u>	<u>Would like to do, but feel you cannot do it legally</u>	<u>Has no desire to do it</u>
a. Have a religious leader (pastor, rabbi, imam, etc.) on staff	1	2	3
b. Staff that are members of the congregation	1	2	3
c. Religious symbols/pictures in facilities	1	2	3
d. Voluntary religious exercises for clients	1	2	3
e. Required religious exercises for clients	1	2	3
f. Spoken prayers at meals for clients	1	2	3
g. Informal references to religious ideas by staff in contact with clients	1	2	3
h. A generalized spirit or atmosphere of service/concern/love among your staff	1	2	3
i. Only hiring staff who agree with your religious orientation	1	2	3
j. Giving preference when hiring staff to those in agreement with your religious orientation	1	2	3
k. Efforts to encourage clients to make personal religious commitments	1	2	3
l. Giving preference when accepting clients to those who agree with your religious orientation	1	2	3

16. (FBO) Which of these, if any, would you say is a reason your organization became involved with IMPACT (CHECK ALL THAT APPLY):

- Felt called to this work because of our religious or faith beliefs
- Felt that this was an opportunity to share our religious or faith beliefs
- Felt that this was an opportunity to bring people to our religion or faith
- Other (**PLEASE SPECIFY**) _____
- None of the above

17. (FBO) Are there any other religious practices you feel you have had to curtail or eliminate because you receive government funds?

- yes no don't know

IF YES, please specify which ones.

18. (FBO) Have any government officials ever questioned any of your religious-based practices or brought pressure to bear on you to change any of them?

- yes no don't know

IF YES, please explain.

19. (FBO) Have you received any other criticism or pressure, or lawsuits because of any of your religious-based practices?

- yes no don't know

IF YES, please explain.

20. (FBO) Have you had any issues with clients related to your religious-based practices?

- yes no don't know

IF YES, what were they?

21. (FBO) Have any of your IMPACT clients attended congregational activities or services, or joined the congregation?

- yes no don't know

22. (FBO) What advantages or disadvantages does religion in your organization have in the area of IMPACT service delivery?



23. (FBO) Is religion, including expressions of faith or personal testimony a part of IMPACT services?

yes no don't know

IF YES, how?

IF YES, what services?

24. (FBO) Have there been any consequences for your congregation because of your involvement with IMPACT?

yes no don't know not applicable

IF YES, what were they?

THE NEXT SET OF QUESTIONS IS ABOUT DETAILS OF YOUR IMPACT PROGRAM.

25. a. Have you contracted with IMPACT before this contract year?

yes no don't know

b. IF YES, for how long? _____

c. IF YES, were any of your current IMPACT services provided under IMPACT prior to this year?

yes no don't know

26. Why did you apply for an IMPACT contract? _____

27. Were any of these services provided under some other funding arrangement prior to this year?

yes no don't know

28. What percent of your IMPACT contract was delivered as of August 30, 2000? _____

29. Is this the percent you initially expected you would have delivered at this point?

yes no don't know

IF NO, what accounted for the difference?

30. What percent of your IMPACT contract do you expect to deliver by the end of the contract? _____%

IF LESS THAN THE TOTAL AMOUNT (100 PERCENT), why do you expect it will be less than the total?

31. Has contracting with IMPACT affected your organization's mission?

yes no don't know

IF YES, how? _____

32. Have you received information or technical assistance in carrying out your contract from the state or county?

yes no don't know

IF YES, describe.

33. How many referrals from the county has your organization received? _____

34. Of those, how many have started your program? _____



35. Do you do anything to follow-up on referrals?

- yes no don't know

IF YES, what?

36. Have you experienced any problems with the IMPACT payment process?

- yes no don't know

IF YES, describe the problems.

37. a. Does your organization provide IMPACT clients with any other services besides those specified in the contract?

- yes no don't know

IF YES,

b. What types of services?

c. Are these reimbursed in some way?

- yes no don't know

IF YES, by whom are they reimbursed?

38. As part of your IMPACT services, do you promote values?

- yes no don't know

IF YES, which services? _____

What values? _____

39. Besides finding employment, are there any other goals you would like the IMPACT clients in your program to achieve?

- yes no don't know

IF YES, what are they?

40. To what extent do you think these other goals are achieved?

41. In general, have there been any unintended/unanticipated effects from your participation with IMPACT ?

- yes no don't know

IF YES, please specify.

NOW WE'RE GOING TO ASK ABOUT YOUR NON-IMPACT SERVICES.

42. Have your non-IMPACT services changed over last 3 years?

- yes no don't know

IF YES, how and why did they change?

43. Besides the IMPACT clients, how many people has your organization served since October 2000 (IMPACT contract year)? _____

44 a. Are some or all of your non-IMPACT programs/activities targeted to any groups?

- yes no don't know

b. **IF YES**, what groups?

c. **IF TARGETED**, have the target populations changed over last 3 years?

- yes no don't know

IF YES, please specify.

d. **IF TARGETED**, do you expect to change over the next two years?

- yes no don't know



45. In the last three years, how would you describe the change in demand for non-IMPACT services?

(READ RESPONSE CATEGORIES AND CHECK ONE):

- Substantially increased Moderately increased Did not change
 Moderately decreased Substantially decreased

46. **IF DEMAND HAS CHANGED:** In the last 3 years, has your organization made any of the following changes in NON-IMPACT service delivery in response to this change?

- a) Reduced or increased the number of clients served, or stayed the same?
 reduced increased stayed the same
- b) Tightened or expanded eligibility requirements for service, or stayed the same?
 tightened expanded stayed the same
- c) Reduced or increased the level of service provided to individual clients, or stayed the same?
 reduced increased stayed the same
- d) Eliminated specific services or programs, or stayed the same?
 yes no don't know
- e) Introduced new service or programs
 yes no don't know

47 a. Does your organization promote any positions related to policy issues or the interests of certain groups?

- yes no don't know

b. **IF YES,** are the issues related to IMPACT or charitable choice?

- yes no don't know

c. **IF YES,** please specify.

d. **IF YES,** have your advocacy efforts related to IMPACT or charitable choice increased or decreased over the last three years?

- increased decreased stayed the same

THE NEXT SET OF QUESTIONS IS ABOUT YOUR ORGANIZATION'S HUMAN RESOURCES:

48 a. Does your organization have its own board of directors? yes no don't know

IF NO, why not?

IF NO, SKIP TO QUESTION 50.

IF YES TO 48 a:

48 b. Does your board make binding organizational decisions? yes no don't know

48 c. How many board members did your organization have on August 30? _____

48 d. How many other board positions were vacant as of that date? _____

48 e. Does your board use a committee structure? yes no don't know

48 f. Are any members of your board elected or selected by any outside groups? yes no don't know

48 g. How often does the board meet? _____

49 a. What is the executive director's educational background?

b. How long has he/she been with the organization? _____

c. What was his/her previous position? _____

d. How long was he/she there? _____



50 a. Do any of the staff members providing IMPACT funded services have any professional credentials that are used in the delivery of services? yes no don't know

IF YES

b. What professional credentials do these staff members have, and how many staff members have them?

51 a. Does your organization use any volunteers, other than those who serve on the board of directors?
 yes no don't know

IF YES:

b. Approximately how many people performed volunteer work for your organization this year up to August 30?
(not including board members) _____

c. Were any of your volunteers involved in providing IMPACT services?

yes no don't know

d. **IF YES**, how many, and what did they do?

Thank you; we appreciate the time you've taken with us today. We hope to be in touch with you further as the project proceeds. If you have any questions, please feel free to call us.





Form 1

Your birthdate: Month: _____ Day: _____ Year: _____ Today's date: _____

IMPACT Pre Survey (Client Survey)

You are invited to participate in a study of IMPACT in Indiana to find out how it is working. If you agree to fill out this survey, it should take 5 to 10 minutes. You will receive a \$10 Kroger's gift certificate when you return your survey. If you do not want to fill it out, that is fine. If you do fill it out, your answers will be kept confidential. If, after you leave, you have any questions, please call Sheila Kennedy at (317) 274-2895.

- Had you heard about <name of program> before you came to the program? Yes No
- Did you talk about <name of program> with your caseworker before you were referred? Yes No Not sure
- Do you feel you had a choice of where to go? Yes No I don't know
- How long have you been in the <name of program> program? _____
- How far have you gone in school?
- Less than high school graduate High school graduate or GED Trade/Vocational program
- Associates degree Bachelors degree or higher

Please circle the answer that shows how you feel about the following statements:

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
When I do a job, I do it well.	SA	A	N	D	SD
I nearly always feel pretty sure of myself even when people disagree with me.	SA	A	N	D	SD
There's little use for me to plan ahead because something always makes me change my plans.	SA	A	N	D	SD
How often do you attend religious services?	<input type="checkbox"/> Never <input type="checkbox"/> A few times a year <input type="checkbox"/> 2-3 times a month <input type="checkbox"/> Once a week <input type="checkbox"/> More than once a week				

- How often do you pray (not counting grace at meal time or group prayer)?
- Never Less than once a week Few times a week Once a day Several times a day
- How often do you read religious materials such as the Bible or Koran in private (not counting group reading that typically occurs in worship service)?
- Never Less than once a week Few times a week Once a day More than once a day

Questions about you:

- Sex: Male Female Age: _____
- Race/ethnicity: Black White Hispanic Other: _____
- Marital Status: Married Never married Divorced Widowed or separated

- How many children do you have? _____ How many of your children are younger than 12? _____
- Do you have childcare for your child or children? Yes No Part of the time

How long have you been in the TANF/AFDC program? Years: _____ Months: _____

- How many OTHER programs that might help you get a job have you been referred to by your caseworker? _____
- None 1 2 3 4 or more
- How many weeks (total) did you attend training in all of these programs? _____

- Do you receive any other type of assistance? (Check any that apply)
- Medicaid Food stamps Public housing (Section 8) Other: _____

Thank you!



Form 2

Your birthdate: Month: _____ Day: _____ Year: _____ Today's date _____

IMPACT Post Survey (Client Survey)

You are invited to continue your participation in a study of IMPACT in Indiana to find out how it is working. If you agree to fill out this follow-up survey, it should take 5 to 10 minutes. You will receive a \$10 Van Til's gift certificate when you return your survey. If you do not want to fill it out, that is fine. If you do fill it out, your answers will be kept confidential. If, after you leave, you have any questions, please call Sheila Kennedy at (317) 274-2895.

How long have you been in the <name of program> program? _____

Have you received any other help from <name of program> or been sent by <name of program> somewhere else for help? (Such as food, clothing, housing, cash, counseling, etc.) Yes No Not sure

(If yes) What help have you received? (Check all that apply.)

- Food Clothing Housing Cash Counseling Other(Specify) _____

Please circle the answer that shows how you feel about the following statements:

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
When I do a job, I do it well.	SA	A	N	D	SD
I nearly always feel pretty sure of myself even when people disagree with me.	SA	A	N	D	SD
There's little use for me to plan ahead because something always makes me change my plans.	SA	A	N	D	SD

Since you began this program, has your attendance at religious services:

- Increased Decreased Stayed the same

Since you began this program, has the frequency of times that you pray:

- Increased Decreased Stayed the same

Since you began this program, has the frequency of times that you read religious materials such as the Bible or Koran in private:

- Increased Decreased Stayed the same

Would you recommend the program to a friend or relative? Yes No Don't know

Was religion, witnessing, or an expression of personal faith ever part of the IMPACT services you received?

- Yes No Don't know

If yes, how was it a part of the services? _____

If yes, how did you feel about that? Made me comfortable Didn't affect me Made me uncomfortable

If yes, was it helpful? Yes No Didn't matter

Do any of the following make it hard for you to get or keep a job? (Check all that apply.)

- Lack of childcare No telephone Lack of transportation
 Need to care for a family member Homelessness Health problems
 Personal problems (mental illness, drug abuse, etc.) Other _____
 None

Do you currently have a job? Yes No

If you don't have a job, do you think the program will help you get a job? Yes No Don't know

If yes, why? _____

If you do have a job:

What type of job is it? _____ How much does it pay per hour? _____

How many hours a week do you work? _____ Does it have health benefits? Yes No Don't know

Thank you!

Follow-up Survey, 2002



**SURVEY OF RELIGIOUS CONGREGATIONS
MEMBERS OF THE UNITED RELIGIOUS COMMUNITY OF ST. JOSEPH COUNTY, INDIANA**

1. Denomination _____

2. Average attendance at primary worship service

- fewer than 100 101-200 201-300 301-400 more than 401

3. Social programs offered by the congregation

- Food Pantry Clothing Cash Assistance
 Day Care Counseling AA/NA
 Soup Kitchen GED classes Job training

Other _____

4. Do you receive any public funds for the above programs?

- Federal grant(s) Grants from State Government Grants from Local Government

5. If you checked any answers in question 4, please answer this question.

From which public agencies do you receive funds?

6. If you do not currently contract with a government agency, would you be interested in doing so in the future? yes no

The next few questions are about the congregation leader (pastor, rabbi, iman, etc.).

7. Age 20-29 30-39 40-49
 50-59 60-69 70-79

8. Race African American White Hispanic
 Asian Other _____

9. Gender Female Male

10. Highest level of education completed

- HS BA/BS MA DMin
 Some college Some grad work MDiv PhD

Other _____

Be sure to turn the page over for the rest of the survey.



Please check the most appropriate response below.

	Agree	Disagree	Don't Know
1. The First Amendment and other provisions of the Bill of Rights apply only to government action.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Religious organizations using their own funds are free to hire and fire based upon religious criteria.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. When religious organizations contract with government to provide services, those services must be provided in a constitutionally appropriate manner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. If a congregation has a contract with government to provide services, the congregation may not include religious instruction or prayer as part of the services funded under the contract.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. If a congregation has a contract with government to provide services, it must serve all eligible clients, and must not discriminate among clients based upon race or religion.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. If a congregation hires employees to provide services under a contract with government, it cannot discriminate in hiring those employees based upon race or religion.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. A congregation contracting with government need not remove religious materials or icons from the premises where the contract services are provided.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. The First Amendment's separation of church and state means that tax dollars cannot be used to fund religion or religious expression.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. The Constitutional guarantee that church and state be separate requires that government be evenhanded between religion and non-religion.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. The First Amendment to the Constitution prevents government from sponsoring religious observances or endorsing specifically religious beliefs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. The First Amendment guarantee of the freedom of religion prevents government from interfering with the religious practices of individuals, so long as those practices do not violate laws (i.e. murder, drug use, etc.).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



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When is Private Public?

State Action in the Era of Privatization and Public–Private Partnerships

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I. Introduction

The Charitable Choice provisions of the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996,” [FN1] encourage states to contract with Faith-Based Organizations (FBOs) for delivery of social services to welfare recipients. [FN2] The relevant language of the act allows such FBOs to retain their pervasively sectarian nature. They may require that employees share their faith, but may not use tax dollars for overtly religious purposes, or condition receipt of benefits upon religious participation. Charitable Choice legislation was premised upon the assumption that FBOs do a better job at lower cost than traditional social service providers, an assumption that is neither supported nor contradicted by available data, because no comprehensive research on the issue is available. [FN3]

Charitable Choice thus extends to a large number of religious organizations an invitation to participate in a trend that has been reshaping government—particularly at the state and local level—for at least the past 20 years. [FN4] That trend is often referred to as “privatization” or “reinvention”; however, those terms are more general and encompass a large number of pro-

grams and initiatives, including outright sales of government operations. [FN5] Charitable Choice legislation is the most recent example of the most prominent of these methods to “reinvent” government: the vastly increased use of private for-profit and nonprofit providers to deliver government services pursuant to contractual agreements. While government has always purchased goods and services in the market, this practice has grown significantly [FN6] and has extended into social services where contractors are more likely to be nonprofit agencies with social missions than business organizations seeking profits, and where it presents issues quite different from agreements to purchase computers or to pave city streets. [FN7]

As contracting out becomes a more common method of delivering government services, the nature of “the state” and hence of “state action,” in a constitutional framework, becomes an evolving concern. [FN8] There is significant evidence that the growth of government contracting, coupled with an unrealistic and narrow understanding of state action, has created jurisprudence that, as one scholar noted is, “significantly underprotective of constitutional rights.” [FN9]



II. Context of the Inquiry: The Invisible State

In traditional political discourse, we consider the nature of government and debate the proper role of the state. Rarely do we turn to discussion of what the state is. One can refer, of course, to Augustine's "Earthly City," Aristotle's polis, or Kant's "system of public right," but it was D.D. Raphael who accurately summarized the contemporary idea of the state by defining it as "an association having universal compulsory jurisdiction within territorial boundaries." [FN10] The two elements of that definition—territoriality and a monopoly on the right to use certain types of force or power—are arguably integral to popular understanding of the concept of statehood. Both elements, however, are undergoing redefinition.

In industrialized nations, and perhaps elsewhere, the growth of the global economy and the worldwide penetration of the Internet are increasingly challenging traditional notions of territorial jurisdiction. In America, the steady expansion of government since the New Deal has already required us to rethink the relationship between government power and fundamental rights. [FN11] While rights were traditionally defined as limitations on the coercive power of the state, lawyers and political philosophers now speak of both negative and positive liberties and debate the propriety of recognizing affirmative "entitlements." [FN12] With the advent of widespread contracting, where a growing number of services are provided by, and paid for by government, but delivered by contractors, we must ask new questions as well.

Some are technical: Should contractors have the same First Amendment free speech rights as government employees? [FN13] Should the definition of government power include the power of the purse? Other questions are political: Are partnerships with businesses and nonprofit organizations creating a new definition of government? Is privatization extending, rather than shrinking, the state? Does the substitution of an independent contractor for an employee equate to a reduction in the scope of

government, as proponents believe? Or, as Stephen Rathgeb Smith has recently suggested, [FN14] does the substitution operate instead to shift the locus but not the scope of government activity, and thereby blur the boundaries between public and private, making it ever more difficult to decide where "public" stops and "private" begins? [FN15] If we are altering traditional definitions of public and private by virtue of these new relationships, what is the effect of that alteration on a constitutional system that depends upon the distinction as a fundamental safeguard of private rights?

However we understand government, a central tenet of democratic regimes is that the state must be accountable to its citizens. Contracting out complicates accountability in a number of ways. [FN16] In *Nonprofits for Hire*, an important book published in 1993, Steven Rathgeb Smith and Michael Lipsky explored a variety of issues raised for government and the nonprofit sector by virtue of the increasing reliance upon government contracts:

American social policy is in the midst of a dramatic restructuring of the way public social services are provided. Although government funding of nonprofit service organizations dates to the colonial period, only in the last 25 years did this government-nonprofit strategy emerge as a widespread and favored tool of public service delivery. But entrusting the most vulnerable citizens and the most delicate service tasks to private agencies is not simply a matter of choice between "making" or "buying" services. This might be the case when one considers contracting out for pencils, computer services, or strategic weapons. But when it comes to purchasing the care and control of drug addicts, the safety and nurturing of children, the relief of hunger and the regulation of family life (through child protective activities) from private agencies, values other than efficiency are at stake. We contend that the impact of this transformation on the future of the American wel-



fare state has not received adequate attention. [FN17]

Among the issues Smith and Lipsky explore is the transfer of state power to private providers. “Like teachers, police officers and welfare workers, service providers in the non-profit sector manage scarce resources by coping with their jobs in such a way as to render them not simply implementers of public policy, but ‘makers’ of public policy.” [FN18] Smith and Lipsky contend that workers in nonprofit agencies executing government contracts must be considered agents of government, [FN19] and express concern that political accountability has been compromised by the lack of transparency that is an inevitable component of such arrangements. As they note, from the point of view of welfare state clients, advocacy groups, and the general public, the state has disappeared, making it extremely difficult to assess political responsibility [FN20] or ensure accountability. [FN21] That difficulty will inevitably be compounded when government services are provided by pervasively sectarian, faith-based organizations pursuant to Charitable Choice. [FN22]

One traditional way to enforce government accountability is through the courts. Just as a lack of transparency in contracting relationships can impede political accountability, I will argue in Section III that the failure of the state action doctrine to keep pace with the political reality of government contracting significantly undermines our ability to achieve constitutional accountability. That said, however, an appropriate solution must be carefully crafted, as I discuss in Section IV. If the state action doctrine does not change to accommodate new realities, we are in danger of losing an important constitutional check on the exercise of administrative power. But if contractors become state actors for all or most purposes, such an extension of the doctrine would further blur our ability to define government in a way that allows us to hold it politically accountable.

We rely upon our understanding of the state action doctrine in order to know when we may ask the courts to restrain government agencies.

If we do not have comprehensible rules defining those actions we may legally attribute to the state, the efficacy of constitutional litigation is undermined. If we are unable to convey to citizens the boundaries of government’s legal responsibilities, our ability to fashion appropriate political remedies will also be compromised.

III. Current State Action Doctrine

In a 1995 case, *Lebron v. National Railway Passenger Corporation*, [FN23] Justice Scalia began his state action analysis with an almost breathtaking understatement: “It is fair to say that our cases deciding when private action might be deemed that of the state have not been a model of consistency.” In fact, even the most diligent attempt to rationalize doctrine in the area is arguably doomed.

The Supreme Court first defined “State Action” in 1883, in the *Civil Rights Cases*. [FN24] Passage of the Fourteenth Amendment had prohibited states from denying, to persons otherwise entitled to them, the “privileges and immunities” of citizenship. The court was addressing the scope of that prohibition:

The Fourteenth Amendment expresses prohibitions (and consequently implies corresponding positive immunities), limiting state action only, including in such action, however, action by all state agencies, executive, legislative, and judicial, of whatever degree.

It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws. [FN25]

As the court recently restated the doctrine: “[E]mbedded within our Fourteenth Amendment



jurisprudence is a dichotomy between state action, which is subject to strict scrutiny under the amendment's Due Process Clause, and private conduct, against which the amendment affords no shield, no matter how unfair that conduct may be." [FN26]

The court has thus established a distinction between invasions of rights that are constitutionally forbidden ("public" invasions) and those that are not ("private" invasions), and that distinction rests upon the identity of the actor. The Bill of Rights was initially designed to limit the reach of the federal government; the Fourteenth Amendment later extended those limitations to bar similar action by the states. [FN27] Over the years, by the process known as "selective incorporation," most of the original eight amendments have been held to apply to state and local government units as well as to the federal government. [FN28] But the citizen's protection is against the public actor only. Discriminatory acts, denials of due process, or restrictions on speech by private parties are constitutional; indeed, they are entirely legal unless prohibited by virtue of legislation like the Civil Rights Act of 1964 [FN29] or the Americans with Disabilities Act. [FN30]

The distinction between public and private acts loses clarity in a number of contexts; indeed, it has been referred to as a "conceptual truth." [FN31] Thus, the court has been obliged to develop a jurisprudence allowing certain private acts to be attributed to government. [FN32] As Robert Gilmour and Laura Jensen have noted, "When the relationship between government and citizen becomes more complex than that between a mere commodity or service provider and its customers, more than marketplace efficiency is required to hold the government and its proxies and surrogates accountable for their exercise of authority on behalf of the state." [FN33]

Acknowledging the need for such rules and actually fashioning them have proved to be very different matters. As one commentator has wryly noted, the court's "sifting" and "weighing" in state action cases "differs from

Justice Stewart's famous 'I know it when I see it' standard for judging obscenity mainly in the comparative precision of the latter." [FN34] On one hand, the mere fact that a regulatory agency exercises oversight of a licensee and has thus implicitly approved the licensee conduct at issue has been held insufficient to attribute an action to the state. [FN35] On the other hand, where government intentionally funds an unconstitutional program conducted by private actors, the courts have generally found state action. [FN36]

In *Jackson v. Metropolitan Edison Co.*, [FN37] Justice Rehnquist summarized what has been called the "nexus theory" of state action jurisprudence. [FN38]

While the principle that private action is immune from the restrictions of the Fourteenth Amendment is well established and easily stated, the question whether particular conduct is "private" on the one hand, or "state action" on the other, frequently admits of no easy answer... [The] inquiry must be whether there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the state itself. [FN39]

The nature and degree of interrelationship sufficient to establish such a nexus remains uncertain. As commentators have noted, there are three general theories pursuant to which the courts have found a sufficient nexus to support a finding of state action: the public function test; the government "entanglement" theory; and cases where there has been specific authorization or encouragement of the challenged activity. [FN40] The public function test was established in *Marsh v. Alabama*. [FN41] *Marsh* involved the distribution of religious literature on the streets of a so-called "company town," where all property, including the streets, was privately owned. In language that arguably foreshadows the instant inquiry, the court found state action in "permitting a corporation to govern a community of citizens so as to



restrict their fundamental liberties.” [FN42] However, Marsh has been so strictly limited as to suggest a very narrow scope indeed for the public function test.

In *Flagg Bros. v. Brooks*, the court considered whether action taken by a New York warehouseman, explicitly permitted by the New York version of the Uniform Commercial Credit Code, was attributable to the state by virtue of that statutory authorization. [FN43] Plaintiffs, not unreasonably, had argued that when a state legislature passes a law expressly authorizing a private party to take an action previously reserved to the state, that authorization should be held to be state action. [FN44] The “primary contention was that New York had delegated to Flagg Brothers a power traditionally exclusively reserved to the state.” [FN45] Writing for the court, Justice Rehnquist began his analysis by stating that, “[w]hile many functions have been traditionally performed by governments, very few have been ‘exclusively reserved to the state.’” ‘ The “mere acquiescence” with a private action by government was insufficient to make that action attributable to the state, and the state action doctrine would therefore not apply to “a number of state and municipal functions,” among them education, fire and police protection, and tax collection. [FN46] Rehnquist did add a disclaimer of sorts, noting that “we express no view as to the extent, if any, to which a city or state might be free to delegate to private parties the performance of such functions and thereby avoid the strictures of the Fourteenth Amendment.” [FN47] That question has gained urgency with the proliferation of contracting; it remains essentially unanswered.

In language that is prescient for purposes of this inquiry, the dissent in *Flagg* protested that “the distinctions between ‘permission’ and ‘compulsion’ on the one hand, and ‘exclusive’ and ‘nonexclusive’ on the other, cannot be determinative factors in state-action analysis. There is no great chasm between ‘permission’ and ‘compulsion’ requiring particular state action to fall within one or the other definitional camp.” [FN48] And in a footnote, the dissent worried

that under the majority’s theory, “the state can shield its legislation affecting property interests from due process scrutiny by delegating authority to private partners.” [FN49]

The court has found state action when cooperation between the public and private sectors is so close as to render them substantially inseparable. This is inevitably a fact-sensitive inquiry, and relatively minor factual distinctions have produced very different results. In *Burton v. Wilmington Parking Authority*, [FN50] for example, the court noted the public aspects of a restaurant charged with racial discrimination, primarily attributable to the fact that it was a lessee in a publicly owned building. [FN51] However, the ruling made it clear that not every lease of public property would be considered a sufficient entanglement to justify a finding of state action. [FN52] Licensing and regulation have sometimes been held sufficient, but only when these activities are deemed “intensive.” [FN53] The mere approval of a liquor license has been held insufficient [FN54] as has regulation of and payment for nursing home care [FN55] and the grant by government of a monopoly to represent the United States in the Olympics. [FN56]

The 1983 case of *Blum v. Yaretsky* [FN57] is an excellent example of the inadequacies of current state action doctrine. The case involved an alleged due process violation arising out of involuntary discharges and transfers of Medicaid patients in a nursing home. [FN58] Rehnquist, writing for the court, declined to find state action. [FN59] He articulated the standard to be met in the following language: “A state normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the state.” [FN60] Acknowledging that over 90 percent (and perhaps as many as 99 percent) of the patients in the facility were being paid for by the government, and that the nursing home was subject to pervasive governmental regulation, the Rehnquist majority nevertheless held “that



programs undertaken by the state result in substantial funding of the activities of a private entity is no more persuasive than the fact of regulation of such an entity in demonstrating that the state is responsible for decisions made by the entity in the course of its business.”[FN61]

In an acerbic dissent joined by Marshall, Justice Brennan underscored the facile nature of this analysis. Noting that a determination whether state action is present will depend upon “a realistic and delicate appraisal of the state’s involvement in the total context of the action taken,” [FN62] Brennan wrote:

The court’s analysis in this case [proceeds] upon a premise that is factually unfounded. . . [A] doctor who prescribes drugs for a patient on the basis of his independent medical judgment is not rendered a state actor merely because the State may reimburse the patient in different amounts depending upon which drug is prescribed. But the level of care decisions in this case, even when characterized as the ‘independent’ decision of the nursing home, have far less to do with the exercise of independent professional judgment than they do with the State’s desire to save money. . . . On the contrary, the two levels of long-term institutionalized care enshrined in the Medicaid scheme are legislative constructs, designed to serve governmental cost-containment policies.

