

Taking Stock:

The Bush Faith-Based Initiative and What Lies Ahead



By David J. Wright



The Roundtable
on Religion and Social Welfare Policy

An independent research project of The Nelson A. Rockefeller Institute of Government
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Photos:

Top: President George W. Bush signs the executive order creating the White House Office of Faith-Based and Community Initiatives on Jan. 29, 2001. Photo by AP.

Bottom: President Barack Obama signs the executive order establishing the White House Office of Faith-Based and Neighborhood Partnerships on Feb. 5, 2009. Photo by Pete Souza, Executive Office of the President of the United States.

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PREFACE

This summative report reflects the work of a special project of the Nelson A. Rockefeller Institute of Government. Formed in 2002 with a grant from The Pew Charitable Trusts to the Research Foundation of the State University of New York, the Roundtable on Religion and Social Welfare Policy was created to engage and inform government, religious and civic leaders about the role of faith-based organizations in our social welfare system by means of nonpartisan, evidence-based discussions on the potential and pitfalls of such involvement. The Roundtable's charge was to increase awareness among key stakeholders, including policy makers, religious and civic leaders, and the media, of the critical issues related to faith-based social service programs by means of in-depth analysis and discussion based on the best social service science, legal and policy research.

Our purpose was to serve as the preeminent source of expert, unbiased information on policy and legal developments concerning the involvement of faith-based organizations in social services. We drew on a wide range of experts from government, civic, religious and research organizations, and sought through our publications and events to report and explain policy and legal developments; better define and measure the character of faith-based social services; gauge private and public sector support for their work; and provide fact-based assessments of their comparative effectiveness.

We were honored to do this work and enormously grateful for the support of The Pew Charitable Trusts in making the project possible. Luis Lugo directed these efforts for The Trusts when the project began, before taking the helm of the Pew Forum on Religion & Public Life, where his vision has continued to shape our work. Our program officer at The Trusts, Julie Sulc, has graciously and generously guided this project from its inception, and we benefited enormously from her insights and encouragement. Quite simply, she is the very model of a foundation officer. Stephanie Boddie joined the Forum as our project wound down, and we were grateful to work with her on transition and publication of this report.

I am indebted to the co-director of the Rockefeller Institute of Government, Richard Nathan, for his leadership on this project. Our institutional partners at George Washington University School of Law – Professors Ira C. Lupu and Robert Tuttle – led the project's work in tracking and explaining legal developments. They were enormously insightful and patient guides, and we were greatly privileged to work with them. We were equally privileged to find such talented people as Claire Hughes and Anne Farris, whose intrepid reporting and interviewing skills did so much to cover and tell this story. I am no less grateful to Patricia Cadrette and Lisa Montiel, my Rockefeller Institute compatriots, for their dedication, grace and good humor.

The contributions and efforts of my colleagues on the Roundtable on Religion and Social Welfare Policy are fully reflected in this report. Any shortcomings or errors are mine. The views expressed here do not necessarily reflect those of The Pew Charitable Trusts or those of the Nelson A. Rockefeller Institute of Government.

EXECUTIVE SUMMARY

Few topics have been more durably contentious over our nation's history than those involving intersections of church and state. And since few matters of domestic public policy were more controversial or associated more closely with President George W. Bush than his effort to expand government partnerships with religious providers of social services, it is all the more surprising to see the Faith-Based and Community Initiative appear to live on in fair measure, despite the current of sweeping change coursing through Washington with the historic election of President Barack Obama. A closer look suggests time will reveal both continuity and change in the Obama and Bush approaches toward service partnerships between the government and religious groups.

The Bush administration and its supporters in Congress set out with high hopes for adopting laws to expand opportunities for faith-based social service providers in government programs and, through the tax code, to strengthen incentives for charitable contributions to their efforts. But this was not to be. Efforts on comprehensive legislation regarding the Faith-Based Initiative were stymied. Separate bills were attempted in three areas: financial incentives to encourage private giving to religious organizations; statutory authorization to explicitly partner with religious organizations in certain governmental programs; and new programmatic initiatives involving faith-based and other service providers, often as part of omnibus appropriations legislation. Few legislative successes on the faith agenda were achieved over the eight-year period however.

Incentives to encourage charitable giving to religious and other charities were adopted, after many years of debate, as part of the Pension Protection Act signed into law by Bush in August 2006. But those incentives were scaled back compared with what was originally proposed. More divisive and ultimately even less satisfying were legislative efforts to modify statutory provisions in a number of existing federal programs that presented barriers, perceived or real, to wider participation of faith-based organizations.

The principal barrier – in statute and to achieving new legislative agreement – involved the right of religious organizations to base employment decisions on matters of religious faith when hiring for positions paid for with taxpayer dollars. The Bush administration sought to clarify, protect and extend that right for religious charities across all federal programs, but several significant federal programs – among them Head Start, the preschool education program for low-income families, and the Workforce Investment Act, the principal program for job training and placement services for adults and youths – make no such provision for religious employers. As those programs and others with similar provisions came up for reauthorization, heated debate centered on whether legislation extending them into the future would maintain or change language that, among other things, permitted or precluded religious organizations receiving federal money from hiring and firing employees based on religious beliefs.

The politics of religious hiring rights proved too difficult for Congress to resolve. No bill to modify existing language on hiring rights was able to pass both chambers of Congress during the Bush presidency. Inclusion of hiring rights provisions doomed attempts to reauthorize the Workforce Investment Act, extended only temporarily and without desired reforms. Congress approved a five-year overhaul of Head Start in 2007, but only by excising the proposal backed

by Bush to allow faith-based groups to consider religion when employing Head Start staff. The proposed Citizen Service Act, legislation authorizing volunteer programs administered by the Corporation for National and Community Service, could not clear the legislative bottleneck of religious hiring. Conversely, Democrats in Congress failed in their efforts to remove existing religious hiring rights provisions included under the Charitable Choice elements of Temporary Assistance for Needy Families when that program was reauthorized. Attempts to grant any permanency to Bush's administrative efforts to expand partnerships with religious groups failed.

In part, this legislative record reflects the disinclination of Democrats in the highly charged partisan climate following the contested election of 2000 to go along with a personal initiative of the Republican president. But the Bush legislation also lacked a strong external constituency to support passage in Congress. Conservative Christian organizations, one natural base, were somewhat divided; some groups believed the initiative would encourage too much government intervention in religion. Another possible base of support – the low-income and mostly minority communities most likely to receive government services from faith-based organizations – lacked the coalescence, infrastructure and connections with leadership necessary to be a formidable force with members of Congress. Few were more dismayed than the strongest supporters for faith-based initiatives in Congress, who contended that the Bush administration's legislative record on the faith agenda reflected a desire to have the continuing fight work as a political issue.

In the absence of new legislative authority, Bush moved aggressively to advance the Faith-Based Initiative through executive orders, rule changes, managerial realignment in federal agencies and other innovative uses of the prerogatives of his office. Chief among those innovations was the creation of the high-profile special White House Office of Faith-Based and Community Initiatives (FBCI). Complementing the White House office, FBCI centers were created by executive order in 11 government agencies, each with a carefully selected director and staff empowered to articulate, advance and oversee coordinated efforts to win more financial support for faith-based social services. Other agencies and quasi-governmental entities established similar offices and functions in areas ranging from citizen service to homeownership and business development to energy conservation.

Bush's executive orders directed all federal agencies to review their rules and internal operations to ensure that they provided equal treatment for faith-based groups. The Bush effort undermined and overcame the "culture of resistance" that had existed in the federal government toward faith-based organizations' participation in social service contracts. "Measured by that standard, the initiative has been, I think, a success that really doesn't have a parallel in contemporary administrative law, where you have a complete change in culture," said Robert Tuttle of George Washington University School of Law.

The legacy of this effort, to its architects and admirers, included: 16 federal rules rewritten to help faith-based organizations provide government services on a "level playing field" with secular groups and without diminishing their religious character; training and assistance provided to more than 100,000 religious and secular grassroots organizations through regional conferences around the country; 36 states and more than 100 cities encouraged to create faith-based offices or designate liaisons to religious communities; about \$300 million in government money set aside to help small faith-based and community organizations apply for grants and build their

organizational capacity; and the use of vouchers advanced so government money could flow to even the most intensely religious organizations without violating constitutional laws separating church and state.

A number of program initiatives were adopted during the Bush presidency that potentially or explicitly included faith-based groups in the mix of providers, but without putting them front-and-center as principal to the effort. The most notable of these programmatic initiatives begun during the Bush presidency is PEPFAR – the President’s Emergency Plan for AIDS Relief. PEPFAR made a massive, \$15 billion commitment to AIDS relief in Africa. In July 2008, PEPFAR was extended through the end of 2013 and expanded for up to \$48 billion more to combat global HIV/AIDS, tuberculosis and malaria. Obama has highlighted the global AIDS initiative as a success of the Bush administration.

Using religious and other community-based organizations as social support networks was a central tenet of Bush administration approaches in several other programmatic initiatives that met with some success. The Mentoring Children of Prisoners and the Prisoner Reentry programs are examples of this approach, programs that establish mentoring relationships for people in need using the social networking apparatus of religious charities as a keystone. The Compassion Capital Fund, the only pot of new money established expressly as part of the Bush Faith-Based and Community Initiative, has as its primary purpose the building of organizational capacity, in part by connecting small and less-experienced community groups in mentor-like relationships with more-established intermediary organizations that provide training. Obama signaled similar goals and approaches in his own developing plans during the campaign and since.

Many faith-based organizations report that Bush’s Faith-Based Initiative raised public awareness of their social service work. On the upside for advocates of faith-based services, there appears to be increased openness among more government officials to the possibility of partnering with faith-based groups. Many governors, for example, followed the Bush administration’s lead in advocating for similar initiatives at the state level. The 2004, 2006 and 2008 elections saw more than a dozen new governors take office, including a sizeable number involving a changeover in party control. In no case during that period did a change in tenure result in a decision to end a state faith-based and community initiative in any of the roughly two-thirds of the states that had such a policy in place.

Yet the Bush White House Office of FBCI did not function without controversy, and questions remain about its operation. Criticism was raised about politicization of the effort, and concern voiced in a number of quarters – including the operational oversight arm of Congress, the Government Accountability Office – about inadequate guidance and administrative oversight of contracting entities with regard to what activities could be supported legally with public dollars. The heightened visibility had negative impacts also. Conflict over the Bush Faith-Based and Community Initiative translated into a big organizational boon for the entrenched interest groups arrayed on either side. Particularly as the issue gained prominence in political circles and the courts, special interest groups grew in size and wealth as they waged legal, legislative and public relations battles over religious liberty and the separation of church and state.

The plan then-Sen. Obama outlined in his campaign struck various observers as a continuation of the Bush policy. Obama called for a Council on Faith-Based and Neighborhood Partnerships which, like the Bush administration's Faith-Based and Community Initiative, would invite religious as well as secular nonprofits to compete for government service grants or contracts, and would provide training on how to partner successfully with the government. Obama vowed to differ from the Bush approach, first, by training larger faith-based and community groups to mentor smaller religious groups, and second, by working more closely with state and local governments to encourage the efforts of faith-based groups and to move the initiative out of Washington. But both were significant elements in the Bush administration's program.

"This council will not just be another name on the White House organization chart – it will be a critical part of my administration," Obama said in July 2008. As a focal point, Obama's proposal called for \$500 million in funding for a summer learning program for about 1 million American children who lag far behind their peers.

But the pivotal difference in the Obama and Bush approaches to partnerships with religious groups could be seen in their stance on whether religious organizations hiring for positions funded with taxpayer money retained the right they have under the Civil Rights Act to base employment decisions on a person's faith. In his remarks and campaign fact sheet from July 2008, Obama said he would not support the right of faith-based groups that receive public funding to "discriminate against ... the people you hire on the basis of their religion."

Most of the organizations that have followed or participated in the faith-based policy debates in Washington over the past eight years are both expectant and fearful of the return of religious hiring rights to the fore. Obama's statements on what he has referred to as hiring "discrimination" indicate that his administration is likely to move in the opposite direction of Bush, by seeking to limit the ability of faith organizations to hire co-religionists when they accept government funds. But legal and policy moves made by the Bush administration will likely make it difficult for the Obama administration to move quickly.