In my view, an accurate and realistic appraisal of the procedures actually employed in the State of New York leaves no doubt that not only has the State established the treatment levels and utilization review in order to further its own fiscal goals, but that the State [has] set forth precisely the standards upon which the level-of-care decisions are to be made, and has delegated administration of the program to the nursing home operators, rather than assume the burden of administering the program itself. [FN63] (emphasis in original)

Brennan and Marshall dissented again in *Rendell-Baker v. Kohn*, [FN64] a case involving the education by a private institution of “problem children” referred to the school by state officials. [FN65] Nearly all of the school’s funding came from the state, the facility was heavily supervised and regulated, and almost all its students were assigned to it by the state. [FN66] Nevertheless, the court declined to find state action, holding that “the school’s fiscal relationship with the state is not different from that of many contractors performing services for the government.” [FN67] Critics of current state action jurisprudence would agree—and would note that so crabbed a view of the doctrine produces equally inequitable results in the context of disputes arising out of those “other” relationships.

The inequities are not necessarily confined to the client population. As privately operated prisons have become more common, cases involving the operation of those facilities have begun to work their way through the judicial system. [FN68] One of the more noteworthy of those cases was *Richardson v. McKnight*. [FN69] In *Richardson*, a prisoner brought action for a federal constitutional tort against guards at the Tennessee South Central Correctional Center. [FN70] The court declined to find that the guards were entitled to qualified immunity, despite the fact that such immunity would clearly have been available to them had they been employed directly by the state. [FN71] The *Richardson* majority reasoned that immunity of state guards was an incident of the employment relationship rather than a functional outcome, and noted that “correctional functions have never been exclusively public.” [FN72]

While the court’s decision in *Richardson* was limited to the immunity issue, and did not explicitly address the question of state action, lower courts have not hesitated to find state action in private prison and institutional detention cases, [FN73] often noting that the power to deprive an individual of liberty is a quintessentially governmental power. [FN74] This line of reasoning is persuasive, but it is difficult to



reconcile with cases like *Wade v. Byles*, [FN75] where a private company providing security to a public housing project was held not to be a public actor [FN76] despite the fact that the guards had authority to carry guns, arrest people, and use deadly force. [FN77]

Complicating state action jurisprudence even further is the tendency of reviewing courts to apply different standards of analysis depending upon the nature of the constitutional right involved, without articulating the basis for those differences. Commentators have noted that, in cases that involve racial discrimination or implicating First Amendment religious liberties, the court has been much more willing to find, or assume, state action. [FN78]

A recent controversy in Kentucky illustrates this double standard in the public/private distinction, and highlights some of the issues that are likely to become more urgent as states implement Charitable Choice legislation. The Kentucky Baptist home for Children serves 3,000 orphaned, dependent, abused and neglected children on an annual budget of \$15.6 million. [FN79] Approximately \$12 million of that amount comes from the state of Kentucky, which is also responsible for placing with the home the vast majority of the children served. [FN80] The home is the largest state-contracted provider of such services in the state. [FN81]

The home's mission statement includes the following language: "We are a Christian ministry that, through God's direction and leadership, reaches out to children and families with Christ's love and compassion. We are committed to presenting a clear message of Christian values." [FN82] A female social worker with the home was terminated in October 1998. [FN83] The letter of termination explicitly stated that the termination was because her "admitted homosexual lifestyle is contrary to Kentucky Baptist Homes for Children's core values." [FN84] There was no dispute about the reason for the termination, no suggestion that the employee was unqualified or had failed to perform adequately. Indeed, the home had actively recruited her from her prior position. [FN85] The day she was terminated, the fol-

lowing memorandum was circulated to the entire staff, announcing a new board employment policy. That policy read, in pertinent part,

Homosexuality is a lifestyle that would prohibit employment with Kentucky Baptist Homes for Children. The Board does not encourage or intend for staff to seek out people within the organization who may live an alternate lifestyle; we will, however, act according to Board policy if a situation is brought to our attention. [FN86]

As a private religious organization, the home has a free exercise right to insist that its employees adhere to its "core values." If it were a government-run institution, however, the termination just as clearly would run afoul of the Fourteenth Amendment. The legal question raised by the facts of this case has been framed as "whether the Establishment Clause permits state funding to a faith-based institution for the provision of care and counseling to at-risk youth, when the institution adopts a Christian-based, anti-gay employment policy." [FN87] It is significant that the legal issue has been framed in terms of the Establishment Clause for purposes of seeking redress, because existing case law suggests that a court would not find state action for purpose of most other constitutional deprivations. [FN88] First Amendment precedents, however, make it likely that Kentucky's support of the Children's Home violates the Establishment Clause. [FN89] This raises a paradox: How do we understand the application of the Establishment Clause in the absence of state action? [FN90] What will be the implications of this case, as it plays out in the courts, for the contract relationships specifically sanctioned by the Charitable Choice provisions?

The lack of clarity and consistency in the application of state action doctrine, and judicial reluctance to find state action where ordinary people would see it, is one reason for current disquiet over Charitable Choice and other programs to contract out social services to faith-based organizations. Members of minority reli-



gious faiths, in particular, are sensitive to the dangers of turning vulnerable client populations over to well-meaning ministries arguably unconstrained by the Fourteenth Amendment. [FN91] Those concerns are not limited to client proselytizing. Will states discriminate against “nontraditional” faith organizations in the award of contracts? Will contract monitoring amount to “entanglement” for Establishment Clause purposes? [FN92] What about employment discrimination—will the legislative provision allowing faith-based organizations to discriminate in hiring withstand constitutional muster? [FN93] If so, what are the implications? What if a faith-based provider is accused of discriminating among beneficiaries on the basis of race or gender or sexual orientation?

Ironically, in litigation involving Charitable Choice, the First Amendment may provide a remedy unavailable in other privatization contexts. In a sense, the Establishment Clause allows the courts to evade the state action issue, by recasting the issues in terms of government support of religion. But logically, finding a violation of the Establishment Clause also requires the presence of state action, whether that requirement is articulated or not. *Hartmann v. Stone*, a recent Sixth Circuit case, is illustrative of the point. [FN94] *Hartman* involved a free exercise challenge to a U.S. Army regulation prohibiting authorized child-care providers on military bases from engaging in any type of religious activity in the home while providing child-care. [FN95] The Army conceded that the prohibition burdened the free exercise rights of those using the child-care services, because only “authorized” child-care providers could operate on the base. [FN96] The Army justified its regulation on the grounds that the providers were acting as a proxy for government, and therefore religious activity was inappropriate under the Establishment Clause. [FN97] The Sixth Circuit rejected the Army’s argument, not because of any disagreement with the theoretical construct, but because it found that the providers were not, in fact, proxies for the government. [FN98] It is difficult to argue that such analyses are somehow distinct and distin-

guishable from the state action cases; indeed, asking whether a private party is a “proxy” for government is asking whether the state has acted through that party. It does not further clarity or consistency to approach state involvement for purposes of Establishment Clause or Equal Protection jurisprudence as if it were conceptually divorced from conventional state action analysis.

If certain liberties protected by the Establishment Clause and the Equal Protection doctrine are to be accorded a greater importance than, say, due process guarantees, the courts should say so explicitly, and should just as explicitly justify the distinction.

IV. A Better Approach

How should the concept of state action be understood? What would a coherent jurisprudence look like? The Warren Court seemed to be groping toward a holistic approach that was promising, [FN99] however, the Berger and Rehnquist courts have retreated from that analytical approach, restricted the scope of the doctrine and arguably further confused the issues. [FN100]

Any workable state action doctrine will require flexible application, especially during a period in which we are “reinventing” government. Flexibility need not trump consistency and predictability, however. Certain characteristics of the relationship between government and private entities will always be relevant to the inquiry whether an action can be fairly attributed to the state. Among the dispositive elements will be the existence, nature and extent of government funding; the nature and extent of government control of the activity in question; the extent to which government has authorized a contractor to exercise government powers; and a functional (holistic) analysis. All of these inquiries, I submit, should be approached through the lens of conventional agency law analysis.

When the state authorizes a private entity to act on its behalf, it creates an agency relationship. When the agent is authorized to exer-



cise powers that are essentially, even if not exclusively, governmental, we are justified in finding that government has acted through that agent. [FN101] Well-settled principles of agency and partnership could be particularly helpful and relevant to this analysis, and it is curious that those principles have not been applied, even by analogy.

Agency principles would suggest that when government cloaks a contractor with real or apparent authority to act on its behalf, the ensuing actions should be deemed governmental. [FN102] Section Seven of the Restatement (Second) of Agency defines authority as “the power of the agent to affect the legal relations of the principal by acts done in accordance with the principal’s manifestations of consent to him.” [FN103] Section Twenty-Six provides that “authority to do an act can be created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal’s account.” [FN104] Section Twenty-Seven defines “apparent authority” as “conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.” [FN105] While a determination that an agency relationship exists remains heavily fact-sensitive, these are far more reasonable standards than the requirement of “coercive power” or “significant encouragement” demanded by Rehnquist in Blum. [FN106] The issue should be control, not coercion. [FN107]

In an agency relationship, the agent has a duty to follow the principal’s direction even when the principal has previously agreed not to intervene in the agent’s exercise of discretion. Significant legal consequences follow from the conclusion that a particular relationship is one of agency. An agent has power to commit the principal to transactions within the scope of the actual or apparent authority created by the agency relationship, and the principal is vicariously liable for instances of misconduct committed by the agent when acting within the scope

of the relationship. [FN108]

The law of agency is concerned precisely with the question on which a finding of state action will turn; that is, when is it fair to hold one person or entity responsible for the actions of another?

How would such an inquiry proceed in the privatization context? Where government money passes to a presumptively private entity, a threshold inquiry should be whether the transaction is a purchase of goods or services, which should not constitute state action, or the funding of authorized activities, which may. Purchase involves a product or service that is generally available and relatively standardized, where production of the good or performance of the service is substantially, if not entirely, controlled by the vendor. When the state goes into the market looking for computer support or engineering services, for accountants to perform an audit, for asphalt to use in paving projects, or similar widely traded goods and services, it is relatively clear that government is simply making a purchase. Even where the transaction is apparently a purchase of services, however, a significant long-term relationship between a contractor and the government, where the government’s business constitutes a majority of the contractor’s income, should be held to raise a rebuttable presumption of agency, or state action. When a single customer accounts for most of a contractor’s income, that customer clearly has the power to control behavior. The existence of that leverage justifies raising the presumption, which can be rebutted by evidence that no active participation by government in fact occurred.

Where government controls the manner in which work is done, there should be a finding of state action, without requiring a finding of explicit authorization of the disputed act. [FN109] This rule is consistent with the court’s current articulation of the law, if not its practice. Mere regulation should continue to be insufficient, but something less than direct coercion should implicate the state. Where a regulatory scheme substantially limits the options available to the private entity, or pre-



scribes goals and delimits acceptable methods for achieving them, the state should bear responsibility for the results. In addition to money or payment, indicators relevant to the issue of control include ownership, relationship, degree of regulatory supervision and authority, and the actual course of dealing between the parties. Courts might helpfully analogize with existing tests to determine whether a worker is an employee or an independent contractor. While independent contractors can also be agents, certain of those questions can provide a useful analytical threshold. [FN110]

Each of these approaches attempts to answer the question whether the private entity is acting as a proxy for government under the facts of the case. If the contractual relationship has replaced government employees who were previously providing the service, common sense suggests the contractor is a government proxy. Where government is responsible for delivery of the service, there should be at least a rebuttable presumption of state action. The “exclusive function” test is not good public policy, because the issue is not whether the activity is one that only government does or has ever done, or should do. The issue is whether it is government that is actually “doing” the activity in question. [FN111] Where government undertakes an activity, funds it, authorizes a contractor to act on its behalf, and effectively dictates the manner in which it is done, that activity should fairly be attributed to government.

Courts have been reluctant to burden governmental units—and ultimately taxpayers—with liability for the actions of private contractors, but the concern is arguably misplaced. Government can protect tax dollars by contracting for hold harmless or other indemnification provisions. Liability is a recognized cost of doing business, and the allocation of costs is a proper subject for contractual negotiation. Indeed, a refusal to allow government to evade its constitutional responsibilities through contracting will force an explicit recognition and accommodation of potential liability costs. Such a result would benefit everyone: private contractors, government units, and most of all, citizens

who have a right to demand fiscal, political and legal accountability from those they elect to office.

When the government acts, it should be accountable. The instrument government chooses should not alter that result. Whether government delivers drug counseling, job placement, or any other service through a state agency or a faith-based organization, the program is state action. Courts should recognize that reality and require adherence to constitutional standards.

V. Conclusion

Sometimes the most obvious rules produce the most tortured applications. It is a truism of every high school and college government class that the Bill of Rights applies only to the government, that there must be state action in order to find a constitutional infringement. But by reinventing government, we have created mutants and hybrids, neither public nor private, but some admixture of the two. The courts have encountered those mutations much as the blind men encountered the elephant: one finding a snake, one a wall, one a tree trunk. Unless the courts can come to grips with the whole animal, protean and evolving as it is, and fashion a coherent jurisprudence that will safeguard the distinction between public and private and thus protect constitutional liberties without engulfing truly private enterprises, we will find ourselves dealing with nineteenth century animals in a twenty-first century legal zoo.

Footnotes

[FN1]. Sheila Kennedy teaches Law and Public Policy at the School of Public and Environmental Affairs at Indiana University—Purdue University at Indianapolis.

[FN2]. *Pub. L. No. 104-193*, 110 Stat 2105. Charitable Choice also raises First Amendment issues not immediately relevant to this discussion.

[FN3]. See, e.g., Martha Minow, *Choice or Commonality: Welfare and Schooling after the End of Welfare as We Knew It*, 49 *Duke L.J.* 493 (1999).

[FN4]. See Susanna Dokupil, *A Sunny Dome with Caves on Ice: The Illusion of Charitable Choice*, 5 *Tex. Rev. L. & Pol.* 149, 154 (2000); Minow, *supra* note 2, at 529. See generally Rick Santorum, *A Compassionate Conservative Agenda: Addressing Poverty for the Next Millennium*, 26 *J. Les.* 93 (2000).

[FN5]. This trend is not restricted, of course, to the United



States. Developing nations, in particular, have increasingly turned to Non-Governmental Organizations (NGOs) for the provision of public goods. See Timothy Besley et al., *Public-Private Partnerships for the Provision of Public Goods: Theory and an Application to NGOs* (1999), and sources cited therein. See also Pierre Guislain, *The Privatization Challenge: A Strategic, Legal and Institutional Analysis of International Experience* (1997).

[FN5]. Technically, “privatization” refers to transactions that return such operations to the private marketplace, where they pay taxes and compete with other private operations. However, for purposes of this paper, the term is used interchangeably with “contracting” and “contracting out.”

[FN6]. See generally Guislain, *supra* note 4.

[FN7]. For an excellent discussion of issues inherent in government contracting, see Donald F. Kettl, *Sharing Power* (1993). See, e.g., Besley, *supra* note 4 (making the point—often overlooked—that much activity in the private sector is value driven, rather than profit seeking, and that this reality distinguishes social service contracting from procurement contracts.).

[FN8]. See, e.g., Robert S. Gilmour & Laura S. Jensen, *Reinventing Government Accountability: Public Functions, Privatization, and the Meaning of State Action* (1998).

[FN9]. Ronald J. Krotoszynski, Jr., *Back to the Briarpatch: An Argument in Favor of Constitutional Meta-Analysis in State Action Determinations*, 94 *Mich. L. Rev.* 302, 305 (1995).

[FN10]. D.D. Raphael, *Problems of Political Philosophy* (2d ed. 1990).

[FN11]. See generally Robert L. Rabin, *Federal Regulation in Historical Perspective*, 38 *Stan. L. Rev.* 1189 (1986).

[FN12]. See Richard A. Posner, *The Future of the Law and Economics Movement in Europe*, 17 *Int'l Rev. L. & Econ.* 3, 10 (1997); Richard H. Fallon, *Individual Rights and the Powers of Government*, 27 *Ga. L. Rev.* 343, 377–78 (1993).

[FN13]. See *Bd. of County Comm'rs, Wabaunsee County v. Umbehr*, 518 U.S. 668 (1996).

[FN14]. See Stephen Rathgeb Smith, *Address at the Annual Meeting of the American Political Science Association*, Washington, D.C. (Sept. 2, 2000). See generally Kettl, *supra* note 7.

[FN15]. This is as much or more a concern of the nonprofit sector as it is for government. As Smith & Lipsky have noted, “When public funds play so vital a role in private agency budgets, it is disingenuous to think that the nonprofit sector would not be in danger of losing its separate identity.” Steven Rathgeb Smith & Michael Lipsky, *Nonprofits for Hire* 12 (1993).

[FN16]. See generally Gilmour & Jensen, *supra* note 8.

[FN17]. Smith & Lipsky, *supra* note 15, at 11.

[FN18]. *Id.* at 116.

[FN19]. *Id.* See *infra* agency discussion.

[FN20]. Smith & Lipsky, *supra* note 15, at 118.

[FN21]. There is a significant literature dealing with political accountability issues, which, while not relevant to the issue of state action, suggest additional areas of concern.

As has been noted, “One of the most common disparities between democratic constitutionalism and administrative efficiency centers on accountability. Accountability requires red tape—vouchers, forms, approvals and oversight by inspectors general, legislatures, courts and others—which clearly militates against administrative efficiency.” David H. Rosenbloom, James D. Carroll & Jonathan D. Carroll, *Constitutional Competence for Public Managers* 1209 (2000).

[FN22]. Despite persistent attacks on the concept of separation of church and state by the religious right, most citizens have long since internalized that concept, and see government and religious organizations as distinctly separate spheres. The average welfare client is arguably unlikely to recognize services received through a religious organization or church as being provided by the government.

[FN23]. 513 U.S. 374 (1995).

[FN24]. 109 U.S. 3 (1883).

[FN25]. *Id.* at 7.

[FN26]. *Nat'l Collegiate Athletic Assoc. v. Tarkanian*, 488 U.S. 179, 191 (1988).

[FN27]. The Fourteenth Amendment provides, in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

[FN28]. See, e.g., *Twining v. New Jersey*, 211 U.S. 78 (1908); *Palko v. Connecticut*, 302 U.S. 319 (1937); *Adamson v. California*, 322 U.S. 46 (1947). See also R. Berger, *Government by Judiciary* (1977), and J. Ely, *Democracy and Distrust* (1980).

[FN29]. 42 U.S.C. § 1983 (1994).

[FN30]. 42 U.S.C. § 12131 *et seq.* (1990).

[FN31]. Geoffrey R. Stone et al., *The Constitution and the Problem of Private Power*, *Constitutional Law* 1086 (1986).

[FN32]. For a good overview of the doctrine of state action, see Laurence H. Tribe, *Refocusing the ‘State Action’ Inquiry: Separating state Acts from state Actors in Constitutional Choices* (1985).

[FN33]. See generally Besley & Guislain, *supra* note 4; and Kettl, *supra* note 7.

[FN34]. Paul Brest, *State Action and Liberal Theory: A Casenote on Flagg Bros. v. Brooks*, 130 *U. Pa. L. Rev.* 1296, 1296–330 (1982) (quoted in Gilmour & Jensen, *supra* note 8).

[FN35]. See *Jackson v. Metro. Edison Co.*, 419 U.S. 345 (1974). But see *Pub. Utils. Comm'n v. Pollack*, 343 U.S. 451 (1952), where the Court held that explicit regulatory approval of an action would support a finding of state action. See also Daphne Barak-Erez, *A State Action Doctrine for an Age of Privatization*, 45 *Syracuse L. Rev.* 1169 (1995).

[FN36]. See *Norwood v. Harrison*, 413 U.S. 455 (1973).



- [FN37]. 419 U.S. 345 (1974).
- [FN38]. *Id.* at 349–50.
- [FN39]. *Id.*
- [FN40]. See Rosenbloom, Carroll & Carroll, *supra* note 21, Ch. 3.
- [FN41]. 326 U.S. 501 (1946).
- [FN42]. *Id.* at 509.
- [FN43]. 436 U.S. 149 (1978).
- [FN44]. See *id.* at 153.
- [FN45]. *Id.* at 157.
- [FN46]. *Id.* at 163.
- [FN47]. *Id.* at 163–64.
- [FN48]. *Id.* at 170 (Stevens, J., White, J., Marshall, J., dissenting). In 1982, the court would hold otherwise on very similar facts, by a slim 5 to 4 margin, distinguishing Flagg in terms that virtually defy analysis. See *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982).
- [FN49]. *Flagg Bros.*, 436 U.S. at 170.
- [FN50]. 365 U.S. 715 (1961).
- [FN51]. *Id.* at 724–26.
- [FN52]. *Id.* at 725 (“Because readily applicable formulae may not be fashioned, the conclusions drawn from the facts and circumstances of this record are by no means declared as universal truths on the basis of which every state leasing agreement is to be tested.”).
- [FN53]. Barak-Erez, *supra* note 35, at 1179.
- [FN54]. *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 175 (1972).
- [FN55]. *Blum v. Yaretsky*, 457 U.S. 991, 1005–06 (1983).
- [FN56]. *San Francisco Arts & Athletics, Inc. v. United States Olympic Comm.*, 483 U.S. 522, 543–44 (1987).
- [FN57]. 457 U.S. 991.
- [FN58]. *Id.* at 993.
- [FN59]. *Id.* at 1012.
- [FN60]. *Id.* at 1004.
- [FN61]. *Id.* at 1011.
- [FN62]. *Id.* at 1013 (Brennan, J., Marshall, J., dissenting).
- [FN63]. *Id.* at 1014–26.
- [FN64]. 457 U.S. 830 (1982).
- [FN65]. *Id.* at 831–32.
- [FN66]. *Id.* at 831–33.
- [FN67]. *Id.* at 843.
- [FN68]. For discussion of this and other cases involving privatization of corrections, see Ira P. Robbins, *Legal Dimensions of Private Incarceration*, 38 *Am. U. L. Rev.* 531 (1989); Ira P. Robbins, *Privatization of Prisons: an Analysis of the State Action Requirement of the Fourteenth Amendment and 42 USC Section 1983*, 20 *Conn. L. Rev.* 835 (1988), and Richard Trant, *Richardson v. McKnight: Are Private Prisons Engaged in State Action for Purposes of 42 U.S.C. § 1983?*, 25 *New Eng. J. on Crim. & Civ. Confinement* 577 (1999).
- [FN69]. 521 U.S. 399 (1997).
- [FN70]. *Id.* at 401
- [FN71]. *Id.* at 405.
- [FN72]. *Id.*
- [FN73]. See, e.g., *Blumel v. Mylander*, 919 *F. Supp.* 423 (M.D. Fla. 1996). See also Trant, *supra* note 68, at 596–603 (discussing cases that show lower courts have not hesitated to find state action in private prison and institutional detention cases).
- [FN74]. *Plain v. Flicker*, 645 *F. Supp.* 898, 906 (D.N.J. 1986) (discussing cases that support the proposition that the deprivation of liberty that requires due process protection).
- [FN75]. 83 *F.3d* 902 (7th Cir. 1996).
- [FN76]. *Id.* at 907.
- [FN77]. *Id.* at 906.
- [FN78]. Cf. David M. O’Brien, *Civil Rights and Civil Liberties* 1264 (2d ed. 1991) (“With those exceptions already noted, though, the Court has refused to extend the state action doctrine primarily in cases not involving claims of racial discrimination.”). For a case exemplifying this principle see *Shelley v. Kramer*, 334 U.S. 1 (1948). *Shelley* was very controversial when it was handed down, because it could be read to mean that any court involvement in a private dispute would satisfy the state action requirement. Some commentators suggest that a narrower reading is more consistent with the facts and that the court action found sufficient in *Shelley* reflected “the state’s policy of selectively enforcing restrictive covenants ... a decision to facilitate some kinds of private behavior but not others.” See O’Brien, *supra* note 78, at 317. In fact, *Shelley* provides evidence of the existence of very different levels of scrutiny in state action inquiries, with First Amendment religion clause violations and racial discrimination cases requiring far less in the way of government activity to support a finding of constitutional violation. “In the two decades following *Shelley*, the Court never denied relief [in a racial discrimination case] on the grounds that no state action was present.” *Id.* at 12, 58.
- [FN79]. Background: Kentucky Baptist Homes For Children, at <http://www.aclu.org/issues/gay/pederiabackground.html>
- [FN80]. *Id.*
- [FN81]. *Id.*
- [FN82]. *Id.*
- [FN83]. Groups File Groundbreaking Lawsuit Against Kentucky and State-Funded Religious Group That Fired Lesbian Employee, at <http://www.aclu.org/news/2000/n041700a.html>
- [FN84]. *Id.*
- [FN85]. *Id.*
- [FN86]. *Id.*
- [FN87]. *Id.*
- [FN88]. Cases of racial discrimination are an exception to the assertion that a court will not find state action in cases involving other than violations of the “Establishment



Clause.” For an example of a case where the court found state action in a racial discrimination case see *Plain v. Flicker*, 645 F. Supp. 898 (D.N.J. 1986).

[FN89]. See Lawrence Tribe, American Constitutional Law 816–17 (1978); *Everson v. Bd. of Educ. of Ewing Township*, 330 U.S. 1 (1947) (holding that the First Amendment did prohibit New Jersey from spending tax-raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it paid the fares of pupils attending public and other schools). See also *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971) (identifying a three-pronged test to determine whether a statute violates the Establishment Clause of the First Amendment).

[FN90]. It will be interesting to see how this double standard plays out in Charitable Choice litigation.

[FN91]. The Anti-Defamation League called Charitable Choice “unconstitutional, bad public policy, and fundamentally bad for religion.” The Case Against ‘Charitable Choice’: Why Government Funding for Faith-Based Social Services Endangers Religious Freedom, at <http://www.adl.org/charitable-choice/Charitable-Choice-a.htm>. Americans United for Separation of Church and State said that it “amounts to federally-funded employment discrimination.” Talking Points on Charitable Choice, at <http://www.au.org/ashcroft.htm>.

[FN92]. Excessive entanglement between government and religion is one of the three prongs of the test set out in *Lemon v. Kurtzman*, 403 U.S. at 612–13.

[FN93]. The Charitable Choice provisions allow FBOs to hire in accordance with their religious beliefs. Some will hire only from their own faith, others will restrict the role of women, refuse to hire gays, etc. Martha Minow has predicted that the purported exemption from the Establishment Clause will be struck down. See Minow, *supra* note 2, at 532–42.

[FN94]. 68 F.3d 973 (6th Cir. 1995).

[FN95]. *Id.* at 975.

[FN96]. *Id.*

[FN97]. *Id.* at 980 (striking down the Army’s attempt “to draw the Providers as close to the fold as possible” because the evidence revealed that “the relationship is solely one of regulator and regulatee”).

[FN98]. *Id.* (“As such it is insufficient to create an unconstitutional entanglement with religion.”).

[FN99]. This approach was not dissimilar to the “meta-analysis” advocated by Krotoszynski, *supra* note 9, at 304.

[FN100]. In his discussion of racial discrimination and the State Action doctrine, O’Brien states, “Whereas the Warren Court looked at the totality of interrelationships between government and private activities, the Burger and Rehnquist Courts tend to scrutinize and then dismiss various arguments for extending the doctrine of state action.” O’Brien, *supra* note 78, at 1263–64.

[FN101]. See generally Smith & Lipsky, *supra* note 15.

[FN102]. Widely used jury instructions define an “agent” as “a person who at a given time is authorized to act for in place of another person,” and specifies that it is not necessary that the conduct of the agent be expressly authorized by the principal for such conduct to be “within the scope” of

the agent’s authority. If the conduct is “incidental to, customarily connected with, or reasonably necessary for” the performance of an authorized act, it is within the scope of authority and, if wrongful, can give rise to liability.

[FN103]. *Restatement (Second) of Agency* § 7 (1958).

[FN104]. *Id.* § 26.

[FN105]. *Id.* § 27.

[FN106]. *Blum*, 457 U.S. at 1004.

[FN107]. Deborah A. DeMott, *The Mechanisms of Control*, 13 *Conn. J. Int’l L.* 233 (1999) (footnotes omitted).

[FN108]. *Id.* at 233.

[FN109]. This requirement of a “smoking gun,” or express government approval evades the central inquiry, because an express approval is an act by a government official and actionable on that basis. Rather, the query in these cases concerns when is it fair to attribute private acts to the government.

[FN110]. Independent contractors differ from agents in that: (a) they are engaged in a distinct occupation or business; (b) the work is skilled and/or typically done by specialists without supervision; (c) the contractor supplies the tools and place of work; (d) the contractor renders services within a relatively abbreviated time period; (e) payment is per job, or per item, and not for time spent; (f) the work is part of the separate, regular business of the contractor; and (g) the intent of the parties.

[FN111]. Robert Gilmour and Laura Jensen framed the issue as follows:

“Privatization in the United States is thus more likely to represent a change in form rather than function, i.e., the substitution of a ‘private’ contractor or other nongovernmental designee to act as a proxy for government officials and employees in performing public tasks under the aegis of governmental authority and paid for from the public purse.”

Gilmour & Jensen, *supra* note 8, at 247.





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Government Shekels without Government Shackles?

The Administrative Challenges of Charitable Choice

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As President Bush plans to expand “Charitable Choice,” civil libertarians worry that the legislation is part of a new assault on separation of church and state. Religious Right activists demand assurances that funds will not flow to groups like the Nation of Islam or Scientologists. African American pastors in urban areas—arguably the main targets of the initiative—are concerned that “government shekels” will be accompanied by “government shackles,” that the costs and regulatory burdens accompanying collaborations with government will divert resources from client services and mute their prophetic voice.

Caught in the middle are public managers, who must make the legislation work in the face of significant administrative challenges. Those challenges occur in three areas: contracting procedures, contract administration, and evaluation. In each of these categories, political realities and constitutional constraints will significantly complicate the manager’s job.

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act, reforming welfare “as we know it.”¹ Among the provisions of that bill was a “Charitable Choice” requirement that states contract with faith-based social service providers on the same basis that they contract with other nonprofits. The bill specified that “pervasively sectarian” organizations were not to be discriminated against; that such providers should be allowed to maintain hiring policies based on their religious dictates; and that they could not be required to divest the premises where services were delivered of religious iconography.

Although governmental partnerships with religious organizations and their affiliates have

been a feature of the social service landscape for decades, Charitable Choice has been attacked from the Left and the Right alike. Civil libertarians object to provisions that, for the first time, would allow employment discrimination with public funds, and they worry that the legislation is part of a new assault on the separation of church and state. Religious Right activists demand assurances that funds will not flow to disfavored groups such as the Nation of Islam or the Scientologists. African American pastors in urban areas—arguably, the main targets of the initiative—are concerned that “government shekels” will be accompanied by “government shackles,” that the costs and regulatory burdens involved in collaborations with government will divert resources from client serv-



ices and will mute their prophetic voice.

Caught in the middle are public managers, who must make the legislation work in the face of significant administrative challenges. Those challenges can be grouped into three major areas: outreach and contracting procedures, contract administration, and evaluation. In each of these categories, political realities and constitutional constraints significantly complicate the manager's job.

Background

Federal and state government units have provided services through nonprofit and religious organizations since the inception of government social welfare programs, although the media's characterization of Charitable Choice and President Bush's faith-based initiative as "new" or even "revolutionary" has tended to obscure that history (U.S. Senate 2001). In a 1969 study of findings from a 1965 survey of 406 sectarian agencies in 21 states, Bernard J. Coughlin reported that 70 percent were involved in some type of purchase-of-service contract with the government. A 1982 study by F. Ellen Netting, which focused on government funding of Protestant social service agencies in one Midwestern city, found that some agencies received 60 percent to 80 percent of their support from the government, and approximately half of their combined budgets were government financed. In 1994, government funding accounted for 65 percent of the nearly \$2 billion annual budget of Catholic Charities USA, and 75 percent of the revenues of the Jewish Board of Family and Children's Services (Monsma 1996; Brown and McKeown 1997; Minow 1999). As the American Jewish Committee noted in a 1990 Report of its Task Force on Sectarian Social Services and Public Funding, "[T]here has been a long-standing history of governmental aid to certain sectarian social programs, demonstrating that, in the non-educational context, there may be substantial involvement between the state and sectarian institutions. The government has provided aid to sectarian homes for the elderly, foster child care homes,

and hospitals.... The legitimacy of such aid, as a matter of broad public principle, was confirmed in the Supreme Court case *Bowen v. Kendrick* (1988). In so ruling the Court relied upon a nearly century-old decision in which it had upheld unanimously the provision of public funds to a sectarian-affiliated hospital, *Bradford v. Roberts* (1899)—the only other time the Court had directly addressed the issue."

Confounding both historical and constitutional analyses of Charitable Choice and President Bush's subsequent faith-based initiative is the fact that our public debate, and much of the existing First Amendment case law, assumes that "religious," "sectarian," and "faith-based" are interchangeable as descriptive terms. The rhetoric used by congressional supporters of Charitable Choice, on the other hand, suggests a more specialized meaning; however, neither the legislation nor the White House Office of Faith-Based and Community Initiatives has defined what "faith-based" means for purposes of Charitable Choice. Many religious providers with histories of social welfare provision are faith-based in the most literal sense; that is, the provision of essentially secular social services is motivated by their religious beliefs. Feeding and clothing the poor, tending to the sick, and housing the aged are approached as religious duties, rather than as opportunities for proselytizing or transforming the individuals served. However, this is by no means universally true of religious organizations that have historically received government funding, especially old age and child care facilities (AJC 1990). The Salvation Army has long received substantial funding, despite being "pervasively sectarian" by almost any definition of that term (Winston 2001). Individual congregations are "faith-based" by definition, yet studies show that 20 percent of congregations providing social services collaborate with government agencies. Most of those partnerships preceded passage of Charitable Choice (U.S. Senate 2001; Chaves 2001).

The character of these relationships has been anything but clear and defined; indeed, the network of social service provision is com-



plex, intertwined, and frequently ad hoc (Wineburg 1992). As the AJC's Task Force delicately noted, there have been "problems" when the provision of services by a religious provider has been inconsistent in some fashion with the mandates of state law or constitutional imperatives. For example, Catholic foster care agencies in Illinois are funded despite their noncompliance with state law mandating that teens be provided with birth control. These and similar "problems" have frequently been "solved" by unspoken understandings, "otherwise known as 'not talking about it'" (AJC 1990, 8).

Given this history and background, it would have been helpful for Congress to address several important questions: What does "faith-based" mean in this context? Do faith-based organizations targeted by the Charitable Choice legislation differ from those with a long history of relationships? If so, how? What are the barriers to their participation in social service delivery? To what extent are those barriers practically necessary or constitutionally mandatory? What is the availability and interest, and what are the capacities, of these organizations? Few of these questions, however, found their way into the congressional debates about Charitable Choice (Kennedy forthcoming), and none were addressed by the legislation. The resulting ambiguities have created substantial public management issues.

Charitable Choice legislation was explicitly predicated on the assumption that faith-based organizations (FBOs) are more effective and efficient at providing assistance than the secular and religiously affiliated nonprofits that have been delivering the bulk of tax-supported social welfare programs on government's behalf.ⁱⁱ However, there are no empirical data to support or rebut that presumption. In September 2000, with support from the Ford Foundation, our research team commenced work on a three-year evaluation of Charitable Choice implementation in three states, Indiana, Massachusetts, and North Carolina, chosen because they represent different political cultures and religious landscapes. We will investigate and analyze state governments' methods of

identifying and working with FBOs; assess the comparative efficacy of faith-based and secular providers; review the capacity of FBOs to bid for, and state governments to manage, purchase-of-service contracts; and address issues of public and constitutional accountability. During the first year of the project, as we have pursued our primary research objectives, we have also encountered and identified many of the practical issues confronting public managers who find themselves charged with translating the legislation into action.

Outreach and Contracting Procedures

If Charitable Choice is intended to make government contracts more "user friendly" to FBOs that have not previously partnered with the public sector, thereby encouraging their entry into social service partnerships (DiIulio 2001), the first task for public managers will be to inventory their current procurement processes to identify and remove existing barriers. Public managers must then develop criteria for identifying and mechanisms for reaching out to new faith-based partners.

Not surprisingly, the identification of barriers disadvantaging FBOs has elicited different responses in different states. Massachusetts significantly revamped its procurement processes in 1995, with the purpose of making the government-contracting processes more accessible and transparent to all potential bidders. Massachusetts officials believe the revamped process does not create barriers to FBO participation; furthermore, the state points to its long history of contracting with Catholic, Lutheran, and Jewish agencies (Jensen 2001). While the Center for Public Justice (2000) gave Massachusetts an "F" on its recent "report card," which rated states' implementation of Charitable Choice, state officials took the position that the legislation was intended to "level the playing field," and Massachusetts' field was already level.

North Carolina has approached implementation primarily through an existing effort, the Communities of Faith Initiative of the North



Carolina Rural Economic Development Center. Launched in the early 1990s, the program worked across denominational and racial lines to address the needs of rural inhabitants of North Carolina, particularly those living in or near poverty. The most numerous and powerful institutions in rural North Carolina were the churches; accordingly, it was through an alliance of those churches that the Rural Center proposed to deliver services. Subsequent to enactment of Charitable Choice, the Center has held two conferences and has contracted with the North Carolina Division of Social Services to initiate a church-based pilot program to support rural families as they move from welfare to work. “Faith Demonstration Awards” were made to five faith-based projects, most of which serve more than one county but none of which are statewide in scope. Communities of Faith also does training for FBOs; in 2000, organizations from 42 North Carolina counties attended its Faith With Works seminars.

Indiana has been the most ambitious of the three states. The state established an initiative called FaithWorks, designed to reach out to faith-based organizations that had not previously contracted with the state and to assist them with capacity building and technical assistance. FaithWorks’ short-term goal is to give organizations the tools, access, and information they need to become competitive with traditional providers. Its long-term goal is to create networks and links that will allow the faith community to sustain an effective presence in the area of social service delivery. As part of an overall outreach effort to the faith community, six informal meetings were held around the state in February 2000. Invitations were sent to houses of worship and to nonprofit service providers affiliated with religious organizations, although any interested organization was welcome to send representatives. Approximately 1,000 people attended. During the year, 400 organizations received technical assistance, either through state-paid consultants or by attending state-sponsored workshops. Workshops included descriptions of the

Charitable Choice legislation, state procurement procedures, the contracting process, effective proposal development, TANF program requirements, and fiscal management and accountability. In addition, information and technical support is provided through a web site and toll-free telephone assistance.

“Affirmative action” outreach programs like Indiana’s FaithWorks program or North Carolina’s Community of Faith Initiative are one method of achieving participation by FBOs and publicizing the existence of a level playing field. Complete revamping of the procurement process, similar to the Massachusetts effort, is another. Whatever approach states choose, they must confront, as a threshold issue, the establishment of appropriate criteria for bidders. For example, some Charitable Choice supporters have criticized requirements for professional credentials and norms. In a recent article in *Commentary*, Lenkowsky (2001) argues for “elimination of arbitrary rules that allow, for example, the use of professional therapy but not pastoral counseling” (23). If an agency is putting together a request for proposal for counseling services, and it requires that successful bidders employ licensed social workers, has the state discriminated against FBOs offering unlicensed “pastoral counseling”? Lenkowsky clearly believes that it has, although other religious spokespersons disagree.ⁱⁱⁱ On the other hand, states are accountable for the quality of the services they provide, and they have a legal obligation to evaluate bidders’ ability to provide those services at an appropriate level. If the bidder offers pastoral counseling in lieu of professional certification, how is the probable efficacy of that counseling to be assessed? If the state appears to relax or discard professional standards when the bidder is an FBO, secular nonprofits and current state contractors may justifiably object that an unconstitutional preference is being shown to religious organizations, in violation of the establishment clause.

In recent testimony on faith-based solutions before the Senate Judiciary Committee, John L. Avery of the Association for Addiction



Professionals focused upon precisely that issue: “NAADAC’s concern is not with who provides care, but rather by what clinical standards that care is provided. We are committed to the application of science-based best practices, perhaps as most succinctly stated in the National Institute of Drug Abuse (NIDA) publication, ‘Principles of Drug Addiction Treatment, a Research-Based Guide.’”

Avery emphasized that, for his organization, the “salient issue is the clinical competency of the treatment provider” and concern for consumer protection and public safety. If FBOs believe insistence on evidence of “clinical competency” is discriminatory, and the NAADC believes that failure to require such evidence is malpractice, it is no wonder that many public administrators feel caught in an untenable situation.^{iv}

The states we are studying have also taken different approaches to the issue of what qualifies as an FBO. Massachusetts considers religious providers essentially fungible, both with other sectarian organizations and with secular providers: Catholic Charities, storefront church, or secular provider—all are officially considered equal and evaluated solely with respect to the responsiveness of their bid. If a lack of prior experience disadvantages some bidders, it is considered to be unfortunate, but irrelevant. In Indiana, at least for record-keeping purposes, the state “counts” as FBOs only those participating in both FaithWorks and the Indiana Manpower Placement and Comprehensive Training (IMPACT) program. IMPACT is Indiana’s welfare-reform demonstration project; It comprises cash assistance and employment services for needy and eligible families with dependent children, and it is funded with TANF dollars. While religious agencies are free to participate in other programs, and both religious and nonreligious providers can access FaithWorks resources, only IMPACT contractors make the “official” FBO list. This approach has generated anomalies that make comparisons difficult: An Indianapolis homeless shelter created and supported by a group of churches and other nonprofits, whose executive director

is an ordained minister, for example, is not considered “faith-based” for Indiana’s record-keeping purposes; however, a for-profit corporation that participates in IMPACT is classified as an FBO and self-identifies as faith-based.

In his recent testimony before the Judiciary Committee, Douglas Laycock noted that “choosing someone to deliver social services is more complex than picking the low bidder on a pencil contract. How do you keep thousands of government employees, federal state and local, from discriminating on religious grounds when they award grants and contracts?” Laycock endorsed a reporting requirement that would require any obvious over- or underrepresentation of religious providers to be explained. Whatever the merits of such a requirement, it would be yet another bureaucratic task requiring at least some level of resource allocation. Whether such a mechanism would minimize claims of bias is an open question; as Richard Foltin of the American Jewish Committee noted in his testimony before the Judiciary Committee, “It seems almost inevitable that, whatever claims may be made that contracts will be allocated on the basis of merit, in any given community the religious groups most likely to receive funds will be those associated with ‘mainstream’ faiths. And, even if the contracts are allocated on a totally objective basis, there is likely to be sharp distrust and suspicion that this is not the case.”

Contract Monitoring

Early experience in Indiana suggests that monitoring first-time FBOs requires considerably more resources—more “hands-on” help—than is needed with more experienced providers (Raibley 2001). This can be expected to diminish as providers become more sophisticated about government’s expectations, but that will take some time.

There is also a significant constitutional issue involved in monitoring, because the free exercise clause protects religious organizations against unwarranted intrusion, and what is “unwarranted” is a fact-based inquiry. Even if



audit and accountability measures are perfectly appropriate constitutionally, elected officials have expressed concerns that, if state agencies find FBO compliance inadequate, charges of bias will be leveled and may resonate politically. To the extent Charitable Choice focuses on inner-city churches, race will inevitably become a part of the political equation in such situations, a prospect that concerns even strong supporters of Charitable Choice and vigorous outreach efforts.^v

If government oversight is not to be viewed as racially or religiously discriminatory, great care will need to be exercised to eliminate unintended disparities in the monitoring process. Oversight methodology and criteria will need to be well conceived, and they will need to be communicated before the fact and with clarity.

State agencies are constitutionally required to insure that government funds go only to support secular activities. Consistent with that requirement, the Charitable Choice legislation prohibits the use of tax dollars for proselytizing, and it prohibits conditioning service delivery upon participation in religious activities. Public managers are responsible for compliance with those restrictions; however, states have limited managerial resources with which to monitor programmatic content for constitutional compliance. Middle managers hired to administer welfare-service contracts cannot be expected to recognize any but the most egregious First Amendment violations and have limited time to devote to such issues. If a violation is alleged and proven, however, the state can be held liable. As the Welfare Information Network frames the issue on a section of its Web site devoted to discussion of frequently asked questions:

State or local jurisdictions should consider these terms [‘faith based organization’ and ‘proselytization’] when working on contracting arrangements that are covered by Section 104 of the federal welfare reform law, P.L. 104–193, also known as the ‘Charitable Choice’ provisions. Contracting with funds under the Temporary Assistance to Needy Families

Program is covered by Section 104. The law does not offer definitions of ‘religious organization’ and ‘proselytization,’ and although some states may have defined these terms in case law related to schooling or other issues, they are not familiar to many contract officers.

Given the lack of precedents, states and local jurisdictions generally have avoided legally binding definitions in their contracts, especially as to what constitutes proselytization. Instead, dialogue and “gut instinct” are guiding the implementation of the ban on proselytization when contracting with federal funds. This approach could include ensuring that organizations bidding on a contract know in advance about the prohibition on using the contract funds for proselytization; talking with the contracting organization about the state or local agency’s expectations and the consequences of any problems reported with proselytization; and ensuring that participants are aware of the ban and what steps they can take if they feel uncomfortable receiving services from a religious provider. For example, Section 104 gives welfare recipients the right to seek alternative providers. Religious organizations have certain rights under Section 104 as well.^{vi}

Rev. Castañón of the United Methodist Church warned in his testimony on faith-based solutions to the Senate Judiciary Committee, “As long as government attempts to separate what is religious from secular in entities like churches, synagogues, mosques, etc. it risks becoming excessively entangled with religion, thus advancing it or hindering religion, both clear violations of the establishment clause.”

Finally, there is the requirement that secular alternatives be provided for welfare recipients who do not want a faith-based provider. Public managers will need to identify such alternatives and fund them. This should not present a problem in urban areas, but it could be a challenge in more rural areas, where alternative providers may not be convenient, or even available, or in very homogeneous communities.^{vii} In situations where the FBO substantially performs under the contract



before the client requests a change, contract allocation and bookkeeping issues must be dealt with.

Evaluation

State agencies should evaluate the efficacy of all service providers, secular or religious. Such evaluation was problematic well before the passage of Charitable Choice; in all three of the states we are studying, the social welfare system is so radically decentralized and uncoordinated that sound evaluation of programs is virtually impossible. In addition, welfare populations are notoriously difficult to track: Poor people move frequently, often do not have telephones, and are frequently unresponsive to or intimidated by surveys and other formal inquiries. The lack of credible data is one reason that welfare policies generally elicit such strong disagreements among scholars and policy makers.

Those who support expansion of Charitable Choice and increased government reliance on nonprofits generally insist that such “mission-driven” organizations are more effective than secular providers. To date, there are virtually no data about FBO performance. This is not surprising, given that the comparative performance of nonprofit, for-profit, and government organizations generally is far from settled. The lack of data about FBO performance is, however, particularly problematic given the current contentious political climate. Debate about the relative advantages of for-profit over nonprofit service provision has raged since the first privatization efforts in the early 1980s. Research, while growing, remains weak, and the findings have been equivocal. Moreover, studies have focused on only a few service areas, primarily health care, child care, and education (for recent summaries, see Hansmann 1996; Weisbrod 1998; Schlesinger 1998; Krashinsky 1998; Mauser 1998).

Reliable scholarship can provide public managers with important answers: Are FBOs more efficient and effective? Are they more effective in some areas than others? Are some FBOs more effective than other FBOs? If so,

what are the characteristics of the more and less effective organizations? If evaluators are to answer such questions, however, clarity and consistency of terminology and objectives will be required: What should be classified as an FBO? How shall we define “success”?

Public managers must measure success—once defined—without intruding on the constitutional prerogatives of religious organizations. This can be especially difficult when the FBO has chosen not to form a 501(c)(3) affiliate, because monitoring and evaluation of fiscal performance will require review of books and records, and program costs may not have been segregated from other financial information. Even if there is a separate 501(c)(3), some inquiry into the finances of the religious organization may be necessary if, for example, a church or synagogue is providing substantial in-kind support. Any analysis of the cost of providing services will include the value of volunteer time, use of church equipment and facilities, and similar accommodations. Valuing those accommodations may require more review than the FBO feels is constitutionally appropriate.

These are thorny issues, but their resolution is important because good information is essential if programs are to work.

Early Indicators

The salience of these issues can be confirmed by a glance at the daily newspapers, which are beginning to report challenges to administrative determinations. Texas, one of the first states to aggressively implement Charitable Choice, has been sued for inadequate monitoring of a church-based drug treatment contractor that allegedly used tax dollars to purchase bibles. California has been sued for allegedly establishing a \$5 million “set aside” to be made available only to faith-based providers. And just this spring, the Texas legislature chose not to continue a Bush administration plan passed in 1997, allowing religious youth facilities to escape state inspection under an “alternative accreditation” program that allowed them to monitor themselves. The legislature was react-



ing to published charges that teenagers had been made to spend 11 hours in sewage-filled pits and had suffered other types of abuse and illegal restraint in such homes.

We have carried out extensive discussion with state IMPACT administrators in Indiana and conducted preliminary interviews with nine faith-based providers in the state. Indiana conducts both financial and non-financial monitoring of all IMPACT providers. The latter includes assessments of programs, facilities, and relations with other community actors. Periodic site visits are conducted. In these as well as subsequent evaluations, no distinctions are made between faith-based and other providers. That these oversight activities are effective is evidenced by the fact that problems in several faith-based providers have been identified. At least one contract was cancelled when a site inspection revealed that the premises were not handicapped accessible, as required. Moreover, state administrators in Indiana seem aware of the complexities inherent in administering programs in this set of faith-based organizations, including the ramifications of the fact that many are small and new to the system, and that they are all religiously oriented.

Information from the faith-based providers has provided evidence that many of the administrative challenges discussed above are real. While a number of the providers offered positive comments about the support provided by the state, most also pointed to administrative problems they had encountered. Difficulty obtaining client referrals was mentioned most often. While this can be partially attributed to increased competition among providers, problems with the client referral system were also alleged. A number of providers suspected that certain contractors were being favored over others, perhaps for reasons of convenience or prior working relationships between caseworkers making the referrals and long-term providers. It bears emphasizing that no one had evidence of such favoritism; these speculations were an effort to explain difficulties they perceived in client allocation under the contract. The existence of these suspicions tends to confirm the concerns raised by Douglas

Laycock and Richard Foltin.

In addition, many providers reported problems with billing and obtaining payment, including paperwork problems and delays. A number also reported information problems, including getting conflicting information, little or no information about their problems with referrals or payments, or information about program changes. While these types of problems are not unique to FBOs that are new to the contracting system, nevertheless, they point to the need for state administrators to spend more time and effort on communication with smaller, grassroots providers that are not familiar with the jargon of administrative bureaucracies and not able to hire lawyers and accountants to interpret for them.

Indeed, the need for better communication was a recurring theme in our discussions with these providers. In some cases, providers felt that the state was not aware of or interested in the particulars of the faith-based providers. They commented that the state was unfamiliar with what they were doing, wasn't listening to them, and wasn't interested in feedback or help from them. This perception may have been a result of the state attempting to treat all providers equally, to avoid the perception of disparities. For the faith-based providers, however, it signified to some that their "special" nature was not being appreciated or used most effectively. This attitude might also translate into feelings that monitoring and evaluation should take their special characteristics into account.

Achieving proper balance between secular services and religious messages was important to all providers. The state's position is that, while it is appropriate to display religious symbols, religious activities should be clearly separated from program services, and clients should not be pressured into participating in them. Providers, however, felt their religious orientation is important, both to their organization and potentially to their clients. Adoption of these religious principles and beliefs was held to be another way that the lives of their clients would be improved. In addition, providers felt their religious beliefs gave them a special caring rela-



tionship to their clients. While none of the programs studied had explicitly religious content, providers generally made it clear that religious or spiritual counseling was available to clients if they were interested, and all of the programs incorporated (to some extent) the moral and ethical premises of the faith.

The state is sensitive to the constitutional constraints imposed by the First Amendment, and it attempts to monitor program content to insure the separation of secular and religious messages. In several instances, providers have been advised that explicitly religious messages may not be delivered as a part of the state-sponsored program, although it may be offered separately and privately funded. Monitoring in this area requires substantial amounts of both tact and constitutional competence, as well as resources.

Conclusion

Attention to these administrative challenges is long overdue. Public managers need to ensure the integrity of the bid process for all participants, whether they are large or small, institutionalized or grassroots, faith-based or secular. Fairness includes at least the validation of bid requirements and standards for assuring evenhandedness in awarding and monitoring contracts.

Most of all, public managers and academics need to evaluate what works, what doesn't, and why. Until we have real evidence of the efficacy of various types of social programs, including (but certainly not limited to) faith-based programs, we will continue to debate these issues on the basis of political ideology and expediency, rather than on the basis of scholarship and evidence.

Endnotes

- ¹ Section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. 3734, 104th Cong., 2d sess., P.L. 104-193.
- ² Prior to the mid-1960s, a "public system provided basic human services to the needy, and a small private system supported by philanthropic donations delivered services

to more specialized populations." The majority of human services are now provided by nonprofits for whom government funds have become the principal source of revenue. (Salamon 1995; Stone, Hager, and Griffin 2001).

- ³ In testimony to the Senate Judiciary Committee, Rev. Eliezer Valentín Castañón presented the position of the General Board of Church and Society of the United Methodist Church, saying "We cannot agree, however, in the establishment of *faith* as a separate category that sets religious groups apart from requirements which others are obligated to meet in order to provide social services" (U.S. Senate 2001).
- ⁴ *American Jewish Congress v. Bernick, Bolden, and Sakamoto*, Superior Court, State of California, County of San Francisco, 2001.
- ⁵ It is instructive that this issue has been raised with the authors on several occasions, but always "off the record." It is a persistent background concern that no one wants to acknowledge publicly.
- ⁶ Available at <http://www.welfareinfo.org/faithbase.htm>
- ⁷ As Douglas Laycock noted in his testimony, "We have not succeeded in guaranteeing even one provider for all people who need these services. How can we plausibly guarantee a choice of providers?" (U.S. Senate 2001).

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Tilting the Level Playing Field: **Public Administration Meets Legal Theory**

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Introduction

There is an old story about two businessmen who take a quarrel to the village Rabbi. He listens to the first man tell his side, and says “Yes, you are right.” The second man then gives his version of the affair, and once again the Rabbi says “You are right.” At that point, an onlooker protests “They can’t both be right!” to which the Rabbi responds “Ah yes. You also are right.” Increasingly, American public administrators find themselves in the position of that Rabbi, needing to acknowledge the legitimacy of competing claims on government that are seemingly both correct and yet are mutually exclusive. Wanting to be fair, we are torn between programs intended to ameliorate past injustices and complaints that the programs themselves are unjust.