"The goal of this office will not be to favor one religious group over another, or even religious groups over secular groups," Obama said. "It will simply be to work on behalf of those organizations that want to work on behalf of our communities, and to do so without blurring the line that our founders wisely drew between church and state," he said at the National Prayer Breakfast. On Feb. 5, 2009, Obama signed Executive Order 13199 establishing the White House Office of Faith-Based and Neighborhood Partnerships to be headed by Joshua DuBois, who was acclaimed for his work on religious issues and outreach for Obama's campaign.

At the same time Obama created a 25-member Advisory Council, naming 15 of its members then and the remaining 10 in concert with the first meeting of the council, which was held April 6, 2009. The members of the Advisory Council serve for one-year terms and include a host of people with significant experience and wide-ranging views on church-and-state matters, as well as accomplished innovators in social service delivery.

In one important respect there appears to be considerable continuity between the Obama and Bush approaches. Bush was not the first chief executive to create an office within the White

House or to appoint Cabinet and sub-Cabinet-level staff in the federal agencies committed to carrying out his initiatives. Activities like these, and the use of executive orders and budgetary powers, are hallmarks of activist presidents, from FDR to Ronald Reagan. But the innovation in the Bush Faith-Based and Community Initiative was the connection of the White House office to mini-branches in the 11 government agencies, each empowered to oversee coordinated efforts to penetrate agency operations and win more financial support for faith-based and community groups. That operational structure is left largely intact by Obama – a central White House office, networked to affiliate offices in 11 federal agencies.

In other respects, developments to date indicate that Obama intends for his Faith-Based and Neighborhood Partnerships effort to diverge from the direction taken by Bush. The hallmark of the Bush initiative was a concentration on “leveling the playing field for federal contracting” to faith-based and other service organizations. By contrast, Obama has emphasized more of a policy developmental role. Four priority areas were outlined, each with considerable breadth and complexity: improving interfaith relations, both at home and abroad; strengthening the role of fathers in society; reducing poverty; and developing policies aimed at reducing the number of abortions.

There is another unresolved issue: whether and why religion influences differences in the effectiveness of services provided by faith-based organizations, if and where such differences do exist. Although anecdotes abound, there is scant evidence measuring or distinguishing the ways in which religion may explain differences in organizational performance. It may be that faith-based organizations are effective because they possess a higher probability of having certain traits – such as staff commitment, service range, community ties and strong relationships with clients – associated with strong performance.

It may be that faith-based groups resonate in a different way than secular groups with some clients; they may be able to respond more fully and effectively to the needs of individuals for whom religion is already important. Or, it may be that by strengthening religious belief and practices among people in their care, faith-related programs enhance individuals’ capacities to make fundamental changes in their lives and achieve secular goals of public social service programs. Unpacking these different pathways of influence on organizational performance will suggest very different avenues for public policy.

Other obstacles present themselves too. Resistance to government partnerships with religious organizations under the Obama administration may also come from the faith community, as it did under Bush. Some churches simply don’t want to accept government support because they see it as a potential source of unwanted control. Others are unaware of or unprepared for public funding. As noted in this report, a survey sponsored by the Rockefeller Institute’s Roundtable on Religion and Social Welfare Policy found that seven in 10 churches throughout the country sponsor social services, ranging widely from marriage counseling to food pantries. But relatively few congregations apply for or receive government funding to support such services. Many, in fact, don’t even know about changes in federal law over the past 10 years that were intended to make it easier for religious organizations to participate in taxpayer-funded services.

Among congregations that have sought government funds for social services, more than three-quarters found it hard to apply for and manage grants, according to the Roundtable's survey. Few have the organizational capacity and practices necessary to properly receive, manage and account for public funds. Several of the members of Obama's council are leading experts in working with and developing the capacity of smaller groups close to the community. It will be important to see what comes from this process.

Thus far, the Obama administration has begun to set out its own efforts to strengthen nonprofits and faith-based groups. The Strengthening Communities Fund, created by the American Recovery and Reinvestment Act of 2009, will make \$50 million worth of grants available for two programs:

- the Nonprofit Capacity-Building Program, which provides two-year matching grants of up to \$1 million to support faith-based and secular nonprofits.
- the State, Local and Tribal Government Capacity-Building Program, which provides two-year matching grants of up to \$250,000 to governments to help strengthen faith-based and secular nonprofits that are aiding families and communities during this economic downturn.

On the legislative front, extension of citizens' service programs was accomplished swiftly through the Edward M. Kennedy Serve America Act of 2009. However, reauthorization is still due this year for the Workforce Investment Act, whose programs are implicated in major ways in the American Recovery and Reinvestment Act, the massive effort by Obama and the 111th Congress to stimulate the economy. The Temporary Assistance for Needy Families program – and the core Charitable Choice provisions it contains – comes up for reauthorization in 2010. Both of those bills were the subject of intense debate in Congress over religious hiring rights, and one wonders whether advocates in those debates will again take up their positions in the trenches or be pulled toward consensus in a new environment.

“The big picture is that President Obama believes faith-based and smaller secular neighborhood organizations can play a role in American renewal. They can work with the federal government to address big problems. We're also going to make sure we have a keener eye toward the separation of church and state,” Joshua DuBois said in a February interview with The Associated Press.

In the *Christianity Today* blog on April 13, 2009, Melissa Rogers, director of the Center for Religion and Public Affairs at the Wake Forest University School of Divinity and a member of Obama's new Advisory Council, summarized the president's approach this way:

“The Obama White House has said that ensuring that these partnerships are in compliance with the Constitution is a priority, as is making sure that they are effective and sensibly arranged for both providers and beneficiaries. It has said it won't measure success by how many religious groups or secular groups get government money, but by whether its policy goals (like bringing about an inclusive economic recovery) are being achieved through these partnerships.

“The Obama office has a much broader mandate. There is an effort to see, for example, where the areas of agreement are on issues like encouraging responsible fatherhood, reducing the number of abortions, and promoting good stewardship of the environment. And the administration is involving religious and secular communities not only in discussions about social service partnerships but also about what the government’s policy should be on domestic and global poverty.”

The decisions of the new Obama administration and the next sessions of Congress will have a substantial effect on the continuation and expansion of the Faith-Based Initiative and related policies. The future rulings in the courts and the arc of interpretation of the First Amendment’s Free Exercise and Establishment clauses will also shape the course charted by this new White House Office of Faith-Based and Neighborhood Partnerships. Of course, much also depends on the competing social and economic challenges and priorities facing the nation.

I. SETTING THE STAGE FOR THE BUSH FAITH-BASED AND COMMUNITY INITIATIVE

Few matters of public policy are associated more closely with President George W. Bush than the Faith-Based and Community Initiative – his effort to expand government partnerships with religious providers of social services. From his earliest days in office, Bush sought legislation, signed sweeping executive orders, restructured White House and agency administrative functions, directed significant changes in federal regulations, pushed to fund federal grants, and fostered similar state and local activities – all as a way to expand government partnerships with religious groups. He used the bully pulpit of the presidency to extol the promise of faith-based social services at nearly every opportunity.

A strong general awareness of Bush’s interest in a faith-based agenda has not extended to the particulars however. The specifics about the scope, character and consequences of efforts to expand government partnerships with religious groups are not widely known. Nor has increased attention translated into broader understanding. With core American principles about religious freedom at stake and the issue highly politicized, the debate over faith-based initiatives over the past eight years has tended to be hotter than illuminating. A spotlight has been trained on the topic, to be sure, but the harsh glare has revealed the subject’s outline rather than its details.

WHAT IS A FAITH-BASED ORGANIZATION?

That the Bush initiative focused on the “faith-based” moniker probably did not aid the interests of greater clarity. There is considerable ambiguity about the term and the daunting range of organizations to which it applies – congregation-based faith-based organizations, independent religiously affiliated nonprofits, faith-based coalitions and faith-based intermediaries.

Faith-based organizations (FBOs) typically are affiliated with a religious denomination, and religious principles often inspire their work, even when the organizations are providing services of a secular nature. The extent to which the underlying faith of an organization is apparent in its services varies widely however. Some FBOs consider faith to be integral to the effectiveness of the services and either mandate or suggest that clients participate in religious activities. An example would be a faith-based provider of substance abuse treatment that considers religious conversion essential to addiction recovery. Others view the offering of a service itself as evidence of their faith and make no specific religious references.

Similarly, there is wide variation in the extent to which religion is apparent in the place where FBO services are offered or through the employees who deliver the services. Staff may share the beliefs of the organization; in conversations, FBO leaders have frequently said that people who share the organization’s beliefs are most likely to respond to its job postings. But that is not always the case, and FBOs that accept government money for the services they provide must be careful to follow applicable laws on selectivity in hiring.

FBOs may be congregation-based, that is, a church, synagogue, mosque or other house of worship that provides social services directly, instead of through a distinct and separate nonprofit arm. This type of FBO is most likely to offer services at the same location used for worship, with

religious symbols present and religious content included in the program. But this is not always the case. It is a relatively new development that public funds, under certain circumstances, may support social services offered by such groups.

FBOs may also take the form of independent religiously affiliated nonprofit organizations and may be local, regional or national in scope. A local religiously affiliated nonprofit is a social service provider that is connected to a faith community but has incorporated as a distinct and separate nonprofit. While organizations of this type typically have religious roots in their origin or philosophy, the services they provide do not necessarily have explicit religious content. FBOs may also form coalitions and join with intermediaries in support of their work.

Some of the largest providers of social services in the nation are religiously affiliated nonprofit organizations. Programs offered by multi-state or national FBOs are usually quite secular. But shared religious tenets may be apparent in their mission statements, hiring decisions, volunteer recruitment, board membership or funding sources. Most FBOs of this type tend to be older and more established and have a history of contracting with the government to provide a range of services to people in need, regardless of clients' religious affiliation. Examples include Catholic Charities, Jewish Family Services, Lutheran Social Services, the Salvation Army and Volunteers of America.

Other large religiously affiliated nonprofit organizations provide a singular service to a specific population. Examples include Habitat for Humanity, which builds houses for low-income people; Prison Fellowship, which provides services to inmates, ex-offenders and their families; and Teen Challenge, which offers recovery programs for addicts. These groups are more likely to contain explicitly religious elements in their activities.

HISTORY OF GOVERNMENT FUNDING OF RELIGIOUS INSTITUTIONS

There is a long history of involvement by religious organizations in publicly funded social service delivery in the United States. FBOs have received federal funds for generations – either directly from federal agencies or funneled through state government – to provide an array of social services.

The involvement of religious organizations in social services also reflects a broader trend: the increasing reliance on nongovernmental charities for delivery of these types of services. We hear a lot about privatizing government services. However, the big story for social welfare and community development services is “nonprofitization.” Over the past 35 years, state and local governments increasingly have contracted with nonprofit organizations for these services, and an extensive, complicated pattern has evolved linking the government and these organizations in new partnership.¹

For decades there has been a shift away from the government directly providing services, away from large public care facilities in favor of smaller community-based organizations, and away from centralized federal control in programs like welfare and toward more local autonomy. Testifying before Congress, researchers from the Government Accountability Office (GAO) estimated that federal money to nonprofit organizations increased more than 230 percent from

1980 to 2004, when adjusted for inflation. And the number of registered public charities has grown more than 30 percent since 2000, from about 646,000 to 851,000.²

The GAO also looked at the dynamics of nonprofit organizations and their relationship with the federal government. It found that nonprofit organizations are more flexible and have greater access to underserved populations to deliver services. Yet, in terms of scale and intensity, this relationship has grown to interdependence. There have been striking increases in government contracting with nonprofits to deliver social services, particularly in areas such as day care, child welfare, homeless shelters, programs for older adults, public health and mental health. But researchers have found that while nonprofits may gain prestige and funding through government contracts, they also may find themselves distracted from their mission by management challenges and the demands of regulation and oversight.