The idea of equality is a bedrock element of the American legal and political systems; we strive for a meritocracy and affirm the obligation of government to treat similarly situated citizens equally. The ‘level playing field’ is a favorite metaphor for politicians and public administrators alike. Whether a playing field is truly level, however, is often a contentious issue. This article analyzes the constitutional requirements of equal treatment against claims arising in the context of Affirmative Action and Charitable Choice, programs whose proponents

claim that the field must ‘tilt’ if genuine equality is to be achieved. But, if government must treat people differently—i.e., unequally—to achieve real equality, what are the implications for public policy, public management and the rule of law? Indeed, how are we to define equality so that, to appropriate Justice Stewart’s famous approach to obscenity, I will “know it when I see it”?¹

I. Justice, Fairness & Difference

Politically, the level playing field has been invoked as a necessary condition of democracy, a “convenient metaphor for saying that a democracy, defined anywhere along the spectrum, presupposes the absence of a wide disparity in the participatory capabilities of the citizenry.”² Political equality has been said to be present when “the decision rule for determining outcomes at the decisive stage must take into account, and take equally into account, the expressed preferences of each member of the demos as to the outcome.”³ This construct, of course, begs the question of equal access to membership, among other things.

Philosophers have gone beyond such narrow rules of political participation in describing the role of equality in a just society. Aristotle defined as a fundamental attribute of justice the principle that equals should be equally



treated, largely begging the questions “who are equals?” and “what constitutes equal treatment?” John Rawls proposes that we construct our legal and political system behind a veil of ignorance: if we do not know beforehand what our personal attributes or social station will be, the theory goes, we will be more likely to construct a system that is fair to all, even where it may be unequal.⁴ Amartya Sen argues that, no matter how many rights individuals may have, if material conditions are such that those individuals cannot freely choose their ends—if they are so afflicted by disease or constrained by custom or poverty that they are not truly free to choose their own goals—they are neither free nor equal.⁵

Virtually all political philosophies exalt equality as an ideal, but as Ian Hacking wryly noted, there is a wide variety of working definitions of the term.⁶ Libertarians want equality of rights, or equality before the law. Egalitarians want equality of results in varying formulations.⁷ Free market advocates want equal access to markets.⁸ Americans speak often of “equality of opportunity” a term often defined as the opportunity to compete on....what else? a level playing field. And so we come full circle, having consistently avoided the crucial question, “equality of what?”

Unless we are able to define the “what,” we will be similarly unable to decide what sorts of differences require recognition if genuine equality is to be achieved. Even if we are talking simply about equal rights before the law, using the narrowest possible construction of that term, a fair and equal system must take note of and allow for differences between children and adults, competent and incompetent persons, motorists and pedestrians, and so forth. All but the most doctrinaire egalitarians will allow for differences in need resulting from a variety of factors including behavior and effort. As Will Kymlicka noted, in other countries it is “increasingly accepted that some forms of cultural difference can only be accommodated through special legal or constitutional measures, above and beyond the common rights of citizenship.”⁹ These systems recognize that

applying the same rules to everyone is not necessarily to treat everyone as equals.

Further complicating the issue of difference, and the importance we should assign to it in an effort to define equality, is the significance of labels, or framing. In the introduction to *Making All the Difference*, Martha Minow tells the story of animal behaviorist Harold Herzog, Jr., who works in a laboratory at the University of Tennessee, and who must obtain approval for any experiment on the 15,000 or so mice they use each year.¹⁰ Yet the concern over mouse welfare does not extend to those that escape and are subsequently labeled “pests,” nor to field mice that might get into the building.¹¹ Those mice are routinely captured and destroyed.¹² Similarly, other mice are used as food for other experimental animals, and likewise fall outside the rules governing appropriate treatment.¹³ Finally, and ironically, when a pet mouse owned by Herzog’s son died, the family gave “Willie” a funeral complete with tombstone.¹⁴ The moral of the story, as both Herzog and Minow note, is that our sense of what is equitable behavior depends heavily upon the labels we assign and the language with which we describe the situation and categories before us.¹⁵ Anyone doubting the accuracy of this observation, or its relevance to issues of equality, need only look to contemporary political disputes over gay rights or reproductive choice. When the gay community demands equality, the Christian Right responds that what they really want is “special rights.” When some women talk about “the right to choose” as an element of religious equality, others respond by equating choice with murder, and by labeling pro-choice advocates “baby killers.” Americans believe in equality; we don’t believe in “special rights.” We believe in personal autonomy and respect for different religious beliefs; we don’t condone baby-killing. He who frames the issue wins the debate. Unfortunately, the competition to be the first to label, to be the side that successfully frames the issue, usually generates more heat than light.



II. Fourteenth Amendment Equality

In the United States, discussions of equality generally, although certainly not always, begin with discussion of the role of government and the meaning and application of the Equal Protection Clause of the Fourteenth Amendment, passage of which, as Akhil Reed Amar has persuasively argued, profoundly changed the way in which America defines its Constitutional principles, including principles of equality.¹⁶

The Fourteenth Amendment prohibited states from denying to persons within their respective jurisdictions “the equal protection of the laws.”¹⁷ The pertinent language reads

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.¹⁸

The language is straightforward, and Congressional debate surrounding passage as well as subsequent arguments for and against ratification proceeded on the assumption that the Amendment would obligate the states to “incorporate” the Bill of Rights—that is, would impose upon the states the same limitations that the original Bill of Rights imposed upon the federal government.¹⁹ Nevertheless, the Amendment, and particularly its Equal Protection Clause, were subsequently interpreted by the Supreme Court much more narrowly. The “fundamental rights” protected by the Bill of Rights were applied to the states very slowly, and over a period of many years.²⁰ Even after the Equal Protection Clause was so applied, early notions of equal protection accommodated treatment that was “separate but equal.” Not until *Brown v. Board of Education* in 1954 did the Supreme Court conclude that separate was inherently unequal.²¹

The equality protected by the Fourteenth Amendment is not the equality proposed by

political philosophers: rather, the Amendment is consistent with the Founders’ belief that liberty is essentially defined in the negative, as freedom from state constraints on our beliefs and behaviors.²² Equality in that sense is limited to our right to be treated equally by government. Equal protection analysis thus begins with an inquiry as to whether there has been state action, without which there is no violation of the Fourteenth Amendment.²³

Once it is determined that state action is present, courts apply an elaborate, ‘tiered’ analysis that hinges upon the nature of the classification involved and the precision with which the government action has been focused. As Randall Kelso explained:

The first inquiry is what governmental interests support a statute’s constitutionality. Depending upon the standard of review, the governmental interests must be legitimate or permissible; important, substantial, or significant; or compelling or overriding. Of course, the governmental interest may be impermissible or illegitimate, and thus not support the statute under any standard of review.²⁴

Subsequent inquiries focus upon the methods employed to advance those governmental ends.²⁵ Under the rational basis test, if the government’s interest is “legitimate” or “permissible,” the law must be rationally related to its objective.²⁶ A second tier, commonly known as intermediate scrutiny, requires that where the interest is “important, substantial or significant,” there must be a more substantial nexus, or connection, between the means and the end.²⁷ If a given law targets a suspect class or impinges upon a fundamental interest, the governmental interest must be “compelling” and a direct relationship must be demonstrated in accordance to “strict scrutiny” standards.²⁸ Where heightened scrutiny is applied, either intermediate or strict, a final level of analysis focuses upon whether the law in question has been narrowly tailored to achieve its ends—such that it avoids imposing a burden greater than necessary to the achievement of the desired ends.²⁹

Most challenges to equal protection are decided under the “rational basis” test and it is



an unusual law that fails to pass muster under this standard, which is highly deferential to the state.³⁰ However, certain classifications have been determined inherently suspect, and require closer examination by the courts. Race, national origin and alienage will trigger strict scrutiny, as will laws burdening the exercise of a fundamental right. The categories requiring strict scrutiny are those where members of the group share an immutable characteristic, have historically suffered pervasive discrimination, and where efforts to vindicate their rights in the political arena are unlikely to succeed. Categories that will be examined under “heightened,” but not strict, scrutiny include, for example, gender and legitimacy.³¹

As the above, somewhat cursory, overview of equal protection analysis makes clear, the Supreme Court has fashioned a highly technical template to determine whether there has been a violation of the Fourteenth Amendment. There is substantial scholarship suggesting that the Court has not hesitated to manipulate that template to serve political or ideological ends.³² It is certainly the case that equal protection jurisprudence has evolved without benefit of any overarching, generally accepted theory of equality, negative or positive. It should not come as a surprise, therefore, that equal protection case law is anything but coherent, nor that political constituencies unschooled in the arcane language of legal analysis view much of it as unfair and decidedly unequal. Because the stability of a society depends in large measure upon the extent to which the members of that society feel that they are being treated justly, this popular resentment is no small matter. If the rules promulgated by the State are believed by large segments of the citizenry to differ substantially from their internalized notions of fair play and equal treatment, the consequences for legal legitimacy and voluntary compliance can be quite negative.

The disparity between popular understanding of equality and its legal or constitutional definition takes on added urgency as government becomes a more pervasive element of the everyday experiences of citizens. In a society

where the operations of the state reach increasingly into areas that were previously entirely private, the way in which that State conducts its business, the ways in which it uses its power to shape law and provide for the common welfare, become critical elements in the formation of a society and the degree to which that society values or devalues particular notions of equality.³³

III. Neutrality and Equality

It is impossible to understand the political passions aroused by Affirmative Action, Charitable Choice, or any other government action that specifically recognizes difference in order to achieve equality, without first understanding the importance Americans attach to state neutrality. As I have written elsewhere, the one thing most Americans will agree upon, at least publicly, is that our goal is the establishment of a society in which skin color, gender and the like are officially irrelevant.³⁴ Most of us really do want a society where people are judged by their actions, talents, and “the content of their characters,” where the same, neutral rules apply to everyone in equal measure.³⁵ If one believes that it is profoundly immoral to disadvantage someone on the basis of race, gender, sexual orientation or other aspects of one’s fundamental identity, it seems morally and intellectually inconsistent to award advantage on that same basis. Furthermore, programs that single out particular groups for protection or other special treatment raise the specter of misuse of government power: how do we ensure that such programs are based upon a desire to remedy demonstrable inequalities, and not on considerations of political or other advantage? If government can “bend the rules” for one group, what is to keep it from advantaging others who are less deserving? How shall we define desert for such purposes?

Of course, legal discourse over “neutrality” runs into many of the same problems encountered in discussions of equality. If African-Americans have been enslaved, stigmatized and segregated over the past three hundred years, how “neutral” is a system that removes legal



barriers but does nothing to remedy the personal and structural effects of those experiences?

Because official neutrality, like equality, is highly valued but rarely defined, it is often argued that application of special rules to certain groups actually furthers more general neutrality.³⁶ As noted by Alan Brownstein, proponents of Charitable Choice use “neutrality theory” to justify a form of affirmative action for faith-based organizations.³⁷ Brownstein stated:

The goal of neutrality theory, according to Esbeck, is to ‘maximize [] religious liberty.’ That objective is best accomplished by the minimization of the government’s influence over personal choices concerning religious beliefs and practices. The goal is realized when government is neutral as to the religious choices of its citizens. Thus, whether pondering the constitutionality of exemptions from regulatory burdens or as to equal treatment as to benefit programs, in both situations the integrating principle is neutralizing the impact of government action on personal religious choices.³⁸

Neutrality theory implements this integration by “distinguishing between burdens and benefits.”³⁹ Under its operational rules, minimization of government influence is achieved by “(1) allowing religious providers equal access to [state] benefits, and (2) allowing them separate relief from regulatory burdens.”⁴⁰

In other words, Esbeck defines “neutrality” in this context as special dispensation from rules of otherwise general application—as “tilting” the level playing field.⁴¹ As Professor Brownstein notes, however, “granting an exemption from a general law confers substantial material benefits” much as if a particular religious group were to be excused from payment of an onerous, but generally applicable, tax.⁴² Comparing such an approach to the neutrality theory underpinning free speech principles, Brownstein argues that providing special regulatory exemptions for proponents of a religious point of view, but not for proponents of other, secular viewpoints, programs like Charitable Choice may distort the marketplace of ideas and run afoul of the First Amendment.⁴³

IV. Affirmative Action and Charitable Choice

Disputes over the nature of fundamental fairness and genuine equality have figured prominently in political debate and litigation over affirmative action programs. One element of that debate centers upon the appropriate level of analysis; that is, to what extent should courts take note of the history of black Americans as a group, and to what extent should judicial remedies address discrimination against discrete, identifiable individuals?⁴⁴ The American legal system is uncomfortable with the claims of so-called “identity politics.” Unlike the legal systems in countries described by Kymlicka, ours has historically been a law focused on individual rights and responsibilities, and Americans are profoundly uncomfortable when individual merit and behavior are not the primary focus of legal analysis.⁴⁵ For example, it has been noted that:

The official American vision of equality has been one of a society in which group identity is legally irrelevant, where individual conduct is the only proper concern of government, and individual merit the only determinant of reward in the workplace. In such a system, individuals are rewarded or punished based upon their behavior and performance. Race, religion, sex, and similar markers of group affiliation are unrelated to one’s legal or employment status, despite how meaningful those affiliations may be to the individual. The civil rights movement spoke so powerfully to the nation’s conscience because the treatment of minorities was blatantly inconsistent with our stated commitment to equality and fundamental fairness.⁴⁶

Both the original 1964 Civil Rights Act, and subsequent affirmative action programs begin with the recognition that injustices done to black Americans as a group have harmed individual members of that group in ways courts can neither quantify nor fully identify, and that individualized remedies are inadequate.⁴⁷ If institutionalized racism has distorted the operation of economic and educational systems and diminished access and opportunities available to most African-Americans, the simple cessation of discrimination, without more, would leave



most black Americans without the means fully enter into American life.⁴⁸ In order to achieve genuine equality and overcome the burdens of past discrimination, affirmative action programs were based upon the belief that achievement of ultimate equality required government to “tilt” the playing field.⁴⁹

The extent of the “tilt,” the degree to which racial identity should be a factor in employment or education decisions, has been the subject of considerable litigation.⁵⁰ Judicial opinions have been closely divided. Indeed, as Ashutosh Bhagwat noted, three of the most significant affirmative action cases, *Regents of the University of California v. Bakke*,⁵¹ *Fullilove v. Klutznick*⁵² and *Wygant v. Jackson Board of Education*,⁵³ were decided by pluralities; the Supreme Court could not even muster a majority opinion.⁵⁴

In *Adarand Constructors v. Peña*, the Rhenquist Court held that all race-conscious programs, state or federal, discriminatory or benign, are subject to strict scrutiny, thus clarifying an area of doctrinal uncertainty about when strict scrutiny was required.⁵⁵ As Bhagwat observes, however:

an examination of recent decisions by the federal courts of appeals reveals widespread disagreement and confusion regarding the constitutionality of race-conscious official action. Despite facial unanimity regarding the applicable standard of review, courts differ widely in how they implement the strict scrutiny standard. In particular, there is an explicit and widening division among the courts of appeals regarding the kinds of governmental objectives that are sufficiently ‘compelling’ to justify race-based actions that disfavor the majority race, a division the Supreme Court has studiously avoided resolving.⁵⁶

In *Hopwood v. Texas*, the Court of Appeals for the Fifth Circuit determined that diversity of the student body at a state university’s law school was not sufficiently compelling to justify an admissions policy that gave preferential treatment to African-American and Hispanic applicants.⁵⁷ The court held that absent of a history of discrimination by the school that would justify remedial measures, the program

could not survive equal protection scrutiny.⁵⁸ Similarly, the Circuit Court for the District of Columbia struck down regulations by the Federal Communications Committee intended to foster diversity in programming, declining to find any compelling government interest in promoting broadcast diversity.⁵⁹ On the other hand, the Seventh Circuit upheld preferential hiring of black officers to staff a boot camp in which the young offenders were predominantly African-American, accepting the state’s argument that the presence of black staff was essential to the program’s success, and thus met the standard of compelling state interest.⁶⁰ Additionally, the Ninth Circuit upheld an admissions process for an elementary-level university laboratory school that made race and ethnicity a part of the admissions decision, agreeing with the University that research goals required a representative student body.⁶¹ Thus, the interest in safeguarding those goals was sufficiently compelling for purposes of equal protection analysis.⁶²

There are numerous additional cases in which federal circuit and district courts have had to determine whether a given interest was sufficiently “compelling” to meet the constitutional standard under the facts of the case.⁶³ Such determinations are necessarily ad hoc, and the resulting body of equal protection jurisprudence demonstrates—if demonstration were needed—the inherent difficulty of using technical legal formulae as a proxy for equality.⁶⁴

Affirmative action programs geared to racial and gender disparities are not the only administrative or legislative efforts intended to correct prior discrimination. In 1996, Section 104 of the Personal Responsibility and Work Opportunity Act, popularly dubbed “Charitable Choice,” addressed a perceived government bias against contracting with religious social service providers.⁶⁵ Proponents of greater involvement by grass-roots religious providers in the complex network of governmental social supports argued that Section 104 was necessary in order to “level the playing field,” although religious providers like Catholic Charities, Lutheran



Social Services, Jewish Family & Children's Services and the Salvation Army had long histories of partnering with government.⁶⁶ Supporters of the legislation argued that confusion over the application of First Amendment Establishment Clause doctrine had caused government officials to disfavor religious bidders in some cases, and impose burdensome requirements on those with whom they did do business, in others.⁶⁷ Advocates of greater "faith-based" participation in welfare programs encouraged states to reach out to such organizations and encourage their participation.⁶⁸ Some states, like Massachusetts, took the position that their playing field was already level, and did little to specifically "implement" Charitable Choice.⁶⁹ Others, like Indiana, instituted extensive, and relatively expensive, programs designed to acquaint small religious providers with opportunities for government collaborations.⁷⁰ These efforts to include faith-based organizations ["FBOs"], have raised many of the same questions as traditional affirmative action programs.

Perhaps the thorniest of these issues involves application of bid qualifications: shall the same criteria be applied to FBOs as are applied to secular providers? In an article published in *Commentary*, Les Lenkowsky argued for "elimination of arbitrary rules that allow, for example, the use of professional therapy but not pastoral counseling."⁷¹ As with affirmative action, equal treatment is in the eye of the beholder: if the State insists that a responsive bidder employ licensed social workers or credentialed drug therapists, does that requirement discriminate against FBOs whose programs use pastors rather than social workers or trained counselors? On the other hand, if the State relaxes certification requirements for FBOs, does this amount to an unconstitutional preference for religious providers? What is the difference between "equal treatment" and "special rights"?⁷² Similarly, provisions of Section 104 that allowed FBOs to discriminate on the basis of religion in employment have been widely attacked, by secular and religious organizations alike, as special accommodation unwar-

ranted by public policy.⁷³ Defenders of the provision respond that a failure to recognize and accommodate the religious nature of FBOs would amount to a special burden on faith, and would be discriminatory.⁷⁴

Lost in the arguments about fair play and equal treatment are cautionary notes sounded by social science researchers, who warn that competition between groups is more polarizing than competition between individuals:

Taking more for one's group seems to be more legitimate than taking more for oneself, even though one benefits in both cases. Implicit in the act of allocating to one's group is the justification that other people will benefit; there exists the possibility that taking more for one's group may reflect the individual's genuine concern with the welfare of fellow group members and not just greedy behavior...The problem arises when one's opponent in the negotiation is also representing his/her group.⁷⁵

Whatever one's position on the merits of particular Affirmative Action programs or versions of Charitable Choice, the controversy each has aroused is indisputable.⁷⁶ No matter what rules the courts ultimately impose, some will feel betrayed—and unequal. Further restrict or eliminate Affirmative Action, and those who have borne the brunt of America's racist history will say that they do not have equal access to the playing field. Confirm those same programs and others will complain that special efforts to redress past injuries that benefit an entire group are too broad, and inherently unequal. Tell religious organizations that they must meet the same standards as secular service providers, and they will argue that such a position fails to take into account their essential nature, and is discriminatory. Make special rules for such organizations and their secular competitors will protest that the playing field has been unfairly tilted. Where you stand, as the saying goes, depends upon where you sit.



V. Implications for Public Administration

What are the implications for government legitimacy and the rule of law, if significant constituencies experience government programs as biased or unfair? A few come to mind:

- Democratic deliberation becomes problematic. We have already seen how proponents and opponents of Affirmative Action and Charitable Choice “talk past each other.” In a very real sense, they are inhabitants of different realities. But democracies require common ground in order to function, and some agreement on the nature of equality would seem to be a precondition for finding that common ground.
- Compromise becomes difficult, if not impossible. If different people see different realities, how can we formulate policies that both will see as fair and equal?
- Social stability is in jeopardy. If government is to be seen as legitimate, it must live up to its own principles. In America, equality is a—perhaps *the*—foundational precept. When a significant segment of our society believes that it is being marginalized, devalued, or treated in a discriminatory manner, or that others are being unfairly privileged, there is a real potential for social upheaval.

What, if anything, can public administrators—those on the “front lines”—do to foster public perceptions of fair play by the state? While it falls to policymakers to fashion laws that attempt to bridge very different perceptions of equal treatment, administrators are not without tools of their own. At a minimum, those charged with administering the laws must take care to do so in as evenhanded a fashion as possible. Where rules prescribe different treatment for members of different groups, administrators must clarify that they are acting pursuant to the law, and not on the basis of personal bias. Whenever possible, they should explain the purpose of laws that may be perceived as favoring some groups over others.

These actions, of course, are all aspects of the professionalism that we expect from public administrators.⁷⁷ But administrators can and should do more: they should give policymakers the benefit of their “street level” experiences. If programs are not working, no matter how well-intentioned, they need to be modified. If misconceptions are rampant, those must be addressed through public education. Most important, public administrators need to remind citizens and policymakers alike of the importance of maintaining the principal of government neutrality toward those who are similarly situated. It is one thing to engage in outreach to identify those who may be wary of working with government or build to help potential bidders meet a legitimate professional standard. It is quite another to relax the standard. The first path adds substance to public resources; the second sows distrust and discord.

Conclusion

Eventually, if America manages to eradicate the vestiges of slavery and segregation, we may no longer need affirmative action. Even ardent proponents of Charitable Choice have suggested that the replacement of direct contracts with vouchers that would allow program recipients to choose their own social service provider might ease both the First Amendment and fairness issues (although such policies raise substantial concerns about the marketization of public goods). But our need to define the nature of equality and equal treatment, to sketch the landscape of the truly level playing field and provide clear guideposts for the public officials who must administer government programs, will remain—a daunting but absolutely essential task of liberal democracy.

Endnotes

1. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring) (discussing the difficulty in defining obscenity).
2. Robert A Dahl, *Procedural Democracy*, in *PHILOSOPHY, POLITICS AND SOCIETY* 97 (Peter Laslett & James Fishkin eds., 1979) (examining the idea of procedural democracy and the problem of inclusion, and examining various solutions to the problem of



- inclusion, including his own). Procedural democracy is the idea that certain criteria should govern the decision making process of any human association. *Id.* at 101. Such criteria include political equality (decisions must take into account the preferences of each member equally), effective participation (members must have adequate and equal opportunity to express individual preferences), and enlightened understanding (members must have adequate and equal opportunity to discover and evaluate individual preferences). *Id.* at 101–105. The problem of inclusion relates to the membership of the association, i.e., who has a right to be included in the association and who can properly be excluded. *Id.* at 109.
- ³ This is sometimes referred to as “pure” democracy, where the majority is always determinative.
- ⁴ John Rawls, *Justice as Fairness, Philosophy and Public Affairs*, 3 PHIL. & PUB. AFF. 223, 235 (1985). Specifically, Rawls argues:
- We must find some point of view, removed from and not distorted by the particular features and circumstances of the all-encompassing background framework, from which a fair agreement between free and equal persons can be reached. The original position, with the feature I have called “the veil of ignorance,” is this point of view. And the reason why the original position must abstract from and not be affected by the contingencies of the social world is that the conditions for a fair agreement on the principals of political justice between free and equal persons must eliminate the bargaining advantages which inevitably arise within the background institutions of any society as the result of cumulative social, historical and natural tendencies. *Id.*
- ⁵ AMARTYA SEN, *INEQUALITY REEXAMINED*, 66–69, 102–107 (Harvard Univ. Press 1992). See also Ian Hacking, In Pursuit of Happiness, N.Y. REVIEW OF BOOKS, Sept. 19, 1996, at 40 (reviewing AMARTYA SEN, *INEQUALITY REEXAMINED* (1992)).
- ⁶ Hacking, *supra* note 5, at 41–42 (noting the different theories of equality and discussing how Sen’s focus on “equality of what” deviates from the previous focus on “equality for whom”).
- ⁷ A wonderful science fiction story I read many years ago, the name of which I have unfortunately long forgotten, describes a society so obsessed with the egalitarian version of equality that persons who can run fast must be weighted down with sandbags; those with high IQs must wear earphones playing distracting music, and so forth. For discussion on egalitarian theories, see MICHAEL QUINN, *JUSTICE AND EGALITARIANISM*, at vi, 41 (1991) (stating that at the core of egalitarian theories of justice is the notion that society should ensure that individuals have the same ability to make reasoned choices, thus allowing for each person to equally consider his or her choices in life). However, Quinn notes that theorists, including Rawls, Dworkin, and Nozick, differ in how this ideal should be accomplished and what stands in the way of accomplishing it. *Id.* See generally JOHN RAWLS, *A THEORY OF JUSTICE* (Rev. Ed., 1999).
- ⁸ See generally CASS R. SUNSTEIN, *FREE MARKETS AND SOCIAL JUSTICE* (1997).
- ⁹ WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* 26 (1995) (noting that group-specific rights may better serve to accommodate cultural differences in some societies than universal individual rights).
- ¹⁰ MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* 4–5 (1990) (noting that in addition to the approval needed for any experiment using the mice, the United States Department of Agriculture and the American Association for the Accreditation of Laboratory Animal Care maintain control over the standard of care provided to the experimental mice through inspection and monitoring).
- ¹¹ *Id.* at 5.
- ¹² *Id.*
- ¹³ *Id.*
- ¹⁴ *Id.* As the Herzog family mourned Willie’s demise, they were setting up traps each night in an effort to eliminate the mice that infested their kitchen. *Id.*
- ¹⁵ *Id.* Minow and Herzog conclude that the negative labels humans use to refer to animals dictate the way such animals are treated by humans. *Id.* In a similar way, the labels often assigned to certain groups of people usually bear a direct relation to the moral judgments made about those people. *Id.*
- ¹⁶ See generally AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 7 (1998) (introducing his argument that the Fourteenth Amendment, since its passage, has greatly influenced the way in which the Bill of Rights is viewed). To the extent that people think the Bill of Rights applies directly to state government action, people have come to ignore the Fourteenth Amendment itself, when, in reality, it underlies everyone’s thinking because it is the Fourteenth Amendment that created the avenue for application of the Bill of Rights to the states in the first place. *Id.*
- ¹⁷ U.S. CONST. amend. XIV.
- ¹⁸ *Id.*
- ¹⁹ See generally AMAR, *supra* note 16, at 163–74, 197–206 for an excellent discussion of the politics of ratification and incorporation debate.
- ²⁰ For example, in 1833, the United States Supreme Court held that the rights guaranteed in the first eight amendments did not apply to state governments. See *Barron v. Baltimore*, 32 U.S. 243, 249 (1833) (finding the Fifth, Sixth and Eighth Amendments to the United States Constitution apply only to the federal government, and not to the states). Forty years later, in the now-infamous *Slaughter-House Cases*, the Court held that those same eight amendments were not “privileges and immunities” of citizenship. See 83 U.S. 36, 81 (1872) (noting, “we are of opinion that the rights claimed by these plaintiffs in error, if they have any existence, are not privileges and immunities of citizens of the United States within the meaning of the clause of the fourteenth amendment under consideration”). Subsequently, in a series of cases, the Court gradually read the Due Process Clause of the Fourteenth Amendment as “incorporating” fundamental liberties, making those guarantees that could be deemed fundamental binding on the States. For an overview of the evolution of the incorporation doctrine, see generally *Twining v. New Jersey*, 211 U.S. 78 (1908) (finding the exemption from self-incrimination under the Fifth Amendment to the United States Constitution as not incorporated under the privileges and immunities clause of the Fourteenth Amendment); *Palko v. Connecticut*, 302 U.S. 319 (1937) (holding that Fifth Amendment immunity from double jeopardy is not incorporated under the Fourteenth Amendment); *Adamson v. California*, 332 U.S. 46, 54 (1947) (incorporating protection against compulsory self-incrimination by fear of hurt, torture or exhaustion under the due process clause of the Fourteenth Amendment); *Duncan v. Louisiana*, 391 U.S. 145 (1968) (finding that the Fifth Amendment right to be free from compelled self-incrimination is incorporated under the Fourteenth Amendment); *Benton v. Maryland*, 395 U.S. 784, 794 (1969) (applying the double jeopardy prohibition to the states through the Fourteenth Amendment on the grounds that it represents a “fundamental ideal in constitutional heritage”).
- ²¹ 347 U.S. 483, 495 (1954) (holding that the doctrine of “separate but equal” holds no place in the field of public education because “separate educational facilities are inherently unequal”). See also *Gaston County, N.C. v. United States* 395 U.S. 285 (1969) (determining it is appropriate to analyze whether a state or county has a history of separate and inferior educational opportunities, as outlined in *Brown v. Board of Education*, when deciding the fairness of a literacy test under the auspice of the Voting Rights Act of 1965 and upholding the lower court’s determination that since there was such a history in Gaston County the literacy



test was unfair and not allowed under the Act).

- ²² See, e.g., *Allgeyer v. Louisiana*, 165 U.S. 578, 589 (1897) (declaring that “[t]he liberty mentioned in [the Fourteenth Amendment] means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion of the purposes above mentioned”); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 847, 851 (1992) (explaining that “[i]t is a promise of our Constitution that there is a realm of personal liberty which the government may not enter Our law affords constitutional protection to personal relations relating to marriage, procreation, contraception, family relationships, child rearing, and education. These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment.”)
- ²³ This search is not as simple as it may seem. State Action jurisprudence is virtually incoherent, with serious consequences beyond the scope of this article. See generally Sheila S. Kennedy, *When is Private Public? State Action in the Era of Privatization and Private-Public Partnerships*, 11 GEO. MASON U. CIV. RTS. L.J. 203 (2001) (emphasizing that under the State Action doctrine, public invasions of rights are constitutionally prohibited, while the Fourteenth Amendment affords no protection against private conduct).
- ²⁴ R. Randall Kelso, *Standards of Review Under the Equal Protection Clause and Related Constitutional Doctrines Protecting Individual Rights: The “Base Plus Six” Model and Modern Supreme Court Practice*, 4 U. PA. J. CONST. L. 225, 227 (2002).
- ²⁵ The realm of equal protection analysis and laws or legislative classifications challenged on equal protection grounds is multifaceted and relatively complex, a thorough analysis of which is beyond the scope of this article. For a thorough analysis, see Kelso, *supra* note 24.
- ²⁶ See Kelso, *supra* note 24, at 227.
- ²⁷ *Id.*
- ²⁸ *Id.* at 228.
- ²⁹ *Id.* at 234.
- ³⁰ *Id.* at 230–32. One notable exception was *Romer v. Evans*, in which the Supreme Court struck down an amendment to Colorado’s state constitution, holding that animus toward a particular group of people (here, homosexuals) could never constitute a legitimate state purpose. 517 U.S. 620, 632. The Supreme Court noted that:
- [The Colorado amendment] fails, indeed defies, even this conventional inquiry. First, the amendment has the peculiar property of imposing a broad and undifferentiated disability on a single named group, an exceptional and . . . invalid form of legislation. Second, its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests.
- Id.*
- ³¹ GERALD GUNTHER & KATHLEEN M. SULLIVAN, CONSTITUTIONAL LAW 681 (13th ed. 1997) (stating that gender, alienage, and illegitimacy have evoked “varying, and often unstable” degrees of heightened scrutiny). This remains true even in contemporary society, although the latter seems quaint in these days of celebrity unwed motherhood. When one considers that illegitimacy will trigger heightened scrutiny while the Court has thus far been

unwilling to accord even quasi-suspect status to sexual orientation, it would seem past time to revisit the “tiers” of current Equal Protection.

- ³² See Stephen E. Gottlieb, *Tears for Tiers on the Rhenquist Court*, 4 U. PA. J. CONST. L. 350, 371 (2002) (arguing that the tiers of equal protection scrutiny are “a vessel into which the Justices pour their values”); R. Randall Kelso, *Standards of Review Under the Equal Protection Clause*, *supra* note 24 at 226 (2002) (arguing that six or seven different levels of equal protection scrutiny are used instead of the traditional three to accommodate the judges’ beliefs).
- ³³ Not only do contemporary laws and regulations address numerous areas of American life that were hitherto unregulated, government programs such as Social Security and welfare, government agencies like the Small Business Administration, the U.S. Civil Rights Commission, the Equal Employment Opportunity Commission, and many others, are part of the ‘landscape’ of even the average citizen. See, e.g., D.J. GALLIGAN, ADMINISTRATIVE LAW, at xi (1992) (positing that “[t]he rise of the welfare state and the regulation of social and economic activity have meant a substantial expansion of government in the middle and later years of the twentieth century. New and wide ranging legislative programmes have been developed; a host of new authorities have been created, and the lives of citizens have been much controlled and regulated.”).
- ³⁴ SHEILA KENNEDY, WHAT’S A NICE REPUBLICAN GIRL LIKE ME DOING AT THE ACLU? 182–91 (1997) (postulating in part that the approach of traditional Republicanism to questions of equality was similar to that of civil libertarians in that both were suspicious of government intrusions).
- ³⁵ *Id.*
- ³⁶ See, e.g., Alan E. Brownstein, *Interpreting the Religion Clauses in Terms of Liberty, Equality and Free Speech Values: A Critical Analysis of “Neutrality Theory” and Charitable Choice*, 13 NOTRE DAME J.L. ETHICS & PUB. POLY 243, 246–56 (1999). Brownstein criticizes neutrality theory on three counts. *Id.* at 246–247. First, he argues that neutrality theory is a misnomer because it encourages decisions that favor religious choices. *Id.* Second, by focusing solely on government interference with religion, liberty, it ignores other constitutional values that are affected by charitable choice laws. *Id.* at 247. Third, the theory ignores “the positive role that government should play in promoting religious liberty and equality.” *Id.* See also Susanna Dokupil, *A Sunny Dome with Caves of Ice: The Illusion of Charitable Choice*, 5 TEX. L. & REV. POL. 149, 198 (2000) (suggesting that neutrality theory is biased in favoring some religious organizations over others, because it will invariably result in greater benefits to larger religious institutions with more resources and political influence).
- ³⁷ Brownstein, *supra* note 36, at 246–56. Brownstein advocates a holistic approach to constitutional scrutiny of Charitable Choice proposals. *Id.* at 249. First, Brownstein acknowledges the basis for some preferential treatment of religious organizations as “constitutionally justified, if not required.” *Id.* He further recognizes that other decisions that may disadvantage religious organizations such as access to state benefits, may be warranted as a result of that preferential treatment. *Id.* Brownstein notes that, “[i]f regulatory exemptions result in incentives favoring religion, the granting of exemptions creates an imbalance in the constitutional ledger that may help justify other decisions, creating countervailing incentives, that move the system closer to equilibrium.” *Id.*
- ³⁸ *Id.* at 245 (quoting, Carl H. Esbeck, *A Constitutional Case for Governmental Cooperation with Faith Based Social Service Providers*, 46 EMORY L.J. 1, 27 (1997). Esbeck is Senior Counsel to the Deputy Attorney General, participated in drafting the charitable choice legislation, and has advocated for its passage before Congress. See Brownstein, *supra* note 36, at 234; Carl H. Esbeck, *Statement Before the United States House of Representatives Concerning Charitable Choice and Community*



- Solutions Act*, 16 J. NOTRE DAME J.L. ETHICS AND PUB. POL'Y 567, 568 (2002). Esbeck argues that government should minimize its impact on religious organizations when determining eligibility criterion for federal funding of social service programs. See Esbeck, *Constitutional Case*, *supra* note 38, at 24.
- ³⁹ Esbeck, *Constitutional Case*, *supra* note 38, at 24. According to Esbeck, religious organizations should be allowed equal access to benefits, but should be granted separate relief from regulatory burdens. *Id.* He suggests that this “best of both worlds” approach is precisely what the First Amendment was designed to encompass. *Id.* at 27.
- ⁴⁰ *Id.* at 24 (emphasis added).
- ⁴¹ *Id.* at 20–21. See also Brownstein, *supra* note 36, at 251 (critiquing Esbeck for ignoring that the neutrality of government spending decisions is, in fact, a sham).
- ⁴² Brownstein, *supra* note 36, at 261.
- ⁴³ *Id.* at 271. Other commentators have made similar suggestions as to potential First Amendment concerns and infringements raised by Charitable Choice initiatives and legislation. See, e.g., Michelle Dibadj, *The Legal and Social Consequences of Faith-Based Initiatives and Charitable Choice*, 26 S. ILL. U. L.J. 529, 556 (2002) (arguing that faith-based initiatives offer protection for religious organizations resulting in preferential treatment over non-religious organizations); Carmen M. Guerricogaitia, *Innovation Does Not Cure Constitutional Violation: Charitable Choice and the Establishment Clause*, 8 GEO. J. ON POVERTY L. & POL'Y 447, 472–73 (2001) (stating that Charitable Choice violates any of the three principles of the Establishment Clause, secular purpose, coercion, and endorsement, and is therefore unconstitutional).
- ⁴⁴ See generally Sandra Levitsky, *Reasonably Accommodating Race: Lessons From the ADA For Targeted Affirmative Action*, 18 LAW & INEQ. 85, 111 (2000) (citing various views on affirmative action). Levitsky notes evidence that most Americans “do not approve of remedies to persistent inequality that grant rewards on the basis of group membership rather than individual merit” and that “[a] successful affirmative action measure will necessarily have to contain then, an individual based remedy.” *Id.*
- ⁴⁵ See generally KYMLICKA, *supra* note 9, at 57 (attributing a negative attitude toward international protection of national minorities to the League of Nation’s minority protection scheme, which facilitated the Nazi aggression in Czechoslovakia and Poland). Kymlicka notes that providing that separation of church and state as a resolution to the growing conflict between Catholics and Protestants in European countries in the sixteenth century resulted in an entrenchment of individual freedom of religion and oppression of religious minorities. *Id.* at 3. Additionally, he notes the uniqueness of the Canadian federalism for its accommodation of both individual and “group-specific community rights.” *Id.* at 26–27. He also asserts that the instability of the former Soviet Union arising from disputes over boundaries, local autonomy, language, and naturalization, could have been resolved by restoring the rights of minority groups, rather than relying on general human rights principles alone. *Id.* at 5.
- ⁴⁶ Sheila S. Kennedy & Richard J. Magjucka, *Reducing Identity Politics in the Workplace: A Modest Proposal*, 17 MID. AM. J. BUS. 33 (2002).
- ⁴⁷ See The Civil Rights Act of 1964, 42 U.S.C. §§ 2000a–2000h (2000). See also Bernard Grofman, *Civil Rights, the Constitution, Common Decency, and Common Sense*, in LEGACIES OF THE 1964 CIVIL RIGHTS ACT 226 (Bernard Grofman ed., 2000) (noting that injustices done to black Americans are not easily quantifiable and cannot always be remedied with a lawsuit); Rachel F. Moran, *Diversity Distance and the Delivery of Higher Education*, in A READER ON RACE, CIVIL RIGHTS, AND AMERICAN LAW 297 (Timothy Davis et. al. eds., 2001) (noting that affirmative action laws grew out of the inability of the courts to provide remedies on a case by case basis).
- ⁴⁸ *Id.*
- ⁴⁹ Academics, practitioners, and politicians have offered multiple and various arguments in favor of affirmative action programs. For a description and assessment of the principal traditional arguments in support of affirmative action, see generally Jack Greenberg, *Affirmative Action in Higher Education: Confronting the Condition and Theory*, 43 B.C. L. REV. 521, 548, 556–67 (2002) (explaining that affirmative action initiatives are necessary for such reasons as that otherwise all but a few black students would attend non-selective colleges, the black-white gap in social conditions would increase, the economic status of black people would decrease, and there would be socially disruption reactions within black communities such as increases in crime).
- ⁵⁰ It should be noted here that a similar analysis could be made with respect to gender, although the application of affirmative action to gender-based initiatives has been less contentious. For a discussion of this phenomena, see generally Daniel P. Tokaji and Mark D. Rosenbaum, *Promoting Equality by Protecting Local Power: A Neo-Federalist Challenge to State Affirmative Action Bans*, 10 STAN. L. & POL'Y REV. 129, 136–38 (1999) (explaining that state laws banning sex-conscious affirmative action directly conflict with the core constitutional principal of equal protection, and showing how a proper determination may be made regarding what, if any, sex-conscious affirmative action initiatives are necessary and appropriate).
- ⁵¹ 438 U.S. 265, 315 (1978) (striking down the University of California’s affirmative action policies as requiring illegal racial quotas even though race may be used as a factor in admissions decisions). The University’s affirmative action policy included a separate admissions committee for economically and/or educationally disadvantaged applicants and applicants who were of a racial minority, and an exemption for such candidates from the general rule that applicants with a grade point average of less than 2.5 were summarily rejected admission. *Id.*
- ⁵² 448 U.S. 448, 490 (1980) (upholding the “minority business enterprise” provision of the Public Works Employment Act of 1977 because Congress had determined that extensive discrimination occurred within the construction industry and Congress was entitled to judicial deference). The provision required at least ten percent of federal funds granted for public work projects be used to procure services from business owned predominately by racial minorities. *Id.*
- ⁵³ 476 U.S. 267, 296 (1986) (holding a public teachers’ collective bargaining agreement invalid on the ground that there must be convincing evidence of prior discrimination before a public employer can use limited racial classifications to remedy that discrimination). The bargaining agreement protected minority teachers during layoffs and resulted in layoffs of white teachers who had more seniority than some retained black teachers. *Id.*
- ⁵⁴ See Ashutosh Bhagwat, *Affirmative Action and Compelling Interests: Equal Protection Jurisprudence at the Crossroads*, 4 U. PA. J. CONST. L. 260, 262 (2002) (noting that the lack of a majority opinion in cases addressing the constitutionality of benign, race-conscious governmental actions produced confusion regarding the circumstances under which governments were permitted to engage in race-conscious decision making and produced confusion regarding the standard of constitutional review applicable to such decisions). It should be noted here, however, that after declining to revisit the issue of affirmative action in the context of education for 24 years, the Supreme Court granted certiorari for *Grutter v. Bollinger*, 288 F.3d 732 (6th Cir. 2002), *cert. granted*, 123 S. Ct. 617, 154 L. Ed. 2d 514 (2002). The Sixth Circuit reversed the District Court decision in favor of an unsuccessful law school applicant that the University of Michigan’s admissions procedure violated the equal protection clause by giving preference to minority applicants. *Id.* at 735. The Sixth Circuit found that the school has a compelling interest in achieving a diverse student body, and giving minority student’s a plus



- in the admissions process for the purposes of fostering diversity does not violate the equal protection clause. *Id.* at 739, 747. The Supreme Court granted certiorari and at the time of publication, the Court's decision was pending.
- ⁵⁵ 515 U.S. 200 (1995). In *Adarand*, a white subcontractor who was not awarded a portion of a federal highway project brought an action challenging the constitutionality of a federal program designed to provide highway contracts to disadvantaged business enterprises. *Id.* at 210. The subcontractor claimed that a benign racial classification, such as the one at issue, violated the due process clause of the Fifth Amendment. *Id.* The Tenth Circuit affirmed summary judgment in favor of the government but the Supreme Court remanded the case, finding that racial classifications, such as the one at issue, should be examined under strict scrutiny. *Id.* at 227.
- ⁵⁶ Bhagwat, *supra* note 54, at 263.
- ⁵⁷ 78 F.3d 932 (5th Cir. 1996). In *Hopwood*, a class of non-minority applicants rejected by a state university law school challenged the law school's affirmative action admissions program as a violation of the Equal Protection Clause. The school utilized a Texas Index ("TI") number, a combination of undergraduate grade point average and Law School Aptitude Test score, as a basis for admission. *Id.* at 935. In addition, the school considered factors such as the strength of a student's undergraduate education, the difficulty of his or her major, significant trends in the student's grades and the qualities each applicant might bring to the law school class. *Id.* Applicants with a TI number that exceeded a certain threshold were presumptively admitted, while those below were denied. *Id.* at 935–36. The plaintiffs challenged the admission process, contending that the practice of having lower TI thresholds for black and Mexican applicants violated the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 938. The Fifth Circuit, finding for the plaintiff class, noted that "[t]he law school has presented no compelling justification, under the Fourteenth Amendment or Supreme Court precedent that allows it to continue to elevate some races over others, even for the wholesome purpose of correcting perceived racial imbalance in the student body." *Id.* at 934.
- ⁵⁸ *Id.* at 952. Specifically, the court noted that benign racial classifications must be strictly scrutinized, meaning that "the racial classification must serve a compelling state interest and be narrowly tailored to meet that goal." *Id.* at 941. The school's admission program did not serve a compelling state interest of remedying past discrimination because although Texas state actors have discriminated against minorities in the past, there was no evidence that the Law School itself was the offending actor. *Id.* at 948–49. The court noted that "[b]ecause a state does not have a compelling state interest in remedying the present effects of past societal discrimination, however, we must examine the district court's legal determination that the relevant governmental entity is the system of education within the state as a whole." *Id.* at 949.
- ⁵⁹ See *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 355 (D.C. Cir. 1998). The Church challenged a FCC order finding that the Church failed to follow the equal employment opportunity guidelines for hiring minorities at the Church's radio station. *Id.* at 346. Though other positions in the Church did not require Lutheran training, the radio positions did, thus considerably narrowing the pool of minority applicants. *Id.* The Church challenged the FCC's race-based employment program as a violation of equal protection provided by the Fifth Amendment. *Id.* at 345. The Court found that the FCC did not define "diverse programming" and did not establish how race brings diversity in programming and therefore, the interest it intended to safeguard was too abstract and did not meet the equal protection's compelling standard. *Id.* at 354–55.
- ⁶⁰ See *Wittmer v. Peters*, 87 F.3d 916, 920 (7th Cir. 1996). Three white correctional officers who were denied a lieutenant position over a less qualified black applicant challenged the hiring as a violation of equal protection. *Id.* at 917. The boot camp, comprised of 70% black youths but only 6% black correction officers, was designed to rehabilitate young criminals as an alternative to prison and the program's success depended on the inmates taking brutal orders from drill sergeants. *Id.* Using a strict scrutiny standard, the Court found that expert evidence supported the state's argument that the correctional program would not succeed unless there were blacks in positions of authority to get the black inmates to respond to the drills, therefore, the hiring of the black applicant was a compelling interest. *Id.* at 920. This decision did not intend that the employees mirror the composition of the inmates, just that there is some representation. *Id.*
- ⁶¹ *Hunter ex rel. Brandt v. Regents of the Univ. of Cal.*, 190 F.3d 1061, (9th Cir. 1999). The University Elementary School ("UAS") is a research laboratory that determines the needs of California's change in population through its own experiences with a diverse student body. *Id.* at 1062. In order to achieve useful results, UAS employs a specific admissions process aimed at producing a student population that reflects the population of urban public schools, including consideration of factors such as race/ethnicity, gender, and family income. *Id.* The parents of a student applicant who was not admitted to the school based on the race/ethnicity criteria challenged the constitutionality of the admissions process under the Equal Protection Clause of the Fourteenth Amendment, thus triggering the strict scrutiny standard requiring that the Regents show that race/ethnicity is a narrowly tailored means to serve a compelling state interest. *Id.* at 1063. The Circuit Court affirmed the District Court's holding that "the defendants' interest in operating a research-oriented elementary school is compelling." *Id.* at 1064. The Court also found that the use of race/ethnicity in the admissions process is "narrowly tailored to achieve the necessary laboratory environment." *Id.* at 1067.
- ⁶² *Id.* at 1067. Specifically, the Court noted that the State of California's benefit from the school's development of effective techniques for use in urban public schools was a compelling interest and the use of race/ethnicity in the school's admissions process was narrowly tailored to developing those techniques. *Id.* The Court stated that "California has a compelling interest in providing effective education to its diverse, multi-ethnic, public school population . . . [The admissions process] produce[s] research results which can be used to improve the education of California's ethnically diverse urban public school population." *Id.*
- ⁶³ A catalogue of such cases and in-depth analysis of the jurisprudence surrounding "compelling interest" is beyond the scope of this article. For thorough reviews and thoughtful commentary, see Ashutosh Bhagwat, *Purpose Scrutiny in Constitutional Analysis*, 85 CALIF. L. REV. 297, 300 (1997) (noting that in *Adarand Constructors, Inc. v. Peña* the United States Supreme Court held that any discrimination predicated upon race, including that adopted under affirmative action, is to be analyzed under strict scrutiny and therefore obligates the government to present a compelling justification underling such practice and in *Hopwood v. Texas* the Court ruled that a law school admissions policy favoring minority applicants for admission was unconstitutional under the Equal Protection Clause because promoting student diversification "could never qualify as a 'compelling' government interest."). See also Stephen E. Gottlieb, *Compelling Governmental Interests: An Essential But Unanalyzed Term In Constitutional Adjudication*, 68 B.U. L. REV. 917, 919 (1988) (discussing that the notion of "compelling interest lacks a strong textual foundation in the Constitution," which never explicitly mandates or defines the term; rather "some governmental interests can be justified on the basis of penumbras surrounding Constitutional rights..." while others may be rationalized as "among the purposes for which particular governmental powers were authorized.")



- ⁶⁴ See Bhadwat, *supra* note 63, at 308–09 (noting that “[l]egislatures, not courts, have the best institutional ability to identify and assess the efficacy of means. When courts do second-guess legislative choices of this nature, they tend to be either proceeding ad hoc or disguising their true concerns.”); Gottlieb, *supra* note 63, at 937. Gottlieb notes that “the Court’s treatment of governmental interests has become largely intuitive, a kind of ‘know it as I see it’ approach... In turn, this kind of ad hoc approach is suspect as inconsistent, unprincipled, and lacking the impartiality we require from the Court.” *Id.*
- ⁶⁵ 42 U.S.C. § 604a(a)(1)(A)–(B). This section provides “[a] State may administer and provide services . . . through contracts with charitable, religious, or private organizations; and provide beneficiaries of assistance under the programs . . . with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations.” *Id.*
- ⁶⁶ See Sheila Kennedy & Wolfgang Bielefeld, *Government Shekels Without Government Shackles? The Administrative Challenges of Charitable Choice*, 62 PUB. ADMIN. REV. 4 (2002).
- ⁶⁷ See, e.g., John J. Diulio Jr., *The New Civil Rights Struggle*, WALL ST. J., June 23, 2002, at A16. Diulio, a professor at University of Pennsylvania, senior fellow at the Manhattan Institute and former director of the White House Office of Faith-Based and Community Initiatives, noted that “[o]pponents of President Bush’s Faith-Based Initiative has rushed to claim that government funding of faith-based organizations providing social welfare services violated the establishment clause of the first Amendment.” *Id.* He further argued, “in their purported fidelity to constitutional values, they have over looked the implication of an equally important amendment, the 14th.” *Id.* See also Lewis D. Solomon & Matthew J. Vliissides, Jr., *Faith-Based Charities and the Quest to Solve America’s Social Ills: A Legal and Policy Analysis*, 10 CORNELL J.L. & PUB. POL’Y 265, 267 (2001) (stating that some faith-based advocates believe there should be legislation to level the playing field between religious and secular charitable organizations because as the law stands now religious programs are not treated equally).
- ⁶⁸ See Amy L. Sherman, *A Report on Charitable Choice Implementation in 15 States*, (Hudson Institute/Faith in Communities, Charlottesville, VA), 2002, available at <http://www.hudsonfaithincommunities.org/articles/FinalExecSummBroch.pdf>. See also Esbeck, *Constitutional Case*, *supra* note 38, at 26; Lewis D. Solomon & Matthew J. Vliissides, Jr., *Faith-Based Charities and the Quest to Solve America’s Social Ills: A Legal and Policy Analysis*, 10 CORNELL J. L. & PUB. POL’Y 265 (2001).
- ⁶⁹ See Lewis D. Solomon & Matthew J. Vliissides, Jr., *Faith-Based Charities And The Quest To Solve America’s Social Ills: A Legal And Policy Analysis*, 10 CORNELL J.L. & PUB. POL’Y 265, 281 (2001) citing THE CENTER FOR PUBLIC JUSTICE, CHARITABLE CHOICE COMPLIANCE: A NATIONAL REPORT CARD, (Oct. 5, 2000) (reporting that in addition to Massachusetts, the District of Columbia, Mississippi, and Vermont claim Charitable Choice is an option they can ignore), available at <http://downloads.weblogger.com/gems/cpj/50StateRpt.pdf>
- ⁷⁰ See Lauren Fagan, *Indiana Leads in Faith-based Initiatives*, S. BEND TRIB., June 27, 2002.
- ⁷¹ Leslie Lenkowsky, *Funding the Faithful: Why Bush is Right*, 111 COMMENT. 19, 23 (2001) (rebutting the various arguments that have been advanced in opposition to President Bush’s plans for government support of faith-based organizations and offering solutions to alleviate some of the concerns raised).
- ⁷² In testimony before Senate Committee on the Judiciary, John L. Avery of the National Association of Alcoholism and Drug Abuse Counselors (“NAADAC”) focused upon precisely this issue, saying that “NAADAC’s concern is not with who provides care, but rather by what clinical standards that care is provided.” *Faith Based Solutions: What are the Legal Issues?: Hearing on S.304 Before the Senate Committee on the Judiciary*, 107th Cong. (2001) (statement of John L. Avery, Director of Government Relations, NAADAC), available at <http://judiciary.senate.gov/old-site/te060601jla.htm>. As I have written elsewhere, “If FBOs believe insistence upon evidence of clinical competency is discriminatory, and NAADAC believes failure to require such evidence is malpractice, it is no wonder many public administrators feel caught in an untenable situation.” Kennedy, Sheila and Bielefeld, Wolfgang. “Government Shekels Without Government Shackles? The Administrative Challenge of Charitable Choice.” *Public Administration Review*, Jan/Feb. 2002.
- ⁷³ Both secular and non-secular groups oppose Charitable Choice because of fear of discrimination in hiring and provision of services. For example, The Interfaith Alliance has taken a position against Charitable Choice legislation, in part because of the potential for “discrimination toward members of minority faiths and ethnic traditions who are in need of assistance” and “the potential for employment discrimination against non-believers or members of religions differing from that of the provider.” *Position of the Interfaith Alliance on Charitable Choice Legislation*, The Interfaith Alliance, available at www.interfaithalliance.org/Initiatives/ccpos.html (last visited Feb. 4, 2003). The American Civil Liberties Union has also issued statements against faith-based initiatives. See *Latest Government Funding of Controversial Religious Programs One More Reason Not to Pass Faith-Based Plan Without Protections*, American Civil Liberties Union, Oct. 9, 2002, (noting that “[t]he Bush Administration seems determined to ignore Congress and continues to argue that faith-based organizations should have the right to discriminate in hiring against people based on their religion in publicly funded programs.”), available at www.aclu.org/news/NewsPrint.cfm?ID=10854&c=37.
- ⁷⁴ See Paul Taylor, *The Costs of Denying Religious Organizations The Right to Staff On a Religious Basis When They Join Federal Social Service Efforts*, 12 GEO. MASON U. CIV. RTS. L.J. 159, 169–74 (2002) (defending discrimination on the basis of religion in hiring practices).
- ⁷⁵ Kristina A. Diekmann, Ann E. Tenbrunsel & Max H. Bazerman, *Fairness, Justification, and Dispute Resolution*, in WORKPLACE DISPUTE RESOLUTION: DIRECTIONS FOR THE 21ST CENTURY (Sandra E. Gleason ed., 1997).
- ⁷⁶ Regardless of one’s personal opinion on the relative strengths or ills of affirmative action and charitable choice initiatives, the one assertion upon which all groups can agree is that all groups do not agree. See generally *supra* notes 43, 49, 72, 73.
- ⁷⁷ See Anthony M. Bertelli & Laurence E. Lynn, Jr., *A Precept of Managerial Responsibility: Securing Collective Justice In Institutional Reform Litigation*, 29 FORDHAM URB. L.J. 317 (2001). The authors note that “[P]rofessionalism] allows a cadre of professionals—public administrators of human service agencies—to interpret the laws that govern them, and to work towards collective justice—providing adequate services to most beneficiaries at the expense of the constitutional rights of a few.” *Id.* at 332.