Increasing reliance on nongovernmental organizations, faith-based or otherwise, for social service delivery is a long-established trend. In fact, many of the contours of Bush's Faith-Based and Community Initiative were shaped well before he assumed national office. The idea was the brainchild of a neo-conservative movement of academics, religious leaders and elected officials in the 1970s and 1980s who sought to redefine the roles of government and civil society to stem what they perceived to be the ill effects of social and moral crises. These advocates viewed the causes of poverty to lie beyond the scope of government, in such things as substance abuse and joblessness.

Religious organizations, by contrast, were perceived as better equipped for the challenge. Their caring and compassionate staff were purportedly able to move beyond the secular and bureaucratic limitations of the government to correct social ills by changing people's hearts and lives. They had the additional advantage of possessing a credible and effective presence in poor neighborhoods, making them especially well-positioned in strengthening families and communities. Partnerships with FBOs, to their advocates, would also allow the government to leverage private resources and achieve an even larger, overarching goal of reducing government spending.

LEGISLATIVE BEGINNINGS

Important legislative developments have permitted and accelerated these trends. Over the past two decades, laws have eased the way for an increase in governments contracting with FBOs to provide social services. Smaller, grassroots FBOs have been particularly encouraged to compete for social service grants.

In 1981, the Adolescent Family Life Act (AFLA) was enacted, authorizing education for teenagers about sexual health and reproduction and encouraging the involvement of "family members, religious and charitable organizations" in that effort. The law, which also supports programs of care for pregnant teenagers, prohibited AFLA funding for programs that "advocate, promote or encourage abortion." In 1983, the American Civil Liberties Union filed a lawsuit challenging AFLA grants to FBOs, alleging that such grants violated constitutional protections intended to separate church and state. The case eventually reached the Supreme Court, which held that the religious character of some AFLA grantees did not, in itself, represent a constitutional violation. The case was returned to the district court for further development of the

facts; the parties subsequently reached a settlement, which imposed a set of restrictions on FBOs that receive grants under AFLA.

In 1990, the Child Care and Development Block Grant Act required states that received grants under the act to include religious institutions among eligible child care providers. The stated intention was to expand child care choices.

By 1995, this movement had produced a series of policy proposals designed to empower local private institutions – including religious organizations – to address social problems. The most successful and far-reaching was the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the sweeping overhaul of welfare programs, which included a series of provisions championed by then-Sen. John Ashcroft, R-Mo., that significantly revamped the relationship between the government and FBOs that provide social services. The government would no longer exclude faith-based groups from receiving federal grants because of their religious character. Instead, the portion of PRWORA addressing religious organizations stated:

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 organization, and without diminishing the religious freedom of beneficiaries of assistance funded under such a program.

This section in the welfare reform law has become known as the Charitable Choice provisions. They include the following:

- **Nondiscrimination in Funding:** If a state contracts with private organizations to provide services to welfare recipients, then FBOs may not be excluded from the list of eligible providers on the basis of religious character.
- **Providers' Religious Identity Preserved:** An FBO need not abandon its religious identity to receive government funds under PRWORA. It may maintain religious elements in its mission statement and criteria for selecting officers and board members, and keep religious art, references or symbols on its walls. It may also base hiring decisions on the faith of applicants, as long as that practice does not conflict with state or local laws.
- **Recipients' Religious Liberty Protected:** Providers funded through PRWORA, including FBOs, may not discriminate against service recipients on grounds of religion and may not condition delivery of services on recipients' participation in religious activities. Welfare recipients must not be forced to receive services through a faith-based provider but must have the choice of a secular provider as well.

- **Limited Audit:** If an FBO providing services under a PRWORA program establishes a separate account for government funds received for such services, the required government audit will be limited to that separate account.
- **Religious Activities Proscribed:** PRWORA specifies that “No funds provided directly to institutions or organizations to provide services and administer programs under [this act] shall be expended for sectarian worship, instruction or proselytization.” This limitation is important for two reasons. First, it makes it clear that the government may not directly finance these distinctively religious activities. Second, the limitation applies only to “direct” grants or contracts, not to indirect forms of financing such as vouchers. If an FBO receives only indirect government aid, the service provided does not need to be segregated from worship, religious instruction or proselytizing.

These Charitable Choice provisions applied originally to the Temporary Assistance for Needy Families (TANF), Food Stamps, Medicaid and Supplemental Security Income programs. Congress also added Charitable Choice provisions to the Welfare-to-Work program, to the Community Services Block Grant, and in 2000, to two remaining programs – the Substance Abuse Prevention and Treatment Block Grant and Projects for Assistance in Transition from Homelessness. Charitable Choice provisions were also part of discretionary funding programs for substance abuse treatment. The Bush administration extended the reach of these provisions via executive order to 11 federal agencies, while other federal and quasi-public agencies followed suit without the imprimatur of a presidential order.

LEGAL REINFORCEMENT

The series of laws and regulations leading up to and including the Charitable Choice provisions and the Faith-Based and Community Initiative were made possible by a dramatic change in the Supreme Court’s interpretation of the religion clauses of the First Amendment. Over the latter half of the 20th century, the court’s rulings emphasized a doctrine of separation between church and state, whereby religious organizations were deemed ineligible to receive public funds or in-kind support out of concern that aid to such “pervasively sectarian” entities would inevitably lead to actual or perceived endorsement of religion by the government or an “excessive entanglement” between the two.

But by 2000, the court adhered to a doctrine of neutrality, whereby religious organizations were to be treated equally with their secular counterparts. As long as funded institutions were treated in a religion-neutral way and aid was given for a secular purpose, participation of religious organizations was permitted. As a result of the neutrality doctrine, the faith character of an organization is no longer a determining factor. Instead, the secular content of the funded activities and the government’s monitoring of restrictions on use of public funds are the legal standards.³

When the government provides funds to religious organizations, it is responsible for ensuring the money is not diverted to religious use. That standard, set down by former Supreme Court Justice Sandra Day O’Connor in 2000 in *Mitchell v. Helms*, encompasses three distinct requirements. First, the permissible and impermissible uses of government aid must be clearly articulated to

faith-based grantees. Second, the government must ensure that grantees agree to comply with the restrictions on government aid. And third, the government must monitor grantees' conduct to ensure that they comply with the rules.

Most of the court challenges to government and faith-based partnerships since this time have centered on the question of what the government is constitutionally permitted to fund. Questions especially arise in programs whose primary purpose is secular – such as substance abuse treatment or prisoner rehabilitation – but are provided with some degree of religious content. Specifically, religious activities cannot be supported directly with taxpayer funding and must be separated in time and location from those activities that the government does fund.

There is, as well, an important distinction in how the ban against public funding of religious activities operates. This depends on whether government funding is direct – as in the case of a service contract or grant award made by a public agency to an FBO – or indirect, as in the form of beneficiary choice, where an individual recipient of government services chooses the provider to receive payment. Vouchers, a form of beneficiary choice, have been employed as a way for the government to pay for services provided by private religious programs without breaching the constitutional separation of church and state. Court decisions have upheld the use of vouchers when recipients are able to make a “genuine, independent choice” among secular and religious schools and among drug treatment facilities. New rules from several federal agencies in recent years have recognized the greater latitude for religious content in voucher-financed services.

The interplay of federal, state and local laws is another significant element in setting the legal context for faith-based and community initiatives. State constitutions may present significant barriers to service contracts between government agencies and religious groups. Thirty-seven states have constitutional provisions forbidding state financing of religious organizations, and 10 states extend the barrier to indirect as well as direct financing, according to a study by the Roundtable on Religion and Social Welfare Policy.⁴ Moreover, the report showed that states and local governments usually have their own laws governing the right of religious organizations to hire based on religious beliefs, and many restrict such rights when public funding is involved. The legal setting for faith-based initiatives remains complicated, perhaps having grown more strained by increased litigation in recent years.

BIPARTISAN SUPPORT

Although it may seem like a remote memory, the political environment for federal efforts to partner with religious groups was not so divisive a few years ago. Both major party candidates in 2000 embraced the idea of “charitable choice” to combat problems of welfare and poverty. Democratic presidential candidates Al Gore and Bill Bradley both proposed to expand government partnerships with FBOs. “Today I give you this pledge: If you elect me your president, the voices of faith-based organizations will be integral to the policies set forth in my administration,” Gore declared in May 1999.

Vice President Al Gore said he had encouraged President Bill Clinton to sign PRWORA and added that he was in favor of extending its Charitable Choice provisions to deal with other social needs, specifically, drug treatment, homelessness and youth violence. Gore qualified his

endorsement, stressing Charitable Choice provisions already in law and the need to have secular alternatives and assurances that no one would be forced to participate in religious observances.

I have seen the transformative power of faith-based approaches through the national coalition I have led to help people move from welfare to work.... For too long, faith-based organizations have wrought miracles on a shoestring. With the steps I'm proposing today, they will no longer need to depend on faith alone. – Vice President Gore in a speech in 1999

Before becoming a presidential candidate, Bush advanced a faith-based initiative in Texas. As the newly elected governor of Texas in 1995, Bush brought a personal understanding of the transforming power of faith and salvation to his office. Shortly before becoming governor, he is reported to have had a spiritual awakening that changed his life. Believing religious organizations could be powerful partners in changing the lives of needy Americans, he worked closely with leaders of the movement such as Marvin Olasky, a professor of journalism at the University of Texas at Austin dubbed the “godfather of compassionate conservatism.” Olasky’s writings helped stir evangelical Christian and politically conservative groups to push for empowering private and religious charities to play a greater role in providing social services.

Bush became the first governor in the nation to apply the new federal standards at the state level. Within months of the passage of welfare reform, he signed an executive order directing Texas agencies to encourage FBOs to provide social services to needy Texans. “Government can hand out money, but it cannot put hope in our hearts or a sense of purpose in our lives,” then-Gov. Bush said. “It cannot bring us peace of mind. It cannot fill the spiritual well from which we draw strength day to day. Only faith can do that.”

Bush highlighted his faith-based initiative and introduced it on a national level during his campaign for president. At a campaign appearance in July 1999 in Indianapolis, he called for a partnership between the government and religious entities to combat social ills. Faith-based groups, he proclaimed, would constitute part of the “armies of compassion” in “the next bold step in welfare reform.” He promised to dedicate \$8 billion to faith-based and community groups in the first year of his presidency through a program of tax rebates and direct grants, and to establish an Office of Faith-Based Action to encourage faith-based groups to work with government agencies.

A NEW FAITH-BASED PRESIDENT

True to his campaign promise, and only nine days after his inauguration, Bush issued two executive orders on Jan. 29, 2001, creating the White House Office of Faith-Based and Community Initiatives – which he appointed John DiIulio, a widely respected academic, to direct – and additional centers for Faith-Based and Community Initiatives within five federal agencies: the departments of Education, Health and Human Services, Housing and Urban Development, Justice, and Labor. The White House instructed the departmental offices to complete an analysis with recommendations on eliminating barriers in their programs to expanding partnerships with religious social service groups. It also began work with like-minded members of Congress to enact a faith agenda into law.

That effort began with a push to adopt comprehensive legislation to broaden opportunities and protections for religious organizations in a host of federal social service programs, and creating additional incentives for private giving in support of faith-based and other charitable groups. When the comprehensive approach proved unsuccessful, efforts were later narrowed to remove barriers from specific programs as they were renewed; to protect and expand rights for religious social service programs where they already existed in law; and to create new initiatives addressing social needs that would involve religious and other groups as service providers. Receptivity in Congress, even with the contracted goals, was limited.

The absence of legislative authority did little to slow the Bush administration from changing a number of federal rules and regulations and from creating an elaborate, active administrative apparatus to involve religious groups in public services. Bush issued additional executive orders in December 2002 and June 2004 adding more FBCI centers to federal departments and agencies.

“We must bring the hope and healing of faith-based services to more and more Americans. Government has often been slow to recognize the importance of faith-based and community efforts. That’s changing. And more changes are needed.” – President Bush, Dec. 12, 2002

In essence, Bush’s Faith-Based and Community Initiative sought to extend the Charitable Choice provisions of PRWORA throughout the federal government. To boost participation among religious organizations providing social services, especially smaller faith-based groups, Bush sought to reduce barriers in the federal grant-making process that he said discriminated against such groups and to allow them to retain their religious identity. For example, his initial executive order permitted faith-based groups to retain religious symbols in the spaces where they provide social services, to retain references to religion in their mission statements, and to retain religiously affiliated board members.