CHARITABLE CHOICE ANNOTATED BIBLIOGRAPHY

Alexander, J. (2000). *Adaptive Strategies of nonprofit human service organizations in an era of devolution and new public management.* *Nonprofit Management & Leadership*, 10, 287–303.

This article begins with an overview of life cycle, organizational adaptation and resource acquisition theories emphasizing the fact that issues pertaining to social service nonprofits are poorly elaborated because of the complex structure of the third sector organizations. The analysis of the nonprofit sector adaptation strategies is conducted through a series of longitudinal focus groups in Cuyahoga County, Ohio. Focus groups were composed of executive directors, associate directors and program staff, and were held with each of the three organizational types: traditional/established organizations, community-based organizations and faith-based organizations. As a result, four adaptation strategies have been identified: stretching current revenues to new services and populations; developing business management techniques, extending inter-organizational networks and employing business techniques that maintain the public service character of their organizations. Fiscal pressures also impose other responses such as cutting programs and/or staff, rationing services, or relying more on volunteers.

Alexander, J. (1999). *The impact of devolution on nonprofits: A multiphase study of social service organizations.* *Nonprofit Management & Leadership*, 10, 57–70.

This article is a report of findings from a study of the Cuyahoga County, Ohio nonprofit (501-(c)3 agencies) social service sector. Four types of agencies serving children and youth were included in the study: traditional-, community-, and faith-based, as well as semi-public organizations. Results from the study suggest that the capacity of community- and faith-based organizations to fulfill expectations of government contracts, even if business oriented approaches are adopted, is limited by a lack of financial and human resources. Market orientation toward service provision also presents a conflict for organizations' missions. For these agencies, serving the most needy may result in incurring increased service costs which, in turn, are reflected by poorer performance on outcome measures (a factor which can jeopardize future funding and agency survival). Representatives indicate that agency responses to the changing environment of increased need and reduced funding could include the following: elimination of services and programs, reduction in staff, increased reliance on volunteers, implementation of management reforms, and possibly charging fees for services rendered. These responses are reflective of a general shift in resources from service delivery to administration and management.

Allison C.G., Gay, D.A., & Glass, T.A. (1989). *Does religious commitment contribute to individual life satisfaction.* *Social Forces*, 68, 1.

The purpose of this paper is to specify the relationships between well-being, general life satisfaction, and three dimensions of religiosity—affiliation, participation, and devotion. The study includes a series of analytical models on which life satisfaction is the dependent variable. The proposed models examine the effects of demographic factors, health and trauma, frequency of social contacts, membership in nonreligious groups, religious preference, attendance at religious services, and the degree of devotion.

Althaus, R.P. (1990). *Paradox in popular religion: The limits of instrumental faith.* *Social Forces*, 69, 585–602.

The author develops the instrumental paradox hypothesis stating that “the more instrumentally oriented a person is, the less the psychological or social rewards of religious faith.” Two alternative explanations are given for the reported psychological and social benefits of religion. Respondents were asked to rank in order the relative importance of the factors they believe determine their religiousness. The data used to test the hypotheses consisted of Methodist church members from three adjacent cities in a Southern state.

Ammerman, N. T. (Ed.). (1997). *Congregation and community.* New Brunswick, NJ: Rutgers University Press.

A report of findings and conclusions based on a study of 23 congregations in nine U.S. cities. The study examined interaction between congregations and the communities/ecologies within which they exist, and how they respond to social change. While most congregations often choose to not adapt and thus die as a result of social change, the authors conclude that important lessons can be drawn from the interaction between congregation and community, namely that congregations remain vital elements in civic culture and important institutions in American life.

Anderson, S., Orr, J., & Silverman, C. (2000). *Can we make welfare reform work? The California Religious Community Capacity Study.* Sacramento, CA: California Council of Churches.

The report is a summary of findings from a statewide telephone survey and a qualitative study of faith-based involvement in California's welfare reform programs. The study focuses on the role of faith-based organizations in providing social services with the primary objective of assessing the will and capacity of California FBOs to expand services to welfare-to-work participants. Results of the study pertain to how state and local social service departments engage with the faith community, responses to welfare reform within the community, and what is required for FBOs to expand services. The report also includes results on the scope of congregational services, the degree of demand reported for such services, and perceptions of capacity to meet increased demand. The extent of government funding of congregations and the success rate of these entities to secure contracts are addressed. The authors elaborate on factors that restrict expanding the capacity of congregations as well as circumstances that will augment their capacity.

Bane, M.J. (2001). *Faith communities and the post-reform safety net.* In M.J. Bane, B. Coffin, & R. Thiemann (Eds.), *Who will provide? The changing role of religion in American social welfare* (pp. 178–197). Boulder, CO: Westview Press.

The paper examines the role that churches, and in particular the Catholic Church, played in welfare reform during the 1990s. The reasons behind the limited scope of the Church's participation are analyzed, and a new broader role for the Church is suggested.

Bane, M.J., Thiemann, R. & Coffin, B. (Eds.). (2001). *Who will provide? The changing role of religion in American social welfare.* Boulder, CO: Westview Press.

This paper discusses a range of perspectives offered by leading scholars regarding the current debate of government, church, and community organizations working together. It provides a broad framework of issues and addresses the question of where responsibility for social provision lies. Chapters also trace the history of social programs and voluntary and religious organizations.



Bartkowski, J. P., & Regis, H. A. (1999). *Religious organizations, anti-poverty, and Charitable Choice: A feasibility study of faith-based welfare reform in Mississippi*. Arlington, VA: Pricewaterhouse Coopers Endowment for the Business of Government.

The report is based on in-depth interviews with religious leaders representing 30 faith communities in a rural area of northeastern Mississippi. Religious leaders were found to promote a “holistic” approach to social service provision that addresses the material and non-material (moral development and spiritual needs). The four categories of assistance by religious communities are outlined in the report: (1) intensive, long-term interpersonal engagement; (2) intermittent direct relief; (3) collaboration with “para-church” relief agencies; and (4) short-term distance missions.

Most of the religious leaders in the sample claim awareness of Charitable Choice, and some named it specifically. Overall, respondents demonstrated a favorable attitude, while some had reservations and others exhibited “profound ambivalence” toward the provision. The authors suggest that pastoral attitudes toward Charitable Choice are associated with certain interrelated factors:

- evaluations of previous relief efforts and congregational-denominational characteristics (church structure and decision-making processes),
- attitudes regarding ethnicity, the poor, and social inequality (Leaders are more favorable toward the provision if they believe that racial and class barriers can be overcome through faith-based efforts. Black pastors were more favorable than some White pastors who indicated that attitudes within their congregations could impede efforts.),
- beliefs about government efforts to alleviate poverty.

Benson, P. & Spilka, B. (1973). *God image as a function of self-esteem and locus of control*. *Journal for the Scientific Study of Religion*, 12, 297–310.

On a sample of 128 Catholic subjects with approximately identical religious backgrounds, the study establishes and explains a theoretical model that makes personality-religion relationships more understandable. The research explores three hypotheses: self-esteem is positively related to loving God-images; self-esteem is negatively related to rejecting or non-loving images; and external control is related positively to controlling God-images.

Berrien J., McRoberts, O. & Winship, C. (2001). *Religion and the Boston miracle: The effect of Black ministry on youth violence*. In M.J. Bane, B. Coffin, & R. Thiemann (Eds.), *Who will provide? The changing role of religion in American social welfare* (pp 178–197). Boulder, CO: Westview Press.

The article begins with the story of the “Boston Miracle.” Between 1990 and 1999, Boston’s homicide rate dropped by a full 80 percent due to a strong partnership between the city’s police and probation departments and a group of Black churches known as the Ten Point Coalition. Based on interviews with the Black churches leaders, the authors examine why community leaders may have been an important contributor to reducing homicide rates.

Blaine, B. & Crocker, J. (1995). *Religiousness, race, and psychological well-being: exploring social psychological mediators*. *Personality and Social Psychology Bulletin*, 21, 1031–1041.

This study examines: (1) whether the relationship between religiousness and psychological well-being differ between Black and White individuals; and (2) what are the social psychological mediators of this relationship. Those relationships were examined in a sample of 66 Black and 59 White university students. Measures include religious belief salience, religious attributions, religious participation, collective self-esteem, and psychological well-being.

The results indicate that religious belief promotes psychological well-being among Black, but not White, individuals. The results further suggest that the influence of religious belief provides individuals with attributions that enhance the meaning of life events, as well as the extent to which people positively evaluate their religious group or affiliation.

Bolduc, G. R. (1984). *A study of the impact of government participation on the program planning and delivery of Catholic social services*. Unpublished doctoral dissertation, Catholic University of America, Washington, DC.

Bolduc examined the impact of public funding on Catholic Charities (CC) and focused on issues of autonomy and identity. He found that the basic mission was unaffected by public support, but that agency executives still feared loss of autonomy, particularly as the portion of their budgets which were government funded approached 50 percent. (Overall government support of CC programs increased from 15 percent of budgets in 1960 to 50 percent in 1984.) Those agencies that received a significant amount of public funding (in excess of 75 percent of budgets) and those with little or no government support indicated less apprehension about loss of independence.

Some of the author’s findings were based on comparisons drawn between CC agency executives and public administrators of Title XX:

- Public administrators believed that the separation of church and state precluded public funding of social services.
- A significant percentage of CC administrators believed that pluralism justified public funding of voluntary social welfare agencies. The opposite was true for Title XX executives.
- Public administrators emphasized accountability and control, while their CC counterparts stressed cooperation.
- A significant number of public administrators believed that private agencies should operate exclusively with private support. The exact opposite was true for the majority of CC representatives.

Brown, D. M. & McKeown, E. (1997). *The poor belong to us: Catholic Charities and American welfare*. Cambridge, MA: Harvard University Press.

An historical account of the development of Catholic Charities and its evolution from its local and volunteer origins to a centralized and professionally trained workforce that has played a prominent role in the development of American welfare.

Carlson-Thies, S. (1999). *Faith-based institutions cooperating with public welfare: The promise of the Charitable Choice provision*. In D. Davis, & B. Hankins (Eds.), *Welfare reform & faith-based organizations* (pp. 29–60). Waco, TX: J. M. Dawson Institute of Church-State Studies.

The author argues that Charitable Choice begins to fulfill the need for ways to expand the role of nongovernmental organizations, including faith-based organizations, in the social welfare system. He outlines principles and rules of the provision that should govern the relationship between FBOs and government. Charitable Choice, he contends, creates new ways for the government to relate to FBOs which protect religiously distinct social service providers from threats posed by cooperating specifically with government entities, while protecting the rights of vulnerable populations served by these organizations.



Chambre, S. M. (2001). The changing nature of “faith” in faith-based organizations: Secularization and ecumenicism in four AIDS organizations in New York City. *Social Service Review*, 75, 435–455.

An exploratory study of four AIDS organizations in the New York City area and the changing nature of “faith.” The author examines the extent to which organizations adhere to their religious orientation. The paper concludes that while all four continue to honor their religious roots, two became “secularized” and two incorporated a more personalized, ecumenical form of faith. Sources of change include lack of funding for religious activities, changing client populations, leadership, and stakeholders.

Campbell, D. (2002). Beyond Charitable Choice: The diverse service delivery approaches of local faith-related organizations. *Nonprofit and Voluntary Sector Quarterly*, 31, 2.

The study profiles eight faith-based organizations. Three basic categories of faith-related organizations have been identified in this sample. Their respective approaches to who is being served and how are compared.

Charitable Choice compliance: A national report card. (2000).

Annapolis, MD: The Center for Public Justice. Retrieved October 2000, from [www.cpjjustice.org/stories/storyReader\\$296](http://www.cpjjustice.org/stories/storyReader$296)

This report is based on a survey administered to state officials around the nation regarding implementation of the Charitable Choice provisions of the 1996 welfare reform legislation. States are graded from A through F for compliance with Charitable Choice requirements (as of summer 2000).

Chaves, M. & Higgins, L. M. (1992). Comparing the community involvement of Black and White congregations. *Journal for the Scientific Study of Religion*, 31, 425–440.

This paper presents results of a comparative analysis of a sample of Black and White congregations. Black and White congregations are found to participate in different sorts of secular activities. Black congregations are not more active in secular activities in general, but are more active in certain types of activities such as serving underprivileged members of their communities or engaging in human rights activity.

Chaves, M. (1999). Religious congregations and welfare reform: Who will take advantage of “Charitable Choice?” *American Sociological Review*, 6, 836–846.

Using data collected from the National Congregations Study Survey (1998), the author examines to what extent congregations are willing to use the funds made available as a result of Charitable Choice legislation and which congregations are eligible to apply for funding. Key findings relate to several factors, including the congregations’ size, ethnic composition, regional considerations, and degree of secular integration.

Chaves, M. (1999). Congregations’ social service activities. *Charting Civil Society*, 6.

The article presents additional findings from the National Congregations Survey (1998) on participation in and extent of social service provision, the effect of location or class composition on willingness to apply for government funding, and use of volunteers.

Chaves, M. & Tsitsos, W. (2000). Are congregations constrained by government? Empirical results from the National Congregations Study. *Journal of Church and State*, 42, 335–344.

This paper presents evaluation (using data from the 1998 National Congregations Study) of the extent to which religious congregations are constrained in their activities by governmental regulations. The article also offers an assessment of the need for additional legal protection of religious activity.

Chaves, M., & Tsitsos, W. (2001, Spring). Congregations and social services: What they do, how they do it, and with whom? (Nonprofit Sector Research Fund Working Paper Series). Washington, DC: The Aspen Institute.

The authors build two hypotheses about congregations and social service provision. The first hypothesis assumes that the focal point of religious providers is personal transformation which provides lasting solutions to poor people’s problems. The second hypothesis states that religious groups have a unique approach, which is an alternative to social services delivered by government agencies, and that this alternative approach may be undermined by collaboration with such agencies. Results support neither assumption.

Chaves, M. (2001). Religious congregations and welfare reform. *Society*, 38(2), 21–28.

The paper describes the findings from the 1998 National Congregations Study (NCS) based on a survey of a nationally representative sample of 1,236 religious congregations. The study indicates that although 57 percent of the congregations participate in some sort of social service delivery, there is variation in the intensity of their involvement. One measure of that involvement is the number of programs they have under their own auspices. The results show that 12 percent run food programs of their own, and fewer than 5 percent run either housing or homeless programs of their own. Of those providing social services, only 12 percent have a staff member assigned to the projects. The survey also indicates that congregations prefer some types of projects to others. Some 33 percent of the congregations have food-related projects, 18 percent have housing and shelter projects, and 11 percent have clothing projects. Projects dealing with health, education, domestic violence, mentoring, substance abuse and work issues are less common. The study proves that larger congregations and those located in poor neighborhoods are most active. On the other hand, congregations with more middle class people in them provide more social services than those with poor people in them. The study also questions the congregations’ interest in expanding social service delivery through the funding opportunities prompted by the Charitable Choice.

Cnaan, R. & Milofsky, C. (1997). Small religious nonprofits: A neglected topic. *Nonprofit and Voluntary Sector Quarterly*, (suppl), 26, S3–S13.

The article begins with the definition of small religious nonprofits by specifying the terms “small,” “religious,” “nonprofit,” and “organization.” Subsequently, it highlights the role and the share of the small religious nonprofits in social services delivery.

Cnaan, R., & Boddie, S.C., & Wineburg, R.J. (1999). The newer deal: Social work and religion in partnership. New York: Columbia University Press.

The book clarifies the role of the religious social services providers focusing on their differences and similarities with the rest of the social work community. It provides theoretical



and methodological overview focusing on relevant issues and key factors. It examines the theological background, the history, and current state of the religious-based social services. It supports its findings with local studies in Greensboro and Philadelphia. The last part discusses issues involved in Charitable Choice and puts forward recommendations for how the different social service providers might have better collaboration in the process of helping those in need. The book includes typology of religious-based organizations based on the size of the organization and the size of the geographical area for which they provide services.

Cnaan, R. (2000). *Keeping faith in the city: How 401 urban religious congregations serve their neediest neighbors*. Philadelphia: Center for Research on Religion and Urban Civil Society, University of Pennsylvania.

This is a report of findings from a study of 401 Philadelphia-based congregations. Among the topics addressed are the scope and nature of social and community programs, sources of support, who provides services, beneficiaries, degree of awareness of government policies such as Charitable Choice and programs such as AmeriCorps by congregations, the level of various types of partnerships, and rough estimates of the monetary “replacement value” of congregational programs.

Cnaan, R.A. & Boddie, S.C. (2002). Charitable Choice and faith-based welfare: A call for social work. *Social Work, 47*, 224–236.

The article outlines important features of the Charitable Choice provision and how it legitimizes the role and integrity of faith-based organizations in social service delivery. It summarizes some political standpoints and reviews the prospects for future political support for Charitable Choice. It also discusses recent research on the effects of Charitable Choice dividing available studies into two categories: (1) those assessing awareness and interest of congregations regarding Charitable Choice, and (2) those measuring the scope of the new partnerships between the public sector and the religious community. It stresses the need for further analysis of faith-based organizations’ ability to grow, incorporate public funds efficiently, evaluate programs and forms of collaboration, and acquire the best practices.

Coughlin, B.J. (1969). *Church and state in social welfare*. New York: Columbia University Press.

This work stems from findings of a 1965 survey of 406 sectarian (Jewish, Protestant, and Catholic) agencies in 21 states and examines the role of “voluntary welfare” in overall welfare programs. At the time of the study, 70 percent of the agencies were involved in some type of purchase-of-service contract with government, with increasing interest in expanding programs and in exploring collaborative arrangements with government.

Key findings:

- Church leaders expressed uncertainty about the role of their institutions in modern society and about the nature of the relationship between religion and government.
- Most agencies in the study had no policy regarding receipt of public funding, but when they did exist, agencies almost always accepted support. Roughly, 70 percent had contracts with the government. Protestant groups had the greatest degree of variation and ambiguity in policy. They tended to oppose government support but recognized practical reality.
- Government support of some agencies accounted for as much as 50 percent of their budgets. Catholic organizations tended to be more heavily supported than Protestant and Jewish counterparts.
- Protestant and Catholic services were provided under the auspices and organiza-

tion of the church while Jewish services were more autonomous.

- Protestant executives were concerned about subsidization of sectarian agencies and violation of church-state separation.
- From the Catholic perspective, government was viewed as an enabler of voluntary effort. This was similar to Jewish agency representatives who expressed little fear of government cooperation and support.
- All three groups were more concerned about the effect of subsidies on autonomy than about the issue of separation of church and state and constitutional issues.

De Vita, C.J., Printz, T.J., & Twombly, E.C. (1999). *Report to the Human Services Faith-Based Organizations Task Force, findings from the Survey of Community Services of Faith-Based Organizations in New Jersey*. Center on Nonprofits and Philanthropy. Washington, DC: The Urban Institute.

The Task Force study includes two separate surveys. The first survey assembled comprehensive information on faith-based service programs and compiled an inventory of available services. The second survey developed a needs assessment tool for houses of worship and faith-based organizations in New Jersey. The study found increased activity among faith-based organizations in providing social services to their communities. The efforts, however, tend to focus mostly on short-term emergency services such as food, clothing, and financial assistance. Far fewer faith-based providers help their clients in moving out of the welfare system or in building community infrastructure. A geographic analysis of the data indicates that employment and training or housing services are offered predominantly in counties where the poverty rate is above the state average. Additional analysis is recommended in planning for future partnerships with the faith-based community.

Edin, K., & Lein, L. (1998). The private safety net: The role of charitable organizations in the lives of the poor. *Housing Policy Debate, 9*, 541–573.

Data in the report were gathered from in-depth interviews with low-income single mothers (welfare-reliant and low-wage working) in four urban areas around the country, (Boston, Charleston, Chicago, and San Antonio) representing variations in welfare benefits, labor market, and cost of living. Findings support the role of nonprofit social service agencies in low-income women’s “economic survival strategies,” yet not sufficient to replace the public safety net. Other findings include:

- Women from poor neighborhoods receive significantly less discretionary cash and voucher assistance from agencies than women from mixed-income neighborhoods.
- Almost all participants felt they had something to hide from the government.
- Agencies’ services were designed primarily to meet non-recurrent emergencies.
- Less than one-third of families had received cash assistance in the last year, but two-thirds had received in-kind assistance, mostly food and clothing.
- Most of the women/families in the sample maintained contact with more than 12 organizations in a given year and used multiple agencies.
- Each agency/program has specific eligibility criteria, “stigma costs,” and rules about how often a family/individual could be served. These policies tend to generate mistrust and favor clients who exhibit preferable social characteristics.



Esbeck, C. H. (1996). *The regulation of religious organizations as recipients of governmental assistance.* Religious Social Sector Project. Annapolis, MD: The Center for Public Justice.

This article explores how Charitable Choice provisions affect the autonomy of religious organizations engaged in social welfare and educational activities. The author examines the various types of regulatory constraints imposed as a condition of governmental assistance. Finally, the author comments on constitutional issues such as whether the financial assistance regulations violate the First Amendment freedom of religious institutions, or whether religious institutions receiving governmental financial assistance are "state actors."

Esbeck, C. H. (1997). A constitutional case for governmental cooperation with faith-based social service providers. *Emory Law Journal*, 46, 1–42.

Esbeck argues for the constitutionality of government funding of faith-based social services. In this article, he provides an overview of Supreme Court cases and decisions within the framework of separationism and the neutrality or equal treatment principle. He asserts that strict church-state separationists often place the First Amendment's Establishment Clause in opposition with the Free Exercise Clause. It is his contention that if the Establishment Clause is interpreted along the lines of the neutrality principle, then faith-based organizations are not required to censor their religious expression if they contract with the government and that the standard for neutrality is equal treatment, not disengagement. Furthermore, to bar religious groups from benefits that secular entities enjoy is discriminatory. He maintains that First Amendment principles can be upheld as long as the objective of the organization is the general betterment of society and all providers, religious and secular, have access to the program.

Farnsley II, A. E. (2000). *Ten good questions about faith-based partnerships and welfare reform.* Indianapolis: Indiana University–Purdue University Indianapolis, the Polis Center.

The author examines the arguments for expanding faith-based participation. Among them are less bureaucracy and greater efficiency, greater familiarity with local circumstances, and the ability to make nuance judgments. He asserts that faith-based groups provide moral teachings and spiritual values that are not addressed by the traditional welfare system. The author also discusses the administrative capacity of those organizations necessary to work in the service arena with public funds and the issue of what resources those groups possess and how they match the objectives of the new initiative. Among other topics addressed are religious context, communication between faith communities, government, and civic groups, and the organizational roles within these new partnerships.

Farnsley II, A. E. (2000). Congregations, local knowledge, and devolution. *Review of Religious Research*, 42, 96–100.

The article presents results of ongoing research conducted in Indianapolis. In order to illustrate some of the variables that are critical to better understanding of the socio-religious context, the author provides a closer examination of two similar neighborhoods, including analysis of similarities and differences in "social networks" and resources. The identification and contextual analysis of key variables, both organizational and environmental, are useful in explaining variations in faith-based community building.

Farnsley II, A. E. (2001). Can faith-based organizations compete? *Nonprofit and Voluntary Sector Quarterly*, 30(1), 9–11.

The author argues that the welfare reform related to the Charitable Choice provisions of 1996 is drawing smaller faith-based groups, especially congregations, into the social service arena. However, these newcomers face many difficulties in responding to requests for proposals and the application process. The findings are based on analysis of 105 applications (70 from faith-based groups) presented to the Indianapolis Mayor's office. The findings focus on which religious organizations applied, the quality of applications and religious content, and the relationship between application quality and funding success. The discussion suggests differences between new initiatives meant to create a level playing field for faith-based groups and those meant to encourage their participation.

Freeman, R. B. (1985). *Who escapes? The relation of church-going and other background factors to the socio-economic performance of Black male youths from inner city poverty tracts.* (Working Paper Series #1656). Cambridge, MA: National Bureau of Economic Research.

Freeman examines the effect of church attendance and other aspects of background on time allocation, social behavior, and work force behavior among inner city youth (using data from the 1979–80 National Bureau of Economic Research–Mathematica survey of inner city Black youth, and a national longitudinal survey of young men). His primary conclusion is that there is sufficient diversity of backgrounds even in similar inner city areas for certain aspects to be good indicators of "who escapes" poverty.

Freeman concludes that church attendance is associated with considerable differences in behaviors of young Black males from high-poverty neighborhoods and thus their chances to "escape." Church attendance, he maintains, affects time allocation, school attendance, work activity, and socially deviant behavior among this population. Other factors examined include whether family members are working or are on welfare and youths' perceptions of work opportunities; both, he argues, influence youths' activities and time allocation.

Friedman, J. (1997). Charitable Choice and the Establishment Clause. *Georgetown Journal on Fighting Poverty*, 5, 103.

The subject of this review is whether Charitable Choice violates the Establishment Clause. The author addresses key provisions of Charitable Choice, an analysis of Establishment Case Law, a review of the legislative history of the law and finally, an assessment of how the Supreme Court is likely to rule on Charitable Choice. He concludes that Charitable Choice is inconsistent with the court's jurisprudence and that it will invalidate provisions that allow for states to contract with faith-based organizations, but will uphold voucher programs. He asserts that ultimately the court will be compelled to decide what constitutes public funding of religion.

Gilmour, R. S. & L. S. Jensen. (1998). Reinventing government accountability: Public functions, privatization, and the meaning of "state action." *Public Administration Review*, 58, 247–258.

Privatization is, for many, the contemporary answer to inefficient government administration. But when public functions are relegated to the nongovernmental sector, more is altered than mere organizational arrangements to promote governmental economy. While such transfers may offer efficiencies, they may simultaneously enable government and its officials to escape legal responsibility for actions that are permitted, encouraged, controlled, or paid for by the state. The rights of citizens at the hands of official authority are protected by the constitution and an array of public laws; at the hands of private parties, very different and less protective rules apply. This article makes the case that contemporary judicial



treatment of the transfer of government authority to “private” third parties, though inconsistent, is implicated in a wholesale loss of government accountability. The authors argue that the existence of an effective public accountability scheme requires a coherent understanding of “state action”—both before and after privatization decisions. Toward that end, they outline a four-step inquiry for the recognition of state responsibility so that government accountability is assured and citizen rights are preserved.

Greenberg, A., (2001). Doing whose work? Faith-based organizations and government partnerships. In M.J. Bane, B. Coffin, & R. Thiemann (Eds.), *Who will provide? The changing role of religion in American social welfare* (pp. 178–197). Boulder, CO: Westview Press.