Bush also used the presidential bully pulpit to hammer home the faith-based message at nearly every opportunity. In the single month of July 2001, for example, he gave seven speeches on his Faith-Based and Community Initiative in a 17-day stretch. Over his tenure Bush devoted more than 50 speeches explicitly to the initiative, and he endorsed it in his State of the Union addresses. He also brought up the Faith-Based Initiative in dozens of speeches centered on other topics. As in his first campaign for the presidency, the faith-based effort and related activities were central themes in Bush’s 2004 re-election campaign. Indeed, critics – including former staffers – claimed various activities stemming from the initiative were structured to benefit Bush and like-minded members of his party in the 2004, 2006 and 2008 campaigns.

A number of programmatic initiatives were put in place during the Bush administration – piggy-backed onto other legislation – to provide services through new partnerships with religious groups or in concert with other sorts of service providers. Of particular note were new programs for substance abuse treatment, prisoner reentry, children of prisoners and global outreach on HIV/AIDS.

“The days of discrimination against religious groups just because they are religious are coming to an end,” Bush said during a speech to 1,600 religious leaders in Philadelphia in December 2002. “We’ve reformed welfare in America to help many, yet welfare policy will not solve the deepest problems of the spirit... No government policy can put hope in people’s hearts or a sense of purpose in people’s lives. That is done when someone, some good soul, puts an arm around a neighbor and says, ‘God loves you, and I love you, and you can count on us both.’ ”

Speaking at the same December 2002 event in Philadelphia, then-Secretary of Housing and Urban Development Mel Martinez decried the problems faced by religious organizations trying to work with his department. “A Catholic organization in Sioux City, S.D., was declined a \$63,000 federal HUD grant because the city demanded that it change its practice of praying before serving meals to homeless people. It was suggested they substitute with a moment of silence,” Martinez said. “HUD reviewed the case and the grant went to the organization without any request that they change their religious practice. This type of discrimination is not well-founded in law and should not be tolerated,” he added. “Faith-based organizations should be judged on one central question: Do they work?”

The same question may be asked about the Bush Faith-Based Initiative itself, and in both cases clear answers are elusive. Amid very complicated terrain, little research has yet been conducted that is able to show that FBOs are more effective than secular organizations in addressing social problems. While more elaborate scientific studies are underway, the Bush White House relied on largely anecdotal evidence to support the view that faith-based approaches produce better long-term results, should be funded directly, and should be included as choices for clients to voluntarily select from in receiving publicly funded services. Little documentation exists to show that religious character or content affects the effectiveness of social services, but more should be known soon.

II. THE ELEMENTS OF THE BUSH ADMINISTRATION'S FAITH-BASED AND COMMUNITY INITIATIVE

Activity in Washington, D.C. is often measured by the proliferation of a customary product in the nation's capital: legislation. But modern presidents – conservatives more so than liberals in recent times – have also sought to achieve their intended ends by using the executive branch's administrative powers rather than working with a fractious Congress. Both techniques were brought to bear by the administration of George W. Bush in an effort to implement his avowed priority of expanding opportunities for government partnerships with religious organizations. As a result, the administrative powers of the presidency were used in ways remarkable and even historic.

The Bush administration's legislative efforts on its faith agenda drew early attention from the press. As the legislative agenda splintered and bogged down, attention focused more on the expression of Bush's personal views on religion and faith-related social services. Although it was not widely reported at the national level, the Bush administration used its executive powers to implement the Faith-Based and Community Initiative throughout the federal government. Few if any presidents in recent history reached as deeply into, or as broadly across, the government to carry out a presidential priority as did the Bush administration in advancing its faith initiative.

A host of steps were taken after Bush's announcement of his Faith-Based Initiative in January 2001. These included changes in federal rules, federal agencies, funding and public outreach advanced by the Bush administration to increase partnerships with faith-based groups to provide a vast array of social services. Religious organizations became involved in government-encouraged activities ranging from building strip malls for economic improvement and patrolling school hallways to promoting child car seats and distributing Medicare prescription cards.

Supporters hailed these moves as a way of ending the exclusion of certain religious groups from public programs and widening the choice of providers. Critics questioned whether efforts to remove barriers facing faith-based organizations (FBOs) also weakened long-standing walls preventing religious groups from mixing spiritual activities with their secular services.

A. THE BUSH FAITH INITIATIVE IN CONGRESS

The Bush administration and its supporters in Congress set out in 2001 with high hopes for adopting laws to expand opportunities for faith-based social service providers in government programs and, through the tax code, to strengthen incentives for charitable contributions to their efforts. Yet what began as a plan for comprehensive legislative authorization for expanded public and private sector partnerships with religious groups gave way to a series of narrower attempts, with few legislative successes over the eight-year period.

The Push for a Comprehensive Bill

The legislative foundation for the Bush administration's Faith-Based Initiative was introduced by Rep. J.C. Watts Jr., R-Okla., on March 29, 2001, three months after Bush became president. The Community Solutions Act of 2001, or HR 7, offered protection for the "equal competition" rights of faith-based providers applying for federal money in 11 program areas. It also would have expanded the range of social services in which these rights were explicitly protected well beyond those already in place under welfare block grants and substance abuse treatment programs. In addition, the proposal called for expanded tax deductions for charitable contributions and encouraged low-income people to save money.

The Community Solutions Act included Charitable Choice provisions that allowed federally funded faith-based service providers to retain their autonomy by keeping their practices and expression of religious beliefs intact. It also would have allowed faith groups to employ staff based on their religious beliefs. There was one limitation however: The bill stated that no federal money could be used for sectarian worship, instruction or proselytizing.

The Bush administration worked behind the scenes with Republican House leaders to draft the legislation. The bill was championed as revolutionary to supporters in private conversations, but publicly its characterization was more muted. In fact, a central element in the public rationale for the bill was that the proposed protections for religious organizations were built on the same provisions enacted in the 1996 welfare reform law during the Clinton administration. Nonetheless, a few voices of opposition began to rally others to their side, arguing that religious protections in existing laws had been added at the last minute and with little notice or consideration. Opponents were determined that this would not happen again under the newly elected Bush. "They were getting [Charitable Choice] legislation through until it got attention," Rep. Robert C. "Bobby" Scott, D-Va., told reporters at the time. "The more they pressed this, the more it smelled. The more it is discussed, the better the chances are that this idea will collapse."⁵

By the time the proposal reached the floor of the House in July 2001, the faith-based provisions had become highly controversial. An amendment to eliminate the religious hiring provisions was pushed forward, but the bill's supporters were able to defeat it. The proposal went on to pass the House by a vote of 233 to 198. "The Community Solutions Act protects exemption for religious organizations established in the Civil Rights Act of 1964," Watts said. "That exemption simply allows religious organizations to maintain their distinct character and mission by hiring staff who share their religious beliefs."⁶

Opponents remained unpersuaded however. "Mr. Speaker, I voted against HR 7 because it is a fundamentally flawed bill that would put in jeopardy one of the bedrock principles of the United States – the separation of church and state," Rep. Diana DeGette, D-Colo., said. "HR 7 would enable a religious organization to engage in discriminatory practices based on religion."⁷

When the Bush administration's faith-based legislation moved on to the Senate, its supporters found the environment even less favorable. The faith-based provisions were dramatically scaled back, and as the legislation moved slowly through committees with opposition, it never reached the Senate floor before the Senate adjourned for the year.

It was during the next session of Congress that Sen. Joseph I. Lieberman, D-Conn., and Sen. Rick Santorum, R-Pa., sought to resurrect the faith-based bill, introducing it as the Charity Aid, Recovery and Empowerment Act (CARE) of 2002. Their legislation sought to reduce the anticipated opposition by omitting the religious hiring provisions, which the sponsors acknowledged would be a major impediment to passage. “Though the question of hiring is not addressed in the bill,” Santorum said at the time, “current laws will continue to apply.”

The legislation did include “equal treatment” provisions ensuring that faith-based organizations that compete for federal funding could display religious icons, have religious names, include religious language in chartering documents, and use religious criteria for their governing boards. The bill also sought to create a \$150 million Compassion Capital Fund to help small community and faith-based organizations partner with the government.

Removal of the hiring rights provisions was insufficient improvement for the bill’s opponents however. Some members of the Senate and House wanted more explicit language barring proselytizing and religious discrimination in employment. Scott said he would oppose the legislation again because it did not expressly prohibit discriminatory practices. “If there is no language that prohibits discrimination, this administration will allow silence to allow discrimination,” Scott said. “I have other concerns about direct federal funding to faith-based organizations. Can they answer these questions: Can you directly fund a church? Can you proselytize during the program funded by government? Can you discriminate based on religion? They haven’t answered any of these questions.”⁸ Several amendments were offered that delayed action, and once again the legislation failed to move to a final vote before the session’s end.

The next step was in January 2003, when Lieberman and Santorum re-introduced the CARE Act but removed all language that explicitly supported the efforts of faith-based groups. The bill retained provisions to encourage charitable giving, to expand the Compassion Capital Fund created a year earlier as an agency budget item, and to restore more than \$1 billion in block grant funding to states for social services for the needy. “I’ve spoken to several members with concerns over the faith-based language that have said if it is off the table, they’ll pass on a fight,” Santorum said at a press conference announcing introduction of the bill.⁹

Santorum explained that he was willing to remove the last remains of explicit faith-based language from the bill because Bush had issued an executive order expanding his Faith-Based Initiative, including reinforcement that federally funded faith-based service providers could consider religion in their hiring decisions. The Bush administration also had sought to change federal regulations to advance its faith-based agenda and met with representatives of civil liberty groups to urge them to support the bill.

The Senate eventually approved the CARE bill and sent it to the House, where it reclaimed the designation HR 7 when Rep. Roy Blunt, R-Mo., and Rep. Harold E. Ford Jr., D-Tenn., introduced their version in May 2003. Although the new HR 7 did not contain the original faith-based language, Blunt said he was not disappointed. “There are better places to do the policy work,” he said, referring to several pieces of pending legislation that included religious hiring provisions. The bill included the \$150 million Compassion Capital Fund, allowing faith-based

and community organizations to apply for program funds. However, it excised provisions restoring social service block grant funding incorporated in the Senate bill.

In an effort to include the faith-based language, the House approved a resolution along with HR 7 that endorsed faith-based organizations as successful agents to deliver services addressing difficult social problems. It also stated that while the work of faith-based organizations should not replace the government, religious groups are valuable partners in meeting society's challenges, and called on Congress and corporations to make more contributions to faith-based groups. However, the resolution had no statutory authority.

By that point in its journey, the CARE legislation had been pared down to a tax bill with incentives for charitable donations and inducements for people to save money. Debates centered not on faith-based provisions, but on how the federal government would compensate for the reduced revenues its tax credits were expected to produce. Also at issue was whether money would be restored for social service block grants for the states, providing expanded grant and contract opportunities for faith-based and other groups that compete for them. But the session of Congress ended without enactment, and even the more-modest tax provisions were therefore doomed.

Bush did not see comprehensive legislation on his Faith-Based and Community Initiative move forward during his tenure. Instead, over the remaining years of his presidency, the legislative agenda on faith-based policy was divided among three types of proposals: legislation creating financial incentives to encourage private giving to religious organizations; statutory authorization to explicitly partner with religious organizations in certain governmental programs; and new programmatic initiatives involving faith-based and other service providers, often as part of omnibus appropriations legislation.

Strengthening Incentives for Charitable Contributions to FBOS

Passage of charitable giving incentives took many years from the time they were first introduced as part of the CARE Act. Throughout all the defeats of the other legislative goals of Bush's faith agenda, provisions to encourage Americans to donate to charities were the single signature legislative element to survive. Legislative proposals used two particular mechanisms to increase incentives for charitable giving. The first permitted older Americans to make charitable contributions from individual retirement accounts without adverse tax consequences. The second allowed the 86 million Americans who do not itemize on their tax returns to claim a deduction for charitable donations above \$250.

In 2006, the provisions were included but then taken out of a general tax cut proposal intended to stimulate the economy. Provisions were subsequently added to a pension reform bill, the Pension Protection Act of 2006, but notably missing was the proposal enabling taxpayers who do not itemize on their tax returns to deduct part of their charitable contributions. Bush signed the pension reform bill containing the remnants of the charitable-giving incentives in August 2006. The incentives are listed below:

- **Donations from IRAs for charitable purposes:** This allowed individuals to donate up to \$100,000 to charity from an individual retirement account without paying income tax on the distributions. The donation had to go to a public charity.
- **Modification of the charitable deduction for food donations:** This provided incentives for businesses and farmers to donate their food inventory to charity. The provision allowed donations from all trades and businesses, and the deduction was equal to the taxpayer's basis plus one-half of the difference between fair market value and basis, or twice the taxpayer's basis in the contributed inventory, whichever was less.
- **Modification of the charitable deduction for book donations:** This added public schools to the list of eligible recipients for book donations by certain corporations.
- **Modifications to encourage contributions of property for conservation purposes:** This provided land-rich, but cash-poor families an opportunity to donate land for conservation purposes by increasing the charitable deduction limit from 30 percent of adjusted gross income to 50 percent if the donation did not prevent the use of the land for farming or ranching. The charitable deduction limit was increased to 100 percent of adjusted gross income for eligible farmers and ranchers. Additionally, the provision allowed a taxpayer to carry forward the deduction for 15 years in certain circumstances.
- **Adjustment to the basis of S corporation stock for charitable contributions:** This leveled the playing field for the donation of stock by small businesses by clearly defining as a charitable contribution the applicable deduction with regard to the donation of S corporation stock.
- **Extension of the enhanced deduction for inventory to include public schools:** This extended the enhanced deduction for inventory property to donations made to public schools.

“These incentives are incredibly important to organizations that will be receiving these donations, but even more so for the people that these nonprofits serve in our communities,” Santorum said of the newly enacted law. Most of these tax incentives were extended through 2009 under subsequent bills signed by Bush.

Removing Statutory Barriers to Government/FBO Partnerships

Expanding statutory protections for religious organizations in more federal programs was one of the central purposes of the comprehensive legislation sought at the outset of the Bush administration. In the absence of a bill, Bush moved forward through executive orders and other means. But there were a number of existing federal programs with statutory provisions that presented barriers, perceived or real, to wider participation of faith-based organizations. Since these provisions were in law, they could not be remedied by presidential order and congressional approval was necessary. When these programs came up for reauthorization, heated debate

centered on whether extending legislation would maintain or change language that permitted or precluded religious organizations receiving federal money from hiring and firing employees based on religious beliefs.

CITIZEN SERVICE ACT OF 2002

One of the first of these proposals was the Citizen Service Act of 2002, introduced by Rep. Peter Hoekstra, R-Mich., to reauthorize and extend the Corporation for National and Community Service, which operates programs to support volunteerism in the United States. The corporation is an independent agency that oversees federally funded national service programs such as AmeriCorps, Senior Corps, and Learn and Serve America. Although the statute authorizing these programs expired at the end of fiscal 1996, the programs were continued through annual funding legislation.

The Bush White House and supporters like Hoekstra sought several changes in the corporation to: overhaul and strengthen existing programs; implement accountability measures for grantees; and make the corporation more effective in leveraging volunteers among its service organizations. Bush proposed funding an additional 25,000 AmeriCorps members and increasing spending on domestic volunteer programs by 40 percent. The proposal also eliminated existing provisions barring grantees and contractors, religious organizations included, from considering religious beliefs in their employment practices.

The objective was to reflect “whether the protection of religious staffing rights is prudent and good public policy for programs administered by the corporation,” Hoekstra said at the time. “This is a matter of concern for some of us because under the current national service laws, faith-based groups are denied the protections of the Civil Rights Act that would otherwise allow them to hire employees or accept participants on a religious basis if they accept federal funds.”¹⁰

The Citizen Service Act’s hiring rights provision generated opposition from the Democratic minority in the House. But the proposed expansion of the program also drew significant opposition from House Majority Leader Richard K. Armey, R-Texas, and others of Bush’s own party, who said the Clinton-created program ran counter to Republican goals of smaller government and more personal responsibility. The bill made it out of committee in 2002 but never went to the House floor and did not advance in the Senate.

Another, final attempt to extend and expand volunteer programs under the Corporation for National and Community Service was made in 2008 and renamed the Generations Invigorating Volunteerism and Education (GIVE) Act. Although it was devoid of the hiring rights provision that bogged down the Citizen Service Act, it met the same fate as its predecessor. The nation’s volunteer programs never received long-term reauthorization during the Bush years. However, on April 21, 2009, President Barack Obama signed the Edward M. Kennedy Serve America Act reauthorizing the Corporation for National and Community Service and its programs through 2014, expanding the number of national service participants to 250,000 by 2017, and establishing funds to leverage more local volunteers and resources to improve communities throughout the country.

WORKFORCE INVESTMENT ACT

The same fight over religious hiring rights also weakened the ground beneath the Workforce Investment Act, enacted in 1998 as the nation's main program for training and assisting people looking for work. The act consolidates and formalizes planning and delivery of training and employment services for youths and adults through a system of regional workforce boards and One-Stop Career centers. These "one-stops" serve as delivery sites where job seekers have access to labor market information, job counseling, job training, job placement services, adult education and literacy classes. Under the program's authorizing statute, participating job training providers – faith-based or otherwise – are prohibited from hiring or firing staff based on their religious beliefs.

Legislation to extend and modify the Workforce Investment Act was proposed in 2003. The Workforce Reinvestment and Adult Education Act, sponsored by Rep. Howard P. "Buck" McKeon, R-Calif., and Rep. John A. Boehner, R-Ohio, aimed to streamline the multiple programs offered at the One-Stop Career centers, shift more control and oversight responsibilities to state and local jurisdictions, and encourage the government to work with faith-based and community organizations to provide the services.

This House Republican proposal was developed with the Bush administration, and it sought to increase opportunities for government partnerships with faith-based and community organizations in two main ways. The bill would have allowed the use of vouchers permitting individuals to shop around and select providers, including those with religious content, for training or support services. This proposed voucher system would have gone well beyond an experiment with Individual Training Accounts permitted under the 1998 act. A second provision would have eliminated the law's prohibition against religiously based hiring. "We will ask states to diversify providers at the local level," said Assistant Secretary of Education Carol D'Amico, the Bush administration official responsible for overseeing vocational and adult education programs. "We will also ask states to build the capacity of community-based organizations, including faith-based organizations, to provide these services."¹¹

The voucher and religious hiring provisions in the bill quickly became flashpoints for controversy. Opponents criticized the voucher component on the grounds that under the bill, faith-based organizations and other private providers would not technically have been considered "recipients" of federal aid and therefore would no longer have been required to adhere to civil rights laws and related requirements that attach to that status. The legislation would have eliminated the provisions under the Workforce Investment Act that barred religious organizations from using the exemption in the antidiscrimination provisions of Title VII of the Civil Rights Act, thus allowing such groups to consider religious beliefs when making staffing decisions.

Supporters argued that religious organizations should be able to retain their autonomy and identity by hiring staff with similar religious beliefs. But civil rights groups voiced loud opposition, and on new rhetorical ground. As had been the case with the CARE Act and the Citizen Service Act, the provision permitting religiously based hiring was characterized as tantamount to "allowing discrimination." Even worse, critics alleged, it removed existing protections against discrimination.

“This discrimination provision undermines the basic tenets of our country and sends a terrible message to people in our country,” said Rep. Chris Van Hollen, D-Md., who offered an amendment to preserve the existing workforce investment law prohibiting federally funded job training providers from discriminating in hiring based on religion. “This would be the first time Congress repeals a law that prohibits discrimination. I believe the American people would be appalled if billions of dollars in federal job training programs could be diverted to job training programs that hire only Christians or only Jews,” Van Hollen added.¹²

Boehner, chairman of the House Education and Workforce Committee and lead sponsor of the bill, maintained that the legislation did not support discrimination. “We just don’t want to restrict faith-based organizations,” he said. Others joined in alongside Boehner. “The power of these organizations is their faith,” then-Rep. Jim DeMint, R-S.C., explained. “We can’t divide the faith component from what they’re doing. They are proving their effectiveness, and we want our money to flow through them. Don’t pretend that you’re not dividing and diluting the power of these faith organizations because that’s what you’re doing.”

The Workforce Investment Act reauthorization followed a path similar to the Citizen Service Act. The bill made it out of committee on a party-line vote and was passed by the House on May 8, 2003. From there, freighted with controversy, it moved over to the Senate, where it found a committed opposition. The brewing debate over religious hiring rights and the voucher provision stalled any further progress for the balance of that year and the next.

Bush complained about the lack of progress on the workforce legislation in March 2005, speaking before a group of religious and civic leaders in Washington. “When it comes to programs such as the Workforce Investment Act, Congress has required faith-based groups to forfeit the right,” he said, referring to the ability of religious organizations to select employees on the basis of their religious beliefs. “And so I want this issue resolved,” Bush continued. “Congress needs to send me the same language protecting religious hiring that President Clinton signed on four other occasions. And if we can’t get it done this year, I’ll consider measures that can be taken through executive action.”¹³

The following day, the House voted mostly along party lines for a five-year extension of the Workforce Investment Act with a change that would have allowed religious organizations offering job training services to consider a person’s religious beliefs when employing staff. An amendment offered by Democratic Rep. Scott to retain the act’s original ban against religiously based hiring by contractors receiving money under the act failed.

The outcome in the Senate was a different scenario. Despite Bush’s admonition and a Republican majority, the Senate in 2005 refused to eliminate the religious hiring prohibition. That prompted a complaint from the Bush administration. But even Sen. Michael B. Enzi, R-Wyo., the bill’s sponsor and chairman of the Senate Health, Education, Labor and Pensions Committee, asserted that the issue of religious hiring rights was one of the most problematic barriers to getting the legislation through. No agreement on extending the act was reached before the end of the Bush administration, and its programs were continued year to year through annual appropriations.

Yet, as early as July 2003, the Department of Labor was awarding millions to better than a dozen states and scores of organizations around the country to specifically link faith-based and community organizations to the One-Stop Career system. Bills reauthorizing the Workforce Investment Act are expected to be introduced year.

HEAD START

Many of the same religious hiring protagonists lined up on legislation to extend and modify Head Start, a popular and generally noncontroversial program providing preschool services since 1965. Head Start had last been reauthorized in 1998 and was due for renewal in 2003. Like the Workforce Investment Act, the Head Start program's existing statutory authorization included a provision barring participating providers from employment discrimination but did not explicitly note religious beliefs as an element of that. The Head Start program pays for approximately 198,000 teachers and staff and includes 1.4 million volunteers.

This time Republicans offered an amendment to eliminate the existing ban against religious-based hiring in Head Start programs. The House Education and Workforce Committee took up the Head Start reauthorization in June 2003. Boehner, lead sponsor of the proposal, argued that the measure would make the Head Start program consistent with other laws that allow faith-based organizations to consider religious beliefs when making hiring decisions. "The Civil Rights Act of 1964 allows religious organizations to hire and fire based on religious beliefs," Boehner said. "Over the years, federal laws have trampled on this right, including Head Start, and it's just wrong. President Clinton signed four bills that do the same thing, although our colleagues on the other side disagree."¹⁴

Opponents countered that the amendment would eliminate an existing prohibition against discrimination and would allow religious tests to be required for positions paid for with public funds. "This language means that private groups could receive public tax dollars to hire and fire employees who pass a religious test," said Van Hollen. "This makes a mockery of the Free Exercise Clause of our Constitution." Van Hollen said the bill allows "religious discrimination and bigotry using federal money."¹⁵

Following heated debate among committee members and a party-line vote, Boehner's Head Start proposal moved to the House floor, where it passed by a one-vote margin. Capitol Hill observers predicted the Head Start bill would face stiff resistance in the Senate.