This article describes the forms of government funding and religious partnerships, carefully distinguishing between congregations and national denominational charities, which are the traditional providers of faith-based services. The author discusses the way state and local communities have responded to innovations in federal and state approaches to welfare reform. Finally, he attempts to describe a number of important factors related to mission, capacity, and politics that explain the reluctance of congregations and faith communities to engage in public/private partnerships.

Grettenberger, S. (1997). Churches as a resource for human services and social capital development: A survey of West Michigan Conference of the United Methodist Church. Unpublished doctoral dissertation, Michigan State University, East Lansing, Michigan.

The author researched the nature and extent of service provision by congregations of United Methodist Churches of Michigan and their potential to provide more human or social services. Representatives of churches in the study area were mailed surveys, and of those who responded, the majority indicated they would be willing to increase human service programs, primarily services for children and youth. Grettenberger found that services were primarily provided in response to emergencies. More than half of these churches reported an increase in requests for assistance, and most reported that they could meet increased need to some degree, but not to a great extent. Respondents’ answers reflect a reluctance to serve stigmatized populations. Roughly, 40 percent indicated they would not be interested in serving the gay and lesbian population and only about 13 percent indicated they would be interested in serving welfare recipients.

The author argues that congregations do not possess the necessary resources to implement services, and that additional, external inputs are needed in the form of financial and technical assistance. Congregations would be able to assist in already established programs. She recommends that if state agencies do approach congregations, matching the theological orientation of the congregation to the particular cause/program would be beneficial. She concludes that congregations in the study may serve as a source of additional services for “clearly-defined” populations.

Gronbjerg, K. A., & Nelson, S. (1998). Mapping small religious nonprofit organizations: An Illinois profile. *Nonprofit and Voluntary Sector Quarterly*, 27, 13–31.

This article is a report of findings from a 1991 survey of Illinois nonprofit human service organizations. From the outset, the authors suggest that further researcher is needed, particularly since these entities tend to be invisible given their size and that religious affiliation reduces the need for formal tax-exempt status. The paper provides a summary of organizational characteristics (mission and types of services provided, target population, year established, and IRS status), financial characteristics (with supporting data for argument that these agencies are more vulnerable financially), nature of relationships with religious congregations, and organizations’ governance structures.

Gronbjerg, K. A. (1997). Transaction costs in social service contracting: Lessons from the USA. In Perri 6, & J. Kendall (Eds.), *The contract culture in public services: Studies in Britain, Europe, and the USA* (pp. 99–118). Brookfield, VT: Arena.

This article details the considerable transaction costs associated with contracting in the U.S. context. Addressed are the nature of transaction costs and their benefits, the impact on nonprofit organizations of contracting with the government and the consequences of the particular pattern of contracting in the United States. Aspects of the transaction costs for contracting agencies include the time and effort involved in tracking the political process and developing and maintaining contacts at the government level; the need to cope with limited discretion due to monitoring and enforcement from government entity; the rigors and requirements of managing contracts; reduced funding for same level of service; cost sharing (supplementing contracts from organizational resources); constraints on agencies by payment lags; and the complexities of the funding patterns and reporting requirements that make it difficult for organizations to “develop co-coordinated, integrated service systems.” In order to meet reporting requirements, agencies specialize in the types of contracting they engage in and will tend to adopt organizational structures that parallel public funders. The consequences of specialization within an agency are a reduced ability to effectively coordinate and evaluate efficacy.

Transaction benefits include the legitimacy and recognition of nonprofits’ capacity to provide services as well as their strategic importance; a significant and predictably secure source of funding; and transferable skills gained from securing and managing contract funds that require a certain level of management capacity. In addition, agency representatives acquire political power by virtue of the fact that they have to keep apprised of developments, can take advantage of new opportunities, and may be in circumstances where they can exert influence or leverage. They are often included in planning stages of public policy which increases the “legitimacy and visibility” of their organizations.

Hall, L. M. (2002, April). Keeping the faith: The impact of religious affiliation on goals and linkages in small religious nonprofit organizations. Presented at the Sixth International Research Symposium on Public Management, University of Edinburgh, Scotland.

This article reports findings from a study of small, religious, nonprofit organizations using data collected from a national mail survey of 360 organizations that received funding from the Campaign for Human Development of the National Conference of Catholic Bishops. It includes evaluation of inter-organizational relations and linkages, organizational behavior, and degree of religious affiliation.

Hangley, B.J., & McClanahan, W.S. (2002). Mustering the armies of compassion in Philadelphia: An analysis of one year of literacy programming in faith-based institutions. Philadelphia: Public/Private Ventures.

This study examines the effectiveness of a literacy model, known as Youth Education for Tomorrow (YET) Centers, established to complement in-school reading instruction. The objective is to find out whether a diverse group of independent faith-based institutions could collectively deliver an effective service. The study also reports the YET Centers’ measurable achievements: how many children were recruited and retained, and what kind of results they achieved in the classroom. The sites’ similarities, differences and overall experience are also discussed.



Harris, M. (1995). Quiet care: Welfare work and religious congregations. *Journal of Social Policy*, 24, 53–71.

This study of four religious programs in England illustrates patterns congruent with U.S.-based studies of religion-sponsored social services. Data was collected from in-depth semi-structured interviews with congregational representatives and includes perceptions of clergy, lay employees, and members about organizational features and problems.

The author identifies six types of “welfare work”:

- Welfare projects are funded by the congregation and operated by volunteers.
- Indirect welfare work includes referrals to outside agencies and funding of outside programs (religious and secular).
- Informal care or “quiet care” refers to leaders and staff identifying people in need and communicating this to other members who respond by assisting in an unobtrusive manner.
- Informal care provided in an organized framework tends to be more professionally oriented and formal, e.g. prison visitation.
- Mutual aid refers to the assistance and “care” that members provide one another.
- Social integration encompasses religious, educational, social, welfare or administrative activities within the congregation.

The authors also outline distinct features of congregational welfare work as follows:

- Religion provides the motivation and guidelines regarding individual responsibility. Religious and welfare principles are similar and, in fact, may be indistinguishable from one another.
- Setting priorities and boundaries is difficult as welfare activities are only part of a broader mission and compete with other aspects of congregational life.
- Continuity of care is problematic at times as congregations experience problems in sustaining welfare activities long term. Recruiting and retaining staff to work on a regular basis is an ongoing concern. Programs rely on volunteers’ commitment and dedication.

The following factors were found to limit the extent to which formal projects can be sustained:

- Competition for resources within the congregation.
- Program longevity/continuity is dependent on the enthusiasm and personal circumstances of one or two dedicated individuals.
- Untrained and unsupported volunteers may be faced with complex social problems.

Harvey, T. J. (1997). Government promotion of faith-based solutions to social problems: Partisan or prophetic? (Nonprofit Sector Research Fund Practitioner Viewpoint Series). Washington, DC: The Aspen Institute. Retrieved February 11, 2003, from www.orgitecture.com/aspen/publications1526/publications_show.htm?doc_id=19976

This report presents the historical influence of religion on views of the poor, and tackles the question of whether faith-based groups should expand their roles defined by government. Of particular concern to the author are two initiatives: the special tax credit for charitable contributions to nonprofit organizations serving low-income people, and the Charitable Choice provision. With respect to Charitable Choice, the author is concerned on two fronts—one, the constitutional challenge that will consume valuable time and resources and two, the illusion that new involvement of religious groups replaces the need for government. He also argues that public policy and programs that emerge from the political process tend to reflect vested interests rather than concern for the common good.

Heinrich, C.J. (2000). Organizational form and performance: An empirical investigation of nonprofit and for-profit job-training service providers. *Journal of Policy Analysis and Management*, 19, 233–261.

This is a study of local, publicly funded job-training service providers that finds no empirical support for the assumption that nonprofit organizations are more altruistic than for-profit organizations or more likely to deliver better job-training services. The paper begins with a discussion of theories of organizational form or structure supported by some empirical evidence, followed by a description of the organizations studied and data used in this research. The next section provides an overview of the research questions and statistical methodologies applied, followed by the discussion of empirical findings.

Hodgkinson, V. A., & Weitzman, M. S. (1993). From belief to commitment: The activities and finances of religious congregations in the United States. Washington, DC: Independent Sector.

The book reports findings of a 1992 national survey of the activities and finances of religious congregations. The survey serves as an update to a previous one conducted in 1987. It also augments information from a larger survey of private, nonprofit, and charitable organizations. Items covered include: congregation size, demographics and membership, location, variety of programs offered and their total revenues and sources, expenditures, volunteering activities, and programs operated directly and indirectly through contributions and voluntary service.

Jackson L. E., & Coursey, R. D. (1988). The relationship of God control and internal locus of control to intrinsic religious motivations, coping and purpose in life. *Journal for the Scientific Study of Religion*, 27, 399–410.

Four hypotheses are tested using a combination of Pearson product-moment correlations and hierarchical and stepwise multiple regression analyses. The sample is drawn from the members of a Baptist church in the Washington, D.C. area. The first hypothesis tests the relationship between God control and locus of control. The second hypothesis states that within the high God-control group, there is an internal-external locus of control scale. Hypotheses three and four focus on purpose of life and intrinsic religious motivation.

Jeavons, T. H. (1998). Identifying characteristics of “religious” organizations: An exploratory proposal. In N. J. Demerath III, P. D. Hall, T. Schmitt, & R. H. Williams (Eds.), *Sacred companies: Organizational aspects of religion and religious aspects of organizations* (pp. 79–96). New York: Oxford University Press.

This chapter explores the definition of “religious” organization and addresses the confusion and implication of categorizing certain organizations as religious. The author offers seven helpful criteria for determining organizations’ degree of “religiousness.”



Johnson, B.R. (2001). *The role of African-American churches in reducing crime among Black youth.* (CRRUCS Report #2001–2).

Center for Research on Religion and Urban Civil Society, University of Pennsylvania and Center for Civic Innovation, Manhattan Institute.

The study tests a hypothesis about the constraining effects of church attendance on crime among African-American youth. A second hypothesis examines the effects of neighborhood disorder on increasing crime among Black youth. It is noted that the direct impact of neighborhood disorder initially observed was reduced when religious involvement was included in the model. It asserts the consistency of the finding that church attendance weakens the severity of the effects of neighborhood disorder on youth behavior by partly mediating those effects.

Kennedy, S. S. (2001). *When is private public? State action in the era of privatization and public-private partnerships.* *George Mason Civil Rights Law Review*, 11, 203.

The Bill of Rights applies only to the government; that is, there must be state action in order to find a constitutional infringement. By “reinventing” government, we have created mutants and hybrids, neither public nor private, and in the process have seriously compromised both the state action doctrine and basic constitutional protections. Constitutional jurisprudence has not satisfactorily confronted this reality. The court must fashion a coherent jurisprudence that will safeguard the distinction between public and private and thus protect constitutional liberties without engulfing truly private enterprises.

Kennedy, S.S. (2002). *Privatization and prayer: The case of Charitable Choice.* Manuscript submitted for publication.

As President Bush plans to expand “Charitable Choice,” civil libertarians worry that the legislation is part of a new assault on separation of church and state. Religious Right activists demand assurances that funds will not flow to groups like the Nation of Islam or Scientologists. African American pastors in urban areas—arguably the main targets of the initiative—are concerned that “government shekels” will be accompanied by “government shackles,” that the costs and regulatory burdens accompanying collaborations with government will divert resources from client services and mute their prophetic voice. Caught in the middle are public managers, who must make the legislation work in the face of significant administrative challenges. Those challenges occur in three areas: contracting procedures, contract administration, and evaluation. In each of these categories, political realities and constitutional constraints will significantly complicate the manager’s job.

Kennedy, S. S. (2001). *Social responsibility, accountability, and U.S. welfare reform: The context of America’s faith-based initiatives.* Manuscript submitted for publication.

The “Charitable Choice” provisions of 1996 welfare reform legislation inaugurated a policy debate that continues with President George W. Bush’s “faith-based initiative.” Proponents of greater religious involvement in social service provision argue that “faith-based” organizations have untapped resources, that they have encountered unnecessary barriers to participation, and that they are more effective than are government or secular contractors. Opponents note the absence of evidence of greater efficacy, the historic involvement of religious providers like Catholic Charities, Lutheran Social Services, and the Salvation Army, and the absence of additional funding, and charge that the new rules are merely an effort to erode the constitutional separation of church and state. Public administrators are left with a number of thorny questions: how to identify and recruit the “faith-based organizations” targeted by these initiatives, how to evaluate and augment their capacity to deliver services, and how to encourage their increased participation while adhering to constitutional principles.

Kennedy, S. S. (2001). *Social responsibility, accountability, and U.S. welfare reform: The context of America’s faith-based Initiatives.* Manuscript submitted for publication.

The history of welfare in the United States is a history of ambivalence about the nature of our social obligation to the poor, the identification of appropriate vehicles through which we should discharge those responsibilities, and the degree of accountability we should demand from nongovernmental social service providers. Accountability is problematic when there is not clarity of expectations or agreed-upon goals, and that lack of clarity has long been a characteristic of social welfare in the United States.

Kennedy, S. S. (2001). *Redemption or rehabilitation? Charitable Choice and criminal justice.* Manuscript submitted for publication.

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act, reforming welfare “as we know it.” Among the provisions of that bill was a “Charitable Choice” requirement that states contract with faith-based social service providers on the same basis as they contract with other nonprofits. “Pervasively sectarian” organizations were not to be discriminated against; such providers were permitted to maintain hiring policies based upon their religious dictates and could not be required to divest the premises where services were delivered of religious iconography.

In many contexts, such partnerships long preceded the legislation, and present relatively few constitutional problems. In the criminal justice arena, however, Charitable Choice raises thorny issues. Drug rehabilitation programs, prison ministries, and the like are more than “faith-based”—they are faith-infused. This paper considers the difficulties posed by the legislation to public administrators charged with responsibilities in these sensitive areas.

Kniss, F., & Campbell, D.T. (1997). *The effect of religious orientation on international relief and development organizations.* *Journal for the Scientific Study of Religion*, 36, 93–103.

This article addresses the question of whether religious orientation matters in policies and programs of international relief and development organizations. Along with descriptive reports, the authors include findings on the effect of religion on program policy and program justification. Using organizational data and surveys from American religiously based organizations, the authors found that religious tradition made little difference in the size and activities of programs. The authors found from analysis of mission statements and program descriptions that the most significant difference between religious organizations is in how they legitimate their activities. Mainline and Protestant ecumenical groups are more likely to distinguish between “religious” programs and “secular” relief and development. Evangelical churches are more likely to blur the boundaries between program/service delivery and proselytizing activity.

Kramer, D. F., Nightingale, D. S., Trutko J., Spaulding, S. & Barnow, B. S. (2002). *Faith-based organizations providing employment and training services: A preliminary exploration.* (A Report to the U.S. Department of Labor, Employment and Training Administration). Washington, DC: Urban Institute.

The purpose of this report is to provide basic understanding of the extent to which faith-based organization are providing employment-related services, drawing upon exploratory information compiled for five communities: Baltimore, Fort Worth, Milwaukee, Pittsburgh, and San Diego. The report addresses three general questions: how much federal funding is going to faith-based organization, and what sorts and how much of employment-related services faith-based organizations provide.



Lockhart, W.H. (2001). *Getting saved from poverty: Religion in poverty-to-work programs.* Unpublished doctoral dissertation summary, University of Virginia, Charlottesville, VA.

The research is designed to compare secular and faith-based poverty-to-work programs that exist in the same community and are targeted to the same type of people. To reduce the effect that other factors, such as community differences, bring into the findings, this comparative research was replicated in two different locations. The study focuses on how human capital, social capital, and cultural capital can work together to create status for low-income persons, and the processes by which that is accomplished. It also investigates status transformations among the poor.

Lupu, I.C., & Tuttle, R.W. (2002). *Sites of redemption: A wide-angle look at government vouchers and sectarian service providers.* (GWU Law School, Public Law Research Paper No. 42.) *Journal of Law and Politics*, Symposium on the End of Separatism. Retrieved February 24, 2003, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=303837

The paper looks at some constitutional issues related to the government-financed vouchers and their use at religious institutions. It examines first the theoretical implications of the voucher question. Although it includes an analysis of the Cleveland school voucher case, the paper expands beyond the context of education. Most of it discusses other examples of voucher programs such as childcare or treatment for substance abuse. It also looks at the so-called "triangle of relationships" which involves relationships between government and recipients, government and providers, and providers and recipients, and comes up with a typology of voucher programs. The typology addresses, among other things, how obligations are placed with respect to crucial constitutional issues.

Lupu, I. C., & Tuttle, R.W. (2001). *The distinctive place of religious entities in our constitutional order.* *Villanova Law Review*, 46.

The study explores the distinctive place of religious institutions by illuminating three cases in which this issue is considered central. The legal context in those cases involves regulation of the employment relation with respect to the exemption from civil rights law, government control over the private use of land, and government partnership with faith-based organizations in the delivery of social services. The analysis focuses on the need for a general and consistent theory and examines two such theories, separationism and neutrality. In conclusion, the authors describe their own vision of the topic.

Lupu, I.C., & Tuttle, R.W. (2002). *Historic preservation grants to houses of worship: A case study in the survival of separatism.* *Boston College Law Review*, 43, 1139–1176.

The paper examines the historical and judicial legacy of American separationism, particularly as it applies to expenditures in support of the physical structures of religious entities. It explains the reasons behind the rise of neutralism, which opposes the distinctive treatment of religious institutions. Part III describes in detail the current patterns, policies, and practices of government with respect to financial support for historic preservation of such structures, and contrasts these with those currently in place in other government programs. The authors address, in particular, the struggle over the question of regulatory exemptions for structures devoted to religious use, from historic preservation laws as well as the constitutional permissibility of government grants.

Lynn, L.E., Jr. (2002). *Social services and the state: The public appropriation of private charity.* *Social Service Review*, 76, 58–83.

The article looks at the transformation of social services sector, once independent, informal, private, and voluntary, into a powerful instrument of public policy. It describes how the structural relationships between government and nonprofit providers began to take shape historically through regulations and tax exemptions. It examines the role of government in direct service provision and the way it was affected by the welfare reform. The paper points out some new trends in social service delivery including privatization and commercialization.

McCarthy, J., & Castelli, J. (1998). *Religion-sponsored social service providers: The not-so-independent sector.* (Working Paper Series of Nonprofit Research Fund). Washington, DC: The Aspen Institute.

The authors conclude (from a review of scholarly literature, annual reports, information on nonprofits from IRS, popular debate, reexamination of *From Belief to Commitment* (Hodgkinson & Weitzman, 1993), and interviews with providers and experts in the field) that it is not possible for religious institutions to significantly increase their provision of social services. This is primarily due to lack of administrative capacity and financial constraints. Religious organizations do play a significant role in providing social services, which they examine in-depth. Their critique pertains primarily to the characteristics of religion-sponsored social service providers.

McRoberts, O. (1998). *Congregation-based community organizing and the challenge of urban religious diversity.* (Working Paper series from COMM-ORG: The On-line Conference on Community Organizing and Development). Retrieved February 11, 2003 from <http://comm-org.utoledo.edu/papers98/warren/faith/mcroberts.html>

This paper provides analysis of interviews with ten Black Pentecostal ministers working in a Boston neighborhood. The author examines the religious and organizational considerations that play a role in the decision making of many inner-city congregations.

McRoberts, O. (2001, January/February). *Black churches, community and development.* *Shelterforce Online #115.* Retrieved February 11, 2003 from www.nhi.org/online/issues/115/McRoberts.html

This article reviews the changing definitions of "community" and "development," within the context of what is currently understood as "community development." The author includes a brief historical review and proceeds to draw the lines of distinction between "community and neighborhood" and examines "faith-based development."

Minow, M. (1999). *Choice or commonality: Welfare and schooling after the end of welfare as we knew it.* *Duke Law Journal*, 49, 493.

In this work, Minow reviews school voucher policies and Charitable Choice legislation. She predicts that of the two, Charitable Choice is more vulnerable on constitutional grounds and will be rejected. These two policies raise challenging issues surrounding individual choice as well as the need for commonality, both of which she addresses. Also outlined in the review are free exercise problems with the Charitable Choice provision.



Minow, M. (2000). Partners, not rivals? Redrawing the lines between public and private, non-profit and profit, and secular and religious. *Boston University Law Review*, 80.

This article examines the public/private distinction and different forms of public allocations of power to private actors. The author also addresses the “blurring” profit/nonprofit line and legal problems that arise, as well as secular and religious lines, in the special context governed by specific constitutional language. In conclusion, the author identifies specific reforms that offer initial points to intervene.

Monsma S.V. & Carolyn M.M. (2002). Working faith: How religious organizations provide welfare-to-work services. Philadelphia: University of Pennsylvania Center for Research on Religion and Urban Civil Society.

This study examines 500 welfare-to-work programs in four American cities: Philadelphia, Chicago, Dallas, and Los Angeles, and draws the lines of distinction between faith-based, government-run, for-profit, and secular nonprofit providers. It assesses the current relationship between faith-based and other nonprofit providers and the government, as well as the types of services provided and capacity to make major contribution to helping welfare recipients. The author discusses some constitutional issues, and in particular, whether religious congregations that provide social services present new and unique challenge to government funding.

Monsma, S. (1996). When sacred and secular mix: religious nonprofit organizations and public money. Lanham, MD: Rowman & Littlefield Publishers, Inc.

This book is based on results of a nationwide survey of 766 nonprofit organizations from education and social service fields. It includes documentation on the extent of public funding of FBOs and its impact on organizations and practices. The study focuses on three types of well-established nonprofits: child service agencies, international relief and development agencies, and religious educational institutions. It includes analysis of Supreme Court legal principles and public attitudes related to religious nonprofit organizations’ receipt of public funds. The author concludes that religious nonprofit organizations (1) receive much public funding, (2) are surprisingly free to engage in religious-based practices and (3) are in a legally unprotected, vulnerable position

Musso, J. A., Kitsuse A., & Cooper T. L. (2002). Faith organizations and neighborhood councils in Los Angeles. *Public Administration and Development*, 22, 83–94

This article reports on an action research initiative undertaken by the Neighborhood Participation Project of the University of Southern California. The authors study social and organizational resources of faith organizations as a promising means for engaging participation among communities that are traditionally underrepresented in the governance process. They discuss the potential role of faith organizations in neighborhood councils and other community-based decision-making bodies that are intended to foster citizens’ involvement, a sense of community, and self-governance among residents of LA’s diverse neighborhoods. The authors believe that one of the most compelling reasons for seeking to involve faith organizations in neighborhood council development is the fact that they are primary sources of organizational and social capital. The research identifies a number of potential barriers to faith organizations’ participation in neighborhood councils, including the traditional opposition among religious communities to state funding and the impact of religious diversity or mission compatibility. The difficulties in organizing the disenfranchised and the community organizing approaches of major denominations in Los Angeles also are discussed.

Nank, R., & Stivers, C. (2001, August 30–September 2, 2001). Nonprofit capacity building for what? Lessons learned from a two-year effort under welfare reform. Paper presented at the American Political Science Association meeting, San Francisco.

The researchers examine the “logic model” on which the Federation for Community Planning operated in administering the Cuyahoga County, California funds to community and faith-based agencies who were working with clients exiting the welfare system. The model is based on the assumption that the funds provided to pay for training and technical assistance would increase learning by individual staff members. The improved staff skills would lead to greater management capacity on the part of the organization. The improved organizational capacity would result in improved service delivery capacity that will have as a final outcome positive impact on clients and their ability to get and keep jobs. Because of the difficulty and cost associated with evaluating all aspects of the logic model, the researchers confine their study to the management support services and their contribution to the improved organizational management capacity. Questionnaires were administered to assess the effectiveness of workshops, technical assistance, and the collaboratives of service providers.

Netting, F. E. (1982). Secular and religious funding of church-related agencies. *Social Service Review*, 56(4), 586–604.

This paper presents results of a study of the development and effect of religious and government funding on Protestant social service agencies (Episcopal, Lutheran, and the Salvation Army) located in a Midwestern city. The author found that every agency was responsible for raising its own funds and that each also drew from funding sources other than its denomination (i.e., government and the United Way). In fact, some agencies received 60 to 80 percent of their funding from government sources, and approximately half of all three denominational agencies’ combined budgets were government-financed.

Agency representatives expressed various concerns regarding government funding:

- They expressed fear of losing identity and uniqueness while being burdened with increased responsibility. (Most directors, however, reported that fears about loss of autonomy were unfounded.)
- They indicated that dependence on government funding resulted in some loss of flexibility to set priorities and be innovative.
- Staff and board members reported that they felt their agencies had become more secularized, and that receiving government funding had “created a tension in their ability to freely and actively demonstrate religious convictions.” There were additional misgivings related to loss of spiritual orientation and the requirement to hire according to secular standards, i.e. non-affiliated persons.
- The possibility of budget cuts prompted concerns about agency uncertainty and increased dependence. Some respondents indicated that “resectarianization” was an option for organizations that had a tradition of serving “their own.”

Denominational sources of funding represented a “captive constituency,” but with a higher degree of accountability. However, agency staff could find themselves competing with the church itself for this source of support. Respondents also indicated that the higher the percentage of government funding, the greater the likelihood of support being withheld by the denomination.



Netting, F. E. (1984). Church-related agencies and social welfare. *Social Service Review*, 58(3), 404–420.

This article includes additional findings from the exploratory study of three groups of Protestant social service agencies. Issues of religious affiliation and church-state relations are also examined.

Netting found variation in the interpretation of church affiliation across and within denominations. Interpretation of church affiliation is influenced by commitments to church, state, and clients and by changes in the religious and secular environment.

The following similarities were found across agencies and denominations:

- Public acknowledgement by agencies of relationship to parent religious body.
- Agency boards are comprised primarily of denominational clergy and/or lay members.
- Each agency receives funding from the parent religious body.
- Each has a specific constituency of denominational members from which it can solicit support.

Other findings included the following:

- Church affiliation provides a captive audience for solicitation.
- When the church polity is the same as the agency administrative structure, the church will maintain legal authority to control its agencies.
- When the church polity is separate, the lines of legal authority tend to be more defined especially regarding the role of the church and issues of “control.”
- When formal control (i.e., official written documents) is not available, informal influences can be used by the parent religious body to affect church-related agencies.
- The larger the budget, the greater the accountability to the non-church funding sources. Large agencies are highly dependent on government funding.
- When constituents discover that a church agency receives government funding, they contribute less, the assumption being that their support is no longer needed.
- As agencies increasingly professionalize, church members begin to question what is “church-related” about the organization.
- There are trends toward less staff representation from the same religion or denomination as the agency, less programming along religious guidelines, and more clients from diverse religious backgrounds.

Orr, J. B., & Stevens, C. W. (1996, September). Church-state relations in Los Angeles’ religiously based community development programs. *Religion and civic culture on-line*. Retrieved February 11, 2003, from www.usc.edu/dept/LAS/religion_online/public_policy/96_09_churchstate.html

This report addresses the question of how the expansion of religiously affiliated nonprofits using public funds has altered the nature of relations between church and state in the city of Los Angeles. The results included come from a relatively small study (10 religiously affiliated community development 501(c3) organizations). Based on interviews and program observations, the agencies in the study were ranked on a 10-point “Religious Ethos Scale” from secular to pervasively sectarian. Programs were also assessed on the degree of program integration (staff, use of facilities, and language used to refer to programs) between supporting religious institutions and affiliated nonprofit agencies. The authors suggest that the wall of separation between church and state in the Los Angeles context is not rigid, and that furthermore, public funds are being directed to religiously affiliated programs for uses that have been considered unconstitutional.

Parks, Dawn L., & Quern, S. R. (2001). An analysis of congregational programs. Research Notes (Project on Religion and Urban Culture). Indianapolis, IN: Indiana University–Purdue University Indianapolis, the Polis Center.