The Senate's expected action on the measure was foreshadowed during a 2003 hearing on Head Start held by the Health, Education, Labor and Pensions Committee at around the same time as the House was acting on its bill. Sen. Jack Reed, D-R.I., asked hearing witness Windy Hill – the associate commissioner for the Head Start Bureau in the Department of Health and Human Services – how many faith-based groups participated in Head Start and if existing federal employment laws had been an obstacle to FBO participation. Hill reported that 115 of 1,500 grantees were faith-based and that faith-based groups had participated in Head Start since 1965. "Many faith-based organizations have attempted to participate but have not been successful for a variety of reasons," Hill said. "The administration has proposed an elimination of barriers to that participation."

Reed also asked G. Reid Lyons – chief of the Child Development and Behavior Branch of the National Institutes of Health – if research had been conducted comparing the difference between “religious-unified” teaching and “religious-diversified” teaching. Lyons said his office had not researched the religious affiliation of Head Start teachers in determining the quality of teaching. “We have studied their background and training, but religious affiliation has been far down on the list,” Lyons said. Summarizing from his line of questioning, Reed stated, “The House bill has employment language that will be very controversial. Hiring doesn’t seem to be a barrier in the [faith-based] organizations’ participation, and there’s no scientific basis that affects whether children can read or not. I hope we can avoid that language.”¹⁶

The religious hiring provision in the Head Start reauthorization was a perennial point of debate over the balance of 2003 and 2004. With progress stalled, the House Republican leadership tried a somewhat different tack in 2005. The School Readiness Act, a bill to reauthorize and overhaul the Head Start program, passed the Education and Workforce Committee by a bipartisan and unanimous vote of 48-0. This time the bill did not include the hiring provision – as an element of strategy, not a change in policy.

The hiring rights provision was held back and offered by Rep. Charles W. Boustany Jr., R-La., when the bill came before the House. Boehner explained that the timing of the amendment was designed to expedite its passage. “I do realize it is divisive,” Boehner said. “I do realize there are strongly held views on both sides, but we should let the House take its vote. Including the amendment later adds comity to the issue. I thought it wise not to bring issues that divide us. Let the House speak on this issue again.”¹⁷

Opponents saw the move differently, charging that the sudden addition of the hiring rights provision converted an otherwise bipartisan bill into a contentious piece of legislation. “This is an ill-conceived and harmful amendment,” said Rep. Emanuel Cleaver, D-Mo. “Proponents of this amendment say this amendment preserves religious freedom. As a pastor, I take offense at that claim. How is religious freedom served when we force a teacher to choose between her faith and her job?” he continued. “How is religious freedom served when we tell children they can lose their teacher because she or he is from the wrong faith?”¹⁸

Again the arguments became heated. “Faith-based organizations should not have to relinquish their rights under the Civil Rights Act to provide services to poor children who desperately need their help,” Boehner said. “If you disagree with that, go to the Judiciary Committee and rewrite the 1964 Civil Rights Act.”¹⁹ “If they can’t freely hire, we will force them out of providing services,” Rep. Melissa A. Hart, R-Pa., added in Boehner’s support. “They should hire the best people and those who can carry out their mission.”²⁰

Rep. Chet Edwards, D-Texas, a leading voice on separation of church and state, saw the matter in starkly different terms. “What is right about hanging out a sign that says no Catholics or Jews need apply for a government job?” he asked. “What’s right about that?”²¹ “You’re trying to inflame what is unreasonable,” Hart countered. “The point of faith-based providers is that they are mostly church people who have a mission. They want to provide a service. They are not discriminating against others. They are encouraging service within their church, and we should allow them to provide that service because we know they have the best track record for

success.”²² The issue could not be resolved in 2005 or 2006, and Head Start was funded instead through annual appropriations bills.

Debate over reauthorization of Head Start was rejoined in March 2007, but with large changes in strategic positioning among the antagonists. The pattern over the prior five years had been for the Democrats in the minority to try to stave off revisions proposed by the Republican majority in Congress that would remove existing prohibitions against religious-based hiring. But with control of Congress switched in the 2006 midterm elections, the committee proposal adopted and moved to the House floor in the 110th Congress extended Head Start without changing the program’s provisions on hiring discrimination.

“The fact that the majority previously has been able to include this in prior statutes doesn’t mean it’s right or that it’s constitutional. It just means they had more votes to put it in,” said Rep. Robert E. Andrews, D-N.J., referring to past attempts to include similar language in other social service bills. “So in a few minutes, we’re going to take a vote. And those of us who believe this is the wrong way to go are going to cast our votes. And those who believe this is the right way to go are going to cast their vote, and we’ll see what happens. But what I hope never happens is that a dollar of my taxpayer money can be used to deny someone a job because of their religious faith.”²³

Andrews was referring to a proposed amendment put forth by Republicans on the Education and Workforce Committee to allow FBOs participating in Head Start to consider religious beliefs in their hiring decisions. As in the past, both sides saw the other as committing ‘discrimination.’ “This would shift the weight of the federal government from standing behind the victims of discrimination to standing behind the right to discriminate with federal funds,” said Rep. Dale E. Kildee, D-Mich. “That is repugnant. This 110th Congress should not be the Congress that begins the rollback of those protections.” But others saw that it was religious groups who were subject to discrimination. “Opposition to this amendment comes close to discrimination against people of faith who want to participate and want to be positive promoters of justice and nondiscrimination in society today,” said Rep. Timothy Walberg, R-Mich. “See that true civil rights are given to all.”²⁴

The Head Start reauthorization bill reached the House floor in May 2007. The Bush White House issued a statement before the vote strongly encouraging the House to add the religious hiring proposal because “such provisions should be applied to all federally funded social service programs so faith-based organizations may operate on an equal level with every other organization competing to provide services.” The Bush administration said it could not support the measure without removing the religious hiring ban and urged the House to amend the bill “to ensure that faith-based organizations are not asked to forfeit their religious hiring autonomy as a condition of receiving Head Start grants.”²⁵

“As a person of faith who believes strongly in the good work of faith-based groups, I rise to passionately oppose this ill-advised motion, a motion also opposed by the Baptist Joint Committee, the American Jewish Committee, the Episcopal Church and the NAACP,” said Rep. Edwards, referring to a motion to send the bill back to the Rules Committee to reinstate the hiring rights provision. “Our principle is simple but deeply profound: No American, not one,

should ever have to pass another American's private religious test to qualify for a tax-funded federal job – not one American,” Edwards said.

The House by a vote of 365-48 passed legislation to reauthorize Head Start, making improvements in teacher quality and pay, adding eligibility for as many as 10,000 more preschoolers, and leaving intact the program's existing language barring participating providers from discrimination in employment. The House bill noted that faith-based and community organizations have participated in Head Start since the enactment of the program in 1965 and continued to serve more than 90,000 children and their families. “Faith-based and community-based organizations continue to be eligible, on the same basis as other organizations, to participate in any program under this subchapter for which they are otherwise eligible,” the legislation stated.²⁶

By November 2007 and for the first time in almost a decade, the House and Senate together approved a five-year overhaul of Head Start and sent the reauthorization to Bush for his signature. The bill, entitled the Improving Head Start for School Readiness Act of 2007, passed with widespread bipartisan support. In the end, it did not include changes on hiring rights sought by Bush and his allies in Congress. Nevertheless, Bush signed the measure into law on Dec. 12, 2007.

“I am concerned that the bill authorizes spending levels higher than those proposed in my budget,” Bush said at the bill signing. “Approval of this legislation is not an endorsement of these funding levels or a commitment to request them. I am also disappointed that the bill fails to include my proposal to protect faith-based organizations' religious hiring autonomy.”²⁷

COMMUNITY SERVICES BLOCK GRANT

The matter of religious hiring rights emerged again as a pivotal issue when the Community Services Block Grant (CSBG) came up for reauthorization in the fall of 2003 and into 2004. The CSBG program distributes federal money through the states to more than 1,100 Community Action Agencies to help low-income people find jobs and adequate housing and to provide emergency food services. The CSBG also represents one of the early programs with Charitable Choice provisions adopted during the Clinton administration.

The controversy on reauthorization of the CSBG, which already allowed religious organizations to consider faith when employing staff with government money, was the inverse of the fight over the Workforce Investment Act and Head Start legislation. The impetus for changing the existing hiring rights language this time came from members in the Democratic minority in the House, who sought to repeal the provisions. Their efforts were not successful. The Republican majority voted down Democratic amendments to eliminate religious-based hiring and sent the bill to the Senate, where it languished again because of the religious hiring issue.

EXTENSION OF CHARITABLE CHOICE MEASURES

The Charitable Choice provisions had their origin, as noted, in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the welfare reform law. The statute authorized Temporary Assistance for Needy Families (TANF), the principal federal program

providing financial assistance and related services to needy families via block grants to states. The law's Charitable Choice protections for faith-based groups providing assistance to welfare recipients were adopted for a period of five years, expiring in September 2002.

Supporters in the House sought to continue the Charitable Choice protections for religious groups serving the needy in subsequent bills reauthorizing PRWORA. But these bills, which included the Personal Responsibility, Work and Family Promotion Act of 2003 and similar measures in 2004 and 2005, also expanded work requirements and family responsibility measures, which hindered passage. Each time, renewal of PRWORA failed to gain approval in the Senate because of differences over the new work requirements for welfare recipients. In the absence of a reauthorization, Congress moved to continue the aid programs and the Charitable Choice provisions in PRWORA through temporary extensions, until a long-term agreement could be reached.

Finally, with the approval of a \$40 billion spending cut bill in February 2006, Bush was able to sign into law the first and only bill during his presidency containing the core provisions of his Faith-Based and Community Initiative. The spending bill incorporated a five-year extension of provisions encouraging faith-based groups to provide publicly funded social services to welfare recipients. Authorized through 2010, the Charitable Choice provisions outline a core set of precepts:

- **Nondiscrimination in funding:** If a state contracts with nongovernmental organizations as providers of welfare-related services, it cannot exclude religious organizations from participating on the basis of their religious character.
- **Preservation of religious character:** Faith-based groups that participate in services funded by federal or federal-state funds cannot be forced to remove religious symbols from their facilities, alter the structure of their governance or remove religious references from their names.
- **Protection of religious liberty of participants:** Faith-based groups may not require clients they serve to engage in religious practices as a condition of service.
- **Religious activities proscribed:** Public funding may not be used for religious worship, instruction or proselytization.
- **Religious hiring rights preserved:** Faith-based groups that receive public funding to provide services do not forfeit their exemption from the Civil Rights Act's prohibition on religious discrimination in employment.
- **Limited audits:** Government audits of organizations participating in covered programs will be limited to accounts through which the public funds have passed and not include privately financed activities.

Programmatic Initiatives Through Legislation

By 2004, as legislative efforts continued on a comprehensive bill and activities persisted to remove statutory barriers in selected programs, the Bush administration and supporters in Congress turned to the appropriations process as another method to advance their faith agenda. For example, the Compassion Capital Fund did not come to fruition as part of the Community Solutions Act or the CARE Act in its many incarnations. Instead, the Bush administration created and financed the Compassion Capital Fund in 2002 as part of omnibus appropriations legislation financing the Department of Health and Human Services and other portions of the federal government.

In a similar fashion, the Bush administration and congressional leaders used annual appropriations legislation to implement a host of other initiatives that were key elements in the faith agenda when they were unable to win approval for the programs in separate bills with long-term statutory and funding authorization. These included a Healthy Marriage Initiative, a Responsible Fatherhood Initiative, the Mentoring Children of Prisoners program, and abstinence education programs to prevent teen pregnancy.

BENEFICIARY CHOICE THROUGH VOUCHERS

Budgetary support for the Substance Abuse and Mental Health Services Administration in 2004 included financing for an Access To Recovery program, which provided block grants to states for use in voucher-based services for substance abuse treatment. The program encouraged more religious organizations to provide an array of government social services, including drug and alcohol rehabilitation. Vouchers, a form of indirect government funding, allow recipients to choose among service providers that meet standards monitored by an oversight agency. The courts have held that if the indirectly funded service has a secular purpose and recipients have a “genuine and independent choice” among providers in a voucher program, the government is not held responsible for endorsing religious content that may be part of the service.

Vouchers have therefore been proposed as a way for the federal government to pay for services provided by faith-based groups without breaching the constitutional separation of church and state. In the context of drug rehabilitation, health care professionals and civil liberty groups are concerned that people in need of drug treatment may not have the necessary capacity to make a free and informed choice of service provider and may be susceptible to coercion or to receiving treatment by unqualified care-givers.

The Mentoring Children of Prisoners program also used vouchers as part of a pilot program to expand mentoring services, especially to faith-based groups that had been actively providing mentors and matching mentors to children. The program sought to direct \$30 million or more per year for mentoring grants to organizations. It called for 3,000 mentoring vouchers in the first year, 8,000 vouchers the second year, and 13,000 vouchers for subsequent years. These vouchers were available for one year with an option to extend to three years.

Of course what the appropriations process giveth it can also taketh away. As an example, faith-based and community organizations appeared to receive two different messages about government funding in fiscal 2007. Bush’s proposed budget for that year included a \$323 million

increase for five programs he highlighted in his State of the Union addresses as being part of his Faith-Based Initiative. But the same budget also included a proposal to cut 141 domestic programs, including at least 18 that religious and community groups were urged to apply for as government partners in the delivery of social services.

THE LEGISLATIVE LEGACY

A final effort was made in 2005 to write into law Bush's administrative changes implementing the Faith-Based Initiative. Rep. Mark Green, R-Wis., introduced legislation to make the White House Office of Faith-Based and Community Initiatives (FBCI), and the FBCI centers in federal agencies permanent fixtures of government. The proposed bill would have kept the offices intact until the statute was repealed.

"I believe we must show that government is committed to helping our citizens by making the Faith-Based Initiative a statutory feature in our executive branch and ensure equal treatment for all," Green said at a hearing on his bill. "This long-term commitment provides critical predictability to community groups and lets them know this is not a passing government enterprise that will end abruptly with a new president. We've now had the executive orders on the books for three years," Green said. "It seems to be working quite well, common sense is being applied, there are guidelines as to what you can do and cannot do. There are guides put out for faith-based organizations – particularly smaller organizations which might not have the same level of sophistication – and it's working."

But other speakers offering testimony challenged the need for the Faith-Based Initiative and its level of success. "There is no prohibition against these organizations from participating now," Democratic Rep. Scott said. "Any program that could be funded under the Faith-Based Initiative could be funded without the Faith-Based Initiative, as long as they agree not to discriminate in employment." Rep. Danny K. Davis, D-Ill., added, "It's difficult for me to rationalize the need; to suggest that the only way these individuals are going to know that they can develop programs and apply for federal resources is that we have a Faith-Based Initiative operated out of the president's office. I just have some serious difficulty understanding that."²⁸

Two former deputy directors of the White House Office of FBCI noted the need for improved performance of the office and not just codification. And one of these officials, as well as the chairman of the House committee holding the hearing, faulted the effort as falling prey to politics. The legislation granting permanency to the faith initiative did not advance.

Efforts to grant any permanency to the Bush's administrative efforts to expand partnerships with religious groups were more likely to fail after the midterm elections in November 2006, which gave Democrats control of Congress for the first time since 1994. The politics of religious hiring rights proved too difficult for Congress to resolve. Inclusion of hiring rights provisions doomed attempts to reauthorize the Workforce Investment Act, which was extended only temporarily and without desired reforms. Congress approved a five-year overhaul of Head Start in 2007 but only by excising the proposal backed by Bush to allow faith-based groups to consider religion when employing Head Start staff. A number of program initiatives were adopted via appropriation bills during the Bush presidency that potentially included faith-based groups in the mix of providers but not as front-and-center to the effort.

In part, this legislative record reflects the disinclination of Democrats in the highly charged partisan climate following the contested election of 2002 to go along with a personal initiative of the Republican president. But the legislation also lacked a strong external constituency to support passage in Congress. Conservative Christian organizations, one natural base, were somewhat divided; some groups believing the initiative to encourage too much government intervention with religion. Another possible base of support – the low-income and mostly minority communities most likely to receive government services from faith-based organizations – lacked the coalescence, infrastructure and connections with leadership necessary to be a formidable force with members of Congress. Even the strongest supporters in Congress and the White House were dismayed.

B. INSTITUTIONAL AND ORGANIZATIONAL REFORMS

“I got a little frustrated in Washington because I couldn’t get the bill passed out of the Congress. They were arguing process. I kept saying, ‘Wait a minute, there are entrepreneurs all over our country who are making a huge difference in somebody’s life; they’re helping us meet a social objective. Congress wouldn’t act, so I signed an executive order – that means I did it on my own. It says we’re going to open up billions of dollars in grant money competition to faith-based charities. And that’s what’s happening and that’s what we’re here to talk about today.” – President Bush, speaking to faith-based leaders in Los Angeles, March 3, 2004

In the absence of new legislative authority, Bush moved aggressively to advance the Faith-Based Initiative through executive orders, rule changes, managerial realignment in federal agencies and other innovative uses of the prerogatives of his office. Among those innovations was the creation of the high-profile special White House Office of Faith-Based and Community Initiatives. Housed in a brownstone row house off Lafayette Park across the street from the White House, the White House Office of FBCI was charged by Bush’s Executive Order 13199 with actively seeking to “enlist, equip, enable, empower and expand” the work of faith-based and community groups. The office also was to help “the federal government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet social needs in America’s communities.” One of the office’s central tasks was to “eliminate unnecessary legislative, regulatory and other bureaucratic barriers that impede effective faith-based and other community efforts to solve social problems.”²⁹

Complementing the White House Office of FBCI were centers for FBCI created by executive order in 11 government agencies. They were responsible for distributing federal grants, and each had a carefully selected director and staff, empowered to articulate, advance and oversee coordinated efforts to win more financial support for faith-based social services. Other agencies and quasi-governmental entities established similar offices and functions in areas ranging from national service programs and homeownership and business development to energy conservation.

Bush’s executive orders directed all federal agencies to review their rules and internal operations to ensure that they provided equal treatment for faith-based groups. Although federal

departments had long worked with faith-based organizations such as Catholic Charities and Jewish Family Services, the administration wanted the federal government to move beyond the traditional strict-separationist framework and partner with smaller faith-based organizations and congregations. Because many smaller groups lacked the staff and experience to apply for or administer federal grants, the centers for FBCI offered legal, logistical and technical assistance in navigating the bureaucracy.

These agency offices were “the engines of administrative reform,” according to one Center for FBCI staff member, and their directors met regularly with White House Office of FBCI staff to promote and coordinate partnerships with religious groups. The centers for FBCI did not themselves make grants, but they provided notices of grant availability and eligibility as well as contact information to ease the application process. Each Center for FBCI maintained an extensive website and displayed a host of information at regional and national White House Office of FBCI conferences.

This administrative apparatus gave the Faith-Based Initiative a spinal column and nerve center established at the White House and connected to arms and legs operating among a cadre of federal agencies and programs. That the initiative gave rise to the creation of this new bureaucracy was ironic. Paradoxically, the roots of the faith initiative lay in a conservative ideology favoring less government, and yet here was a new growing government apparatus created to leverage private interests. Perhaps the government’s overall role in providing social services would eventually be reduced as private interests assumed a greater role, although the Bush administration contended the initiative attempted to leverage private resources to supplement, not replace, the government’s work.

The First Wave – Centers for FBCI in Five Federal Agencies

On Jan. 29, 2001, Bush issued Executive Order 13198 creating centers for FBCI within five federal agencies: the departments of Health and Human Services, Housing and Urban Development, Labor, Education, and Justice.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Department of Health and Human Services (HHS) plays a major role in potential federal partnerships with faith-based social service groups. HHS is the federal government’s largest grant-making agency, with responsibility for more than 300 grant programs and a \$460 billion annual budget. It oversees a majority of the government’s social service programs. The department’s faith-based partnerships emphasized programs promoting marriage as a means of reducing poverty, abstinence-only programs to reduce teen pregnancy and infectious disease, efforts to mentor children of incarcerated parents, and an array of other programs.

HHS administered the Compassion Capital Fund (CCF), the only new funding stream dedicated to the Faith-Based and Community Initiative, which was created in 2002 as an HHS budget item. The CCF Demonstration Program funded intermediary recipients, which were established social service organizations, that then provided technical assistance, training and mentoring to newer social service startups, including faith groups. Intermediary grantees ranged from Catholic Charities in New Mexico to Mennonite Economic Development Associates in Pennsylvania, and

included Operation Blessing International, run by the evangelical leader Reverend Pat Robertson, who had criticized the Faith-Based Initiative because non-Christian groups might receive funding. The intermediaries made sub-grants to the smaller organizations they trained, which provided such services as shelter, food and care for at-risk children, drug rehabilitation and Welfare-to-Work assistance.

The CCF Communities Empowering Youth program sought to address the issues of gang involvement, youth violence, and child abuse and neglect. The program funded experienced organizations that, in turn, worked to build the organizational capacity of their collaborating partners in the community. The CCF Targeted Capacity-Building Program also included a small-grant program for social service organizations that had not previously received federal funding.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

A report called *Unlevel Playing Field* commissioned by the White House to determine where religious groups faced barriers in receiving federal grants revealed that the Department of Housing and Urban Development (HUD) imposed burdensome regulations on faith-based groups. The impediments to such groups included a partial ban on faith-based partnerships in two housing programs and a complicated grant application process. Spurred by this report and early attention from the White House Office of FBCI, HUD expanded and refined its long history of partnerships with faith-based organizations. These partnerships focused on promoting homeownership, providing emergency shelter and transitional housing for the homeless, building affordable housing for the elderly and people with disabilities, and promoting economic development in neighborhoods. HUD also sought to enlist more faith-based partners in providing services to residents of public housing.

DEPARTMENT OF LABOR

The White House considered the Department of Labor critical to the Faith-Based Initiative because the agency ran many Welfare-to-Work job-training and placement programs. However, the Labor Department's internal reviews early in the Bush presidency found that most agency programs other than Welfare-to-Work had ignored the Charitable Choice provisions of the 1996 welfare reform law. In Welfare-to-Work programs the department had focused on informing faith-based and community-based organizations that they were eligible and provided assistance to facilitate applications and to ensure that grantees fulfilled requirements. The Welfare-to-Work program received an unusually large number of grant applications, and six faith-based organizations received a total of about \$16 million. However, program audits found that the department did not elaborate on religious provisions in its Welfare-to-Work grants, leaving that responsibility to the states.

In other Labor Department programs, including its One-Stop Career centers operated under terms of the Workforce Investment Act, an audit found that the department imposed overly burdensome restrictions on faith-based organizations and wrongfully prevented states from using federal funds – including through vouchers – to train or employ clients in sectarian jobs.

The Labor Department Center for FBCI coordinated the agency's faith-based efforts in three main programs: Workforce Investment Boards, which are appointed by locally elected officials and distribute 85 percent of federal job-training funds; One-Stop Career centers, which also

provide job-training and placement services; and Ready4Work, a three-year pilot program that helped ex-offenders find jobs.

DEPARTMENT OF EDUCATION

The Department of Education expends billions each year to aid schools and conduct and disseminate educational research. This department is also responsible for implementing the No Child Left Behind Act of 2001, which fundamentally changed the federal government's role in education by holding public schools accountable for student achievement. Under the act, all students in public schools are expected to perform at adequate academic levels by designated deadlines. The department cited thousands of schools as needing additional after-school tutoring services under the act, and the legislation spurred funding to improve student skills through "supplemental educational services" provided by state-certified organizations, including faith-based groups.

The Department of Education Center for FBCI encouraged faith-based and community groups to apply for grants to tutor children in math and language arts, to address the academic and social needs of at-risk youths, and to create and expand centers that give urban and rural residents access to information technology and training. The Office of Elementary and Secondary Education administered most of the grants for which faith-based organizations were eligible, while other grants were available through the Office of Vocational and Adult Education.