This report provides analysis of program activities of a large sampling of Indianapolis congregations and relation to theological orientation, space availability, size of membership, and other factors. The findings are based on data collected by the Polis Center between 1995 and 2000 as part of the Project on Religion and Urban Culture. Researchers surveyed 400 congregations in 17 urban and suburban neighborhoods of Indianapolis. Their activities are collapsed in two broader categories: religious programs and social outreach programs. Two areas emerged as most important regarding the number of programs that a congregation offers: capacity and general orientation.

Plante, T.G., & Boccacini, M.T. (1997). The Santa Clara Strength of Religious Faith Questionnaire. *Pastoral Psychology*, 45, 375–387.

The authors review some psychological and psychiatric literature indicating that religious issues have become increasingly relevant in this particular field of study. Related research suggests that religious beliefs and the type of religiosity are positively associated with mental well-being, self-esteem, and coping strategies when experiencing severe stress. The literature provides a number of instruments to assess various aspects of religiousness and religiosity, but none of them measures the strength of religious faith.

The Santa Clara Strength of Religious Faith Questionnaire (SCSORF) is a 10-item measure scored on a 4-point scale. A number of personality and mood variables are measured among high-faith and low-faith subjects. The need for future research on the questionnaire to further examine its reliability and validity and to establish test norms is also discussed.

The Polis Center, Indiana University–Purdue University Indianapolis (2001, March 7). Indiana congregations’ human services programs: A report of a statewide survey, Faith Works Indiana, Family and Social Services Administration. Retrieved February 10, 2002 from www.state.in.us/fssa/faithworks/Executive_Summary_Report.pdf

This report presents results of a survey conducted by the Polis Center for the Indiana FaithWorks program. The survey’s objective is to assess congregations’ capacity and interest with regard to the provision of human services and the receipt of government funds. This survey was designed in part to mirror the National Congregations Survey (conducted by Mark Chaves). Participation in human services programs by religious congregations in the state of Indiana follows participation trends by congregations nationally, although there are some notable differences in type and degree of interest. More than three-fourths of the congregations in the Indiana survey report that they participate in human service activities of some sort, but at a rate that is higher than congregations nationally. Fewer than 3 percent of Indiana congregations use government funding to support these activities, which is similar to the national trend.

Poole, D. L., Ferguson, M., DiNitto, D., & Schwab, A J. (2002). The capacity of community-based organizations to lead local innovations in welfare reform: Early findings from Texas. *Nonprofit Management & Leadership*, 12, 261–276.

This article presents results from an investigation of the capacity of 15 state-funded community-based organizations in Texas. It examines six variables predictive of an organization’s success or failure: goals, management, technology, funding, community involvement, and performance.



Printz, T.J. (1998, April). Faith-based service providers in the nation's capital: Can they do more? (Number 2 in series, *Charting civil society*). Retrieved February 11, 2003 from the Urban Institute Web site from www.urban.org/periodcl/cnp/cnp_2.htm

Printz reports findings from a survey of 266 congregations, representing a cross-section of faiths and size, in the Washington, D.C. metropolitan area (the study was conducted for the Center on Nonprofits and Philanthropy at the Urban Institute). The study's objective was determination of the level of social and human services administered by congregations while addressing specific factors such as content, beneficiaries, costs of service and capacity to meet an increased need for services.

Romzek, B.S., & Johnston, J.M. (2001, August 30– September 1, 2001). State contracting, social service networks, and effective accountability: An explanatory model. Paper presented at the Annual Conference of the American Political Science Association. Washington, DC.

The authors review the current network and governance theories and assess some of the models of contracting. The research methods rely on qualitative case study techniques. Key variables associated with social service contract accountability have been identified and analyzed. The researchers do so by examining five cases of contracting, developing explanatory propositions in Kansas, and then providing a preliminary test of those relationships. Using semi-structured personal interviews, they asked state agency officials, managers, and employees of the contracting agencies in each of the five program areas to respond to a standard list of questions.

The potential explanatory variables are organized into three different categories:

1. *adequate contract specifications*, including clarity of accountability relationships, and suitability of performance measures and obligations;
2. *contract design issues* including autonomy of the contractor (the extent to which contractors are dependent on other organizations as they deliver services); ease of collecting performance data; the extent to which risk has been retained by the state; and the introduction of new technologies associated with service delivery and performance measurement;
3. *alignment of accountability relationships*, including asking which of the potential accountability strategies are best suited to the contract. Decisions as to which accountability relationships are appropriate are a function of the organization's institutional environment, managerial strategy, and contracting tasks.

Queen II, E. L. (1998). The devil is in the details: Emerging issues in the relationship between religion and government. Paper presented at the Symposium on Nonprofits and Government, Indianapolis. Sponsored by the Institute for the Study of Government and the Nonprofit Sector.

This article provides an analysis of areas of "interface" between religion and government, which the author argues will become more problematic over the coming years. However, as the author points out, this information can contribute to knowledge about the relationship between the nonprofit sector and government.

Queen II, E. L. (2000). Serving those in need: A handbook for managing faith-based human services organizations. San Francisco, CA: Jossey-Bass.

A discussion of the role of FBOs in providing social services and whether these are appropriate endeavors for congregations and what management responsibilities congregations assume in providing these services. Given the increased pressures and higher demand on social-service organizations, faith-based providers must find ways to increase their effectiveness while maintaining their religious distinctiveness. The article provides practical answers for those engaged in the delivery of human and social services while highlighting the challenges providers face. It also offers specific advice for meeting those challenges while remaining true to religious mission.

Rallying the armies of compassion. (2001, January). Washington, DC: U.S. Government Printing Office. Retrieved February 1, 2001, from www.whitehouse.gov/news/reports/faithbased.html

This proposal highlights President Bush's plans for expanding Charitable Choice, the role of faith-based and other community organizations in social service delivery, and the identification and elimination of barriers to participation. It outlines the role of the White House Office of Faith-Based and Community Initiatives and similar cabinet offices in five major federal agencies. Also included are proposed measures for expanding private giving.

Ryden, D. K. (2000, September 3). Black churches' involvement in "Charitable Choice" programs: The promise and peril. Paper presented at the annual meeting of the American Political Science Association. Washington, DC.

The author addresses the efficacy of the Charitable Choice policy and constitutional issues. He also reports on a survey of the attitudes of Michigan-based nonprofit professionals toward the new policy. He argues that Black churches, given their historical activist role in the political arena and commitment to serving the needs of the most vulnerable in their communities, are in a unique position to apply for government funding under Charitable Choice. He points out that despite Black churches' opposition to the 1996 Welfare Reform legislation, they are increasingly collaborating with government in social service provision. He examines the potential positive outcomes for churches contracting with the government.

The author is cautionary and addresses the dilemma of accepting government funding while at the same time maintaining organizational integrity and adherence to constitutional principles. He uses two Michigan-based programs to illustrate the potential benefits and pitfalls (the latter of which these two programs have avoided) of partnerships between religious/nonprofit organizations and government.

Seefeldt, K.S., McBeath, B., Clum, K., & Danzinger, S.K. (2001). Nonprofits that serve welfare recipients: Contractual relations and agency effects. (Working Paper Series of the Nonprofit Sector Research Fund). Washington, DC: The Aspen Institute.

This study examines the effect of increased contracting under welfare reform on the nonprofit sector. It focuses in particular on two questions: what types of nonprofits are currently providing contracted services within the welfare system, and what factors influenced their decision to bid for a contract as well as in what ways the contract affects the service provision. The primary sources of information for this study are data gathered from telephone interviews with executive directors of nonprofit organizations in Michigan holding Work First contracts.



Salamon, L.M. (1995). *Partners in public service: Government-nonprofit relations in the modern welfare state*. Baltimore: Johns Hopkins University Press.

The subject of Salamon's study is the relationship between government and the nonprofit or voluntary sector. One of his primary conclusions is that this relationship has become a defining characteristic of the American welfare state and, furthermore, that the sector has become a vehicle of government-supported service delivery. The book covers five broad topics, including the theoretical basis of government-nonprofit relationship, size and scope of relations, the consequences of cooperation to both clients and the nonprofit sector, and impacts of the 1980s retrenchment policies on the relationship. He maintains that the latter policies weakened the partnership, and along with increased demand for services, the sector has been pushed toward greater commercialization as agencies look for other sources of support. It is particularly interesting to note that the fears, such as threats to agency independence and objectives, surrounding the government-nonprofit relationship have not been borne out. In fact, Salamon argues that a greater threat is the one to the objectives of public entities as a result of increased dependence on agencies that may not share similar objectives.

Salamon, L. M., & Teitelbaum, F. (1984). Religious congregations as social service agencies: How extensive are they? *Foundation News*, 25, 3–5.

Researchers report on findings from a survey of 2,200 religious congregations in 16 areas throughout the country in 1982. They found that congregations were engaged in direct provision of services (findings that are consistent with more recent studies), from basic necessities (food and shelter) to support services (counseling and recreation) and facility-based services such as day care. The most common types of service were provision of emergency food, followed by counseling and youth activities. The number of congregations involved in providing services that are capital intensive or require specialized skills was small in comparison. Volunteers were vital to delivery. The authors conclude that religious congregations augment formal services and, in a different capacity, they play an important role in socializing individuals to the importance of charity by providing service opportunities to members.

Segal, J. A. (1997). Welfare for churches: Buyers and beneficiaries beware. *Georgetown Journal on Fighting Poverty*, 5, 71–76.

Segal argues that government funding will hinder religious programs and violate the First Amendment principle of the separation of church and state. The author asserts that the agencies' vitality may be stifled by increased dependence on public funding and requirement to comply with government regulation. Furthermore, the government is put in a position to choose among different religions and denominations. She also addresses problems with the provision:

- It does not require that recipients be informed of their right to request alternate service providers.
- It does not include an overall prohibition against religious practices in programs.
- Religious discrimination is allowed in employment practices.

Sherman, A. (2000). *The growing impact of Charitable Choice: A catalogue of new collaborations between government and faith-based organizations*. Annapolis, MD: The Center for Public Justice.

A report of findings from the Center for Public Justice's Charitable Choice Tracking Project. It was researched and prepared in 1999 and provides a "snapshot" of Charitable Choice collaborations in nine states: California, Illinois, Massachusetts, Michigan, Mississippi, New York, Texas, Virginia, and Wisconsin.

Smith, S. R., & Lipsky, L. (1993). *Nonprofits for hire: The welfare state in the age of contracting*. Cambridge, MA: Harvard University Press.

Smith and Lipsky make a strong case, based on data and anecdotal evidence from 30 nonprofits located in the Northeast (25 of which were in Massachusetts), for the trend toward increased reliance on nonprofit provision of social services under government contract. They provide analysis of the development toward contracting while illuminating implications for the welfare state, clients, and nonprofit organizations. Ultimately, they contend, contracting and increasing privatization result in the restructuring of the nonprofit sector and welfare state.

Smith, S. R. & Smyth, J. (1996). Contracting for services in a decentralized system. *Journal of Public Administration Research and Theory*, 6, 227–296.

This article presents the results of a study of the North Carolina procurement process for substance abuse services. Data is gathered from interviews with representatives of state and contracting agencies. The article covers the background and character of public funded substance abuse services in NC, aspects of contracting and competition, and a description of providers and relationships to state and county officials.

Smith, S. R., & Sosin, M. R. (2001). The varieties of faith-related agencies. *Public Administration Review*, 61, 651–670.

This article provides a detailed analysis of religiously affiliated service agencies in two cities. Findings are based on interviews with officials in a wide class of "faith-related" agencies and examine two aspects of the issue: agencies' ties to faith, and the impact of those connections on agency structure and service programming. The authors offer definition of the term "faith-related" and explanations of its methodological utility, as well as assessment of the dimensions of faith relations in terms of resource dependency, authority, culture, and religious blending. The authors suggest that (1) many of agencies in the study are loosely tied to faith in terms of resources, more closely connected in terms of authority, and moderately connected with respect to culture; (2) certain aspects of service-delivery are heavily secularized in many agencies; (3) faith plays a more prominent role in such matters as choices of services; and (4) the larger, potentially more secularized agencies might be least likely to be characterized as faith-based.

Smith, S. R. (1998). Government financing of nonprofit activity. In: Boris, E.T. & Steuerle, C.E. (Eds.), *Nonprofits and government: Collaboration and conflict*. Washington, DC: The Urban Institute Press.

This article outlines some major trends in government financing of nonprofit organizations in the last century, especially in the 1980s and 1990s. It discusses four different ways through which the government contributes to the nonprofit sector: direct grants and contracts, fees from individuals and third party organizations, tax credits and deductions, and tax-exempt bonds. The government regulations, although they differ from direct financing, are also mentioned as they play a significant role in securing the place of nonprofits in service delivery and guarantee the flow of government funds into the sector. An overview of several theoretical perspectives in assessing the impact of government financing of nonprofit organizations is included, and the role of accountability for public funds is examined. The final section focuses on organizational adaptation and change, and on how government financing relates to broader aspects of public policy.



Soonhee, K. (2001). Faith-based service delivery: A case study at ground zero. *Journal of City and State Public Affairs*, 2, 41–52.

The purpose of this article is to present a theoretical framework for analyzing the impact of mentoring programs on community and welfare clients, as well as to analyze the structure of mentoring programs in Michigan. The study examines community partnerships in welfare reform, focusing on the structure and processes of mentoring programs.

Spain, D. (2001). Redemptive places, Charitable Choice, and welfare reform. *Journal of the American Planning Association*, 67, 249–270.

The article examines the challenges that planning professionals face with welfare reform as it places new demands for local resources, including housing and transportation. The author looks at the forms and functions of the so-called redemptive places throughout the 19th and 20th centuries. He also discusses some questions that have direct relevance for planners and their roles in implementing the Charitable Choice provision.

Stone, M. (2000, November). Scope and scale: An assessment of human service delivery by congregations in Minnesota. Paper presented at the annual ARNOVA conference, New Orleans, LA.

This paper studies the human service delivery capacity of faith-based organizations in Minnesota. Included are descriptions of congregation sample, location, and affiliation (64 percent are liberal or moderate Protestants), the services provided, and the demographic profile of persons served. The author also reports on the number of service programs, types of provision, beneficiaries, financial resources, and responses to increased need for capacity. The researchers checked for two types of possible bias in respondents—denominational bias and bias based on location. They admit that another potential source of bias may concern congregational size, but the assumption has not been checked because the original database does not contain that information. Results are similar to those of other studies (Cnaan, for one) in terms of congregational provision of services, types of service, recipients/beneficiaries, types of funding, staff, and volunteer support.

Sullivan, W.F. (2002). Neutralizing religion: Or, what is the opposite of “faith-based”? *History of Religions*, 41, 369–391.

In an attempt to define the meaning of “faith-based,” the author briefly presents the First Amendment religion clause and its interpretations. In two separate sections, she describes the meaning of the establishment clause and the free exercise clause. She also examines their applications in general law with respect to religious issues.

Tenpas, K. D. (2002, February). Can an office change a country? The White House Office of Faith-Based and Community Initiatives, A year in review. Washington, DC: Pew Forum for Religion and Public Life.

This is a report commissioned by the Pew Forum on Religion and Public Life. It provides analysis of the creation of the Office of Faith-Based and Community Initiatives, obstacles and challenges faced by the office—internal and institutional. The author discusses accomplishments and setbacks as well as analysis of current developments and the future of the office.

Thiemann, R., Herring, S., & Perabo, B. (2001). Responsibilities and risks for faith-based organizations. In M.J. Bane, B. Coffin, & R. Thiemann (Eds.), *Who will provide? The changing role of religion in American social welfare* (pp 51–70). Boulder, CO: Westview Press.

This article addresses some empirical, legal, and theological issues involved in the relationship between faith-based organizations and governmental agencies. After a brief history of faith-based social service provision in the United States, the authors look at the distinctive contributions of faith-based organizations.

Thomas, S. B., Quinn, S. C., Billingsley, A., & Caldwell, C. (1994). The characteristics of northern Black churches with community health outreach programs. *American Journal of Public Health*, 84, 575–579.

The authors report on a study examining the characteristics of 635 African American churches involved in health promotion from the northern region of the country. The majority of senior ministers interviewed believe that the primary role of the church is to serve church members and the community. Church size and the educational level of ministers were found to be the strongest indicators of church-sponsored community health programs. Churches in the study operate multiple programs and already collaborate with secular agencies such as welfare departments and public housing agencies. Study results demonstrate that programs, which provide basic needs, education and counseling, were staffed primarily by volunteers. Minimal levels of program evaluation were observed. Authors assert that the presence of paid clergy and other staff who can provide consistent leadership is a necessary factor in determining the extent to which a church can effectively continue a program.

Trulear, H. D. (2000). Faith-based institutions and high-risk youth. Philadelphia, PA: Public/Private Ventures.

This report outlines the objectives of Public/Private Ventures and initial findings and impressions from eight sites around the country, identified earlier as having a strong collaborative faith-based institution(s). Key issues of research interest to the project include the following: the role of faith in service provision, the degree of FBOs’ involvements in the respective communities, how the initiative impacts youth and their communities, and congregational capacity. Four areas of congregational services are considered: literacy, youth violence reduction, daycare services, and job training and placement. The author reports on initial challenges faced by these institutions which include capacity building, connecting to funding sources, program evaluation, and targeting high-risk youth.

Unruh, H. R. (1999). Using the “e” word: Evangelism, church-based community services, and social transformation. Paper presented at the symposium on the faith factor in social policy co-sponsored by the Brookings Institution and the Civitas Program, Washington, DC.

The author reports on the “Congregations, Communities, and Leadership Development Project”—a three-year project including case studies of 15 churches in the Philadelphia area. The aim of the project is examination of the intersection of evangelism and social action in addition to exploration of how, why, and with what effect congregations address issues of social concern and spiritual matters. Unruh contends that one of the reasons for neglect of this type of research is the split between “liberal social actions churches” and “conservative evangelical churches” as well as political, cultural, and theological reasons, and attitudes towards evangelism. “Holistic” churches are highlighted as those that view a connection between spiritual transformation and socio-economic empowerment. Types of holistic ministry are also addressed in the paper.



U.S. General Accounting Office. (2002). *Charitable Choice: Overview of research findings on implementation.* Retrieved May 2002, from the U.S. General Accounting Office Web site from www.gao.gov/new.items/d02337.pdf

This is a review of literature on the extent to which and how states have responded to the provisions, factors limiting collaboration with FBOs, and FBO performance compared with secular providers.

White House Office of Faith-Based and Community Initiatives. (2001, August). *Unlevel playing field: Barriers to participation by faith-based and community organizations in federal social service programs.* Retrieved from White House Office Web site September, 2001, from www.whitehouse.gov/news/releases/2001/08/unlevelfield.html

This is a report issued by the White House Office of Faith-Based and Community Initiatives summarizing initial findings from a survey of five cabinet centers on barriers that impede religious and grassroots organizations from collaborating with government. According to the report, Charitable Choice has been essentially ignored by federal administrators, who have done little to help state and local governments comply with new rules for involving faith-based providers.

Williams, D. R., Griffith, E. Collins, C., & Dodson, J. (1999). *Structure and provision of services in Black churches in New Haven, Connecticut.* *Cultural Diversity and Ethnic Minority Psychology*, 5, 118–133.

This article is a report of results from a study that investigated the extent to which African American churches in a northeastern urban area (New Haven, CT) are involved in health and human service delivery programs. The inquiry also assesses the comfort level of clergy in referring members to the formal mental health system and analyses organizational and individual characteristics that are predictive of levels of service and the likelihood of referral.

Those churches that cooperate with other entities (religious and secular) are more likely to have programs of their own than those that do not cooperate. Referrals are positively related to church size and budget. Furthermore, clergy who cooperate with secular organizations are more likely to feel comfortable with making referrals than those who do not cooperate or who only cooperate with other religious organizations. The size of a congregation is an important factor in determining its level of service. Clergy educational level is positively related to the average number of programs and to referral patterns. The scope and range of services is limited by the lack of available full-time, paid staff.

The authors cite the importance of cultural sensitivity in delivery of services to racial and ethnic minority communities and assert that cultural barriers are eliminated or at least reduced when African American churches deliver services.

Wineburg, R. J. (1992). *Local human services provision by religious congregations: A community analysis.* *Nonprofit and Voluntary Sector Quarterly*, 21, 107–118.

This paper offers results of an investigation of religious congregations' (330 in Greensboro, North Carolina) responses to increasing devolution in the 1980s to determine the level of participation in social service provision. The author argues that budget cuts and national policy focus on localities and increased social problems in the 1980s (such as homelessness) have stretched existing service capacities, creating an urgent need to meet community needs. Religious groups consequently have been pushed into providing direct services

and support—measured by degree of volunteerism, financial and material donations, and availability of facilities. These services tended to be provided on an ad hoc basis rather than in a planned manner. Results suggest that congregations engage in external service activities and return to meeting internal needs without formally examining the impact of their efforts.

Winston, D. (2000). *Soup, soap, and salvation: The impact of Charitable Choice on the Salvation Army.* Annapolis, MD: The Center for Public Justice.

This report is based on interviews with Salvation Army (SA) officials. From the early part of the 20th century, the SA realized the importance of not appearing “evangelical” when soliciting funds, as donors may not share similar beliefs. SA programs reflect a “mission to meet human needs.” According to Winston, Charitable Choice has had little impact on the SA, an organization that already has considerable access to government contracts (the SA budget is 15 percent federally funded) and has “learned accommodation” with government. Few are aware of new provisions of welfare reform legislation. The author asserts, based on interviews with SA officials, that Charitable Choice may have an affect on the SA's identity and mission.

Wood, B. A. (1997). *First African American Episcopal Church and its social intervention in South Central Los Angeles.* Unpublished doctoral dissertation, University of Southern California.

This dissertation examines the role of the FAME church in the 1992 riots and unrest in Los Angeles. The author outlines the factors that contribute to FAME's activist role in the community. These include: (1) being rooted in the Black Christian tradition and a commitment to racial equality, where religion and politics are not so separate; (2) issues of identity and autonomy in the African American community; (3) racial pluralism (emphasis is not on exclusion, rather on creating a level playing field); and (4) communal power.

Working Group on Human Needs and Faith-Based/ Community-Based Initiatives. (2002, January). *Finding Common Ground: 29 Recommendations of the Working Group on Human Needs and Faith-Based and Community Initiatives.* (2002). Retrieved February 10, 2002, from the Search for Common Ground USA Coordinator's Web site from www.working-group.org

The report is based on an endeavor to establish areas of agreement between parties with diverse perspectives. Includes a summary of findings, specific recommendations, and proposed action. Also included are typologies of faith characteristics of social service organizations and of programs.

Wubbenhorst III, W. H. (1998). *The pitfalls of contracts for funding faith-based ministries.* (Policy Paper from the Religious Social Sector Project). Annapolis, MD: The Center for Public Justice.

The author examines the practice of privatization both in terms of history and the range of public-private collaboration models with particular attention to the practice of contracting out. Also provided is a brief overview of the historical role of faith-based human services providers, along with a description of the different ways these providers interact with government. The article concludes with an evaluation and comparison of the practice of contracting out with other forms of collaboration, while pointing out the pitfalls for faith-based providers seeking collaboration with government.



Wubbenhorst III, W. H., & Hurt, A. D. (2000). *Charitable Choice in Massachusetts: An un-tapped resource*. (Report to the Center for Public Justice). Washington, DC: Sterling-Sparrow Press.

This paper reports on the extent of Charitable Choice implementation in Massachusetts, evidence of new partnerships between FBOs and government, as well as measurable changes in existing government-FBO partnerships. Investigators interviewed representatives of state government, legislature, churches, para-churches, and faith-based social service organizations. The article includes three case studies of contracting, semi-autonomous (limited funding), and independent (avoidance of government funding) organizations.

The authors report no Charitable Choice partnerships in Massachusetts and no significant changes among existing partnerships. Charitable Choice provisions of the 1996 legislation have not been adopted to Massachusetts statutes. They argue that the lack of Charitable Choice implementation or significant changes can be attributed to the nature of the Massachusetts Purchase of Services system, which is difficult for newcomers to enter. In addition, the religious community in the Massachusetts urban environment is less organized and developed than in other areas of the country and lacks the administrative capacity to compete for Purchase of Services contracting and meet auditing requirements. The authors contend that the Massachusetts Purchase of Services system has grown at a rapid rate, but without similar development in accountability systems. They also note that the state human services department has little information regarding the effectiveness of the nonprofit organizations it contracts with.

Wuthnow, R. (2000). *Linkages between religious congregations and nonprofit service organizations*. (Working Paper Series).

Retrieved from The Aspen Institute Web site on February 25, 2003 from www.orgitecture.com/aspen/publications1526/publications_show.htm?doc_id=46568

The author reports results of an investigation of churches and faith-based nonprofit organizations (NPOs), their interactions, and relationships. Data was obtained from 20 nonprofit service agencies and 60 congregations in Lehigh Valley, Pennsylvania, via in-depth interviews with agency executives and pastors regarding the nature and extent of activities, sources of funding, volunteers, perceptions of community needs, and beneficiaries of services.

Congregations and NPOs in the area of study were found to have complex yet mutually beneficial relationships. NPOs garner funds and provide administrative oversight, while congregations provide volunteers and refer clients. Among the issues that were found to affect these relationships are: time constraints limiting contact between clergy and agency executives, a limited and aging volunteer pool, and the issue of separation of church and state. The author also addressed issues pertaining to the burden of newness faced by some organizations, and the advantages of size and scale, issues of efficiency, the role of clergy, and the impact of Charitable Choice. The author doubts whether churches that have previously not contracted with government will take advantage of the provision. Many of those interviewed were unfamiliar with Charitable Choice and divided in terms of support or opposition. Directors of the faith-based agencies were more skeptical of the provision, reflective of the experiences of some with government and, as the author reports, indicative of concern about increased competition for resources between churches and faith-based organizations.



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Sheila Suess Kennedy is an associate professor in the School of Public and Environmental Affairs and a faculty fellow at the Center for Urban Policy and the Environment at Indiana University–Purdue University Indianapolis. She holds a B.S. from Indiana University and a J.D. from its School of Law, where she was managing editor of the *Indiana Law Review*. She practiced real estate, administrative and business law, first at Baker & Daniels and later at Mears, Crawford, Kennedy & Eichholz. She served as corporation counsel for the city of Indianapolis, was a Republican candidate for Indiana's then 11th congressional district seat, and was president of Kennedy Development Services, a real estate development firm. Prior to joining the faculty of IU's School of Public & Environmental Affairs in 1996, she served for six years as executive director of the Indiana Civil Liberties Union. Her research focuses on the constitutional and policy implications of privatization and public-private partnerships. Dr. Kennedy is the author of two books, and co-editor of a third, and has published in *Public Administration Review*, *American Review of Public Administration*, *Brooklyn Journal of Law and Policy*, and *George Mason Civil Rights Law Review*, among others. In addition to her scholarly publications, she is a regular columnist for the *Indianapolis Star* and the *Indianapolis Eye*, and a frequent contributor to other periodicals.

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Ms. Jones holds a B.S. degree in biology from Butler University and a Master of Public Affairs degree from Indiana University–Purdue University Indianapolis.

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Benefit Societies that emphasizes youth-adult partnerships. She has designed and conducted evaluations of all stages of programs, from needs assessments to process evaluations to outcome evaluations, for clients that include the Indiana Gaming Commission, the Indianapolis Parks Foundation, *Arts Partners* (a program of Young Audiences), Campus Compact, and Community Centers of Indianapolis. She has been the principal author of numerous Center publications and several journal articles.

Ms. Littlepage holds a Master of Public Administration degree from New York University and a Bachelor of Science in public affairs from Indiana University. She has ten years of government experience at both the state and local level in New York and Indiana in various capacities with duties that included budgeting, policy analysis, and program evaluation.

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