DEPARTMENT OF JUSTICE

The Department of Justice had a history of working with faith-based organizations before 2001. For instance, the department's Office of Juvenile Justice and Delinquency Prevention joined with the National Center for Neighborhood Enterprise and the Congress of National Black Churches in the late 1990s in a national campaign to reduce youth violence and provide training and technical assistance to programs aiming to curb substance abuse and prevent violence. The FBCI center at Justice – created and known as the Task Force for Faith-Based and Community Initiatives – focused on building additional partnerships with religious and other groups in programs on gang-reduction, prisoner reentry and domestic violence.

The Second Wave – Two More Centers and International Outreach

On Dec. 12, 2002, Bush signed Executive Order 13280 creating centers for FBCI in two more federal agencies.

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

The U.S. Agency for International Development (USAID) was one of two agencies that added faith-based centers that became operational in 2003. The addition was important because it expanded Bush's Faith-Based Initiative to the international level, where a large proportion of humanitarian relief organizations are religiously based. The agency operates under the State Department and helps developing countries respond to disasters, provide food and health care, and encourage economic growth. USAID has worked with faith-based organizations since its inception in 1961. Approximately one-fourth of USAID partners are faith-based, including

Catholic Relief Services, World Vision and Samaritan's Purse. But the Center for FBCI reached out to new, smaller partners based in and indigenous to native countries.

There was especially strong interest in bringing together USAID programs and faith-based partnerships to address the HIV/AIDS crisis. A September 2003 report from the agency concluded that "faith-based organizations can make a considerable contribution to mitigation, prevention and care activities. Indeed, faith-based organizations are often the only genuine nongovernmental organizations in many rural parts of poor countries, or at a minimum, they are the strongest and most influential."

DEPARTMENT OF AGRICULTURE

The Department of Agriculture also established a Center for FBCI that became operational in 2003. The department built its outreach to faith-based and community groups on a history of relationships with nonprofits, including religious groups, in both domestic and international food and nutrition programs, housing assistance and environmental protection. The agency encouraged faith-based and community organizations to develop single and multi-family housing, as well as community facilities, including day care centers, hospitals, nursing homes, veterinarian clinics, fire stations and libraries, and provided grants to nonprofit groups that finance housing for domestic farm laborers.

The Third Wave – Three More Centers

On June 1, 2004, Bush signed Executive Order 13342 creating centers for FBCI at three more federal agencies: the Department of Veterans Affairs, the Commerce Department and the Small Business Administration.

DEPARTMENT OF VETERANS AFFAIRS

The Department of Veterans Affairs' (VA) involvement in Bush's Faith-Based Initiative predated creation of its Center for FBCI. Beginning in 2001, the VA used the faith initiative as an opportunity to expand upon its previous work with faith-based groups. The VA formed an FBCI Task Force with representatives in Washington, D.C. and regional field offices to explore additional ways to partner with faith-based groups. The White House's *Unlevel Playing Field* report included the VA in its survey of federal agency activities and administrative procedures affecting partnerships with faith-based groups. The VA task force and the department's internal audit found that faith-based activities were most prevalent among VA programs for the homeless, especially the Homeless Providers Grant and Per Diem Program, which provided grants and payments to help organizations establish and operate new housing and service centers for homeless veterans.

DEPARTMENT OF COMMERCE

The Department of Commerce also had a tradition of working with faith-based organizations but sought to expand those efforts under the Bush administration. One program in particular that included faith-based groups as grantees was the Technology Opportunities Program, which awarded grants for projects demonstrating innovative uses of telecommunications and

information technologies to provide educational, health care and other information in the public and nonprofit sectors.

SMALL BUSINESS ADMINISTRATION

The Small Business Administration (SBA) sought to work with faith-based organizations that promote and facilitate greater economic development among low-income and minority businesses and populations. In particular, the SBA worked with nonprofit organizations, including FBOs, to promote entrepreneurship and small business growth models. The SBA initiated a program in which more than 10,000 working or retired business leaders coached the leaders of faith-based and community organizations on business planning and management to make their organizations more competitive and sustaining.

The Fourth Wave – National Security, Disaster Relief and Corporate Outreach

DEPARTMENT OF HOMELAND SECURITY

Bush signed Executive Order 13397 on March 7, 2006, creating a final new Center for FBCI in the Department of Homeland Security. Creation of this center followed reports criticizing government responses and lauding religious group reaction to widespread damage and unmet, emergent human needs in the aftermath of major hurricanes along the Gulf Coast. The department's Center for FBCI concentrated on better integrating and coordinating with the efforts of religious groups active in emergency preparedness and response.

OTHER ENTITIES

A number of other federal agencies and quasi-governmental entities instituted companion efforts that promoted the Bush faith initiative without the impetus of an executive order. In some instances, faith-based groups had partnered with the government in these programs for years and the relationships were expanded after the announcement of the initiative. In other cases, the efforts reflected a then-growing recognition that churches and faith-based organizations provided a good grassroots base for disseminating program information and recruiting participants in federal programs.

The Corporation for National and Community Service, which operates AmeriCorps, Senior Corps, and Learn and Serve, has a history of working with faith-based organizations to serve poor communities. To expand its efforts, the corporation created the Faith and Communities Engaged in Service Initiative – an undertaking similar to the agency-designated centers for FBCI.

While Bush did not initiate a Center for FBCI at the Corporation for National and Community Service, he did issue an executive order in March 2004 directing the corporation to review its operations and report back in six months on several policy and management changes. One aspect of the review was to determine how to increase the involvement of faith-based and community organizations. According to the corporation, more than 14 percent of AmeriCorps Vista's members as of 2007 were assigned to projects that supported the work of FBOS. Rather than provide direct services to these organizations, the members help them increase their financial, technological, administrative and volunteer capacity.

Two of the nation's largest mortgage financiers – the quasi-public agencies Fannie Mae and Freddie Mac – launched partnerships with FBOs during the Bush administration to spread the word about the virtues of homeownership. Fannie Mae established an outreach program with 100 churches, synagogues, mosques and other faith-based institutions. A Fannie Mae program called Walk to Worship Mortgage underwrote loans for homes located within one mile of a designated church. Fannie Mae also started employer-assisted housing programs for the employees of two Catholic hospitals. Freddie Mac began an education and technology program that included faith-based organizations.

The lenders incorporated some creative techniques to suit homebuyers' religious beliefs. In one program, an Islamic finance institution entered an agreement with Fannie Mae to enable American-Islamic families to buy a home without violating the prohibition in Islamic Law on paying or collecting interest on debts.

The National Credit Union Administration, which ensures the soundness of the credit union system, launched a special effort to provide support to smaller credit unions. In 2001, it began outreach efforts such as newsletters, workshops and letters to credit unions to introduce them to partnering opportunities with government-sponsored agencies that were focused on wealth-building for minority and low-income individuals, including a number involved in the Bush administration's Faith-Based Initiative. The National Credit Union Administration sponsored a series of national workshops to guide credit unions on how to partner with organizations, including faith-based groups, provide financial services to minorities and low-income families, encourage homeownership and promote economic development.

The Federal Deposit Insurance Corporation (FDIC) is an independent agency created by Congress in 1933 to supervise banks, insure deposits and maintain a stable banking system. Part of the agency's mission is to advance financial education through alliances with financial institutions, bank trade associations, state and local agencies, nonprofit organizations and consumer-based groups. The agency expanded its work with faith groups for these purposes through a program called Money Smart, which helps people with little or no banking experience increase their savings, buy homes and develop financial skills. The FDIC also formed partnerships with faith-based groups and community organizations that were leading Earned Income Tax Credit outreach campaigns across the country and operating Volunteer Income Tax Assistance sites in low-income neighborhoods.

The Federal Home Loan Bank, created in 1932 to stimulate mortgage financing, promoted partnerships with locally based organizations, including faith groups, to connect low- and moderate-income people and businesses with its programs to finance housing projects.

C. REGULATORY CHANGES

On Jan. 29, 2001, Bush ordered internal audits of department regulations, rules, orders, procurement procedures, and other administrative policies and practices to identify barriers to the participation of faith-based and community organizations in the delivery of social services. The department audits also examined outreach activities that “discriminated, discouraged or

disadvantaged” faith-based and community organizations that attempted to participate in federal programs.

Seven months later, the White House released *Unlevel Playing Field*, which assessed a pervasive belief among federal officials that collaboration with faith-based organizations was legally suspect. This attitude in turn promoted malaise and uncertainty among religious organizations regarding their ability to participate in federal programs, the report noted. It also said that some grant programs maintained outright bans on funding religious organizations, restricted their faith-based activities, and did not allow them to employ staff based on their religious beliefs. According to the report:

“It is not Congress but these overly restrictive agency rules that are repressive, restrictive, and which actively undermine the established civil rights of these groups. Such excessive restrictions unnecessarily and improperly limit the participation of faith-based organizations that have profound contributions to make in civil society’s efforts to serve the needy.”

More specifically, *Unlevel Playing Field* listed 15 barriers that the FBCI centers in each federal agency would begin to dismantle. The barriers included:

1. A pervasive perception and bias by federal officials that collaboration with religious organizations was legally suspect.
2. Explicit bans against the receipt of federal funds by faith-based organizations. Program handbooks emphasized prohibited activities and eligibility rather than including affirmative language to encourage faith-based participation.
3. Restrictions on religious activities that amounted to an “organizational strip-search” and had a chilling effect on the relationship between faith-based groups and the government.
4. The expansion of application restrictions to new programs beyond the original purview.
5. Denial of the ability of religious groups to use federal funds to employ staff based on religion. Confusion and inconsistency was prevalent in applying this provision.
6. The failure of the executive branch to abide by the Charitable Choice provisions of the 1996 welfare reform law.
7. Limited accessibility of government grant information, which appeared only in the Federal Register and on department websites.
8. Excessive regulations and requirements (about 50 applied across the board to federal grants) and a complicated and intimidating application process.
9. Extensive financial and administrative requirements on organizations competing for federal grants.
10. Complex and unwieldy grant applications and grant agreements.
11. A bias in favor of previous grantees. One department awarded extra points for topical and managerial experience and past receipt of a government grant.
12. A requirement that organizations apply for grants in collaboration with likely competitors. Each FBCI center identified at least one program in which grant applicants had to show support from other providers.

13. A requirement that grantees establish 501(c)(3) nonprofit status. By statute, many federal discretionary and formula grant programs require applicants to be nonprofit organizations. However, federal officials imposed this requirement unilaterally, even in the absence of statutory authorization.
14. Inadequate attention to faith-based and community organizations in the government-wide effort ordered by Congress to simplify and streamline the grant application process.
15. Favoritism toward faith-based groups. One instance was cited in which a grant program limited eligibility to faith-based organizations and to youth-serving organizations collaborating with faith-based groups. The report recommended discontinuing this practice because it could prove constitutionally problematic.

Unlevel Playing Field became the backbone of an administrative strategy to encourage governmental partnerships with faith-based organizations.

On Dec. 12, 2002, Bush signed Executive Order 13279, which laid out the key policy guidelines governing the work of the centers for FBCI in federal agencies and the White House Office of FBCI. The executive order also encouraged a coordination of their efforts. As described by Roundtable Legal Research Directors Ira Lupu and Robert Tuttle, there were six core elements:

- Any organization that provides *direct* federal funding for social welfare services should be prohibited from using such funds for “inherently religious activities.”
- By implication from the first element, any organization that receives *indirect* government funding – i.e., as a result of the “genuine and independent private choice” of a program beneficiary – should not be required to segregate the financed service from “inherently religious activities.”
- The government should provide a “level playing field” in federal grant programs for social welfare services; religious organizations should be able to compete for government grants on the same terms as private non-religious institutions.
- Religious organizations that participate in federal grant programs should be able to do so “without impairing their independence, autonomy, expression or religious character.”
- Any organization that participates in a federally funded grant program should be prohibited from discriminating against “current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.”
- Where permitted by law, any religious organization that participates in a federally funded grant program should be able to prefer its co-religionists for employment. This executive order exempts faith-based organizations from a prior executive order forbidding religious discrimination by any entity with whom the federal government enters into a procurement contract.

Of particular importance to legal scholars and other interested observers was the Bush administration’s use of the words “inherently religious” to define that which the government may not fund directly. In agency rule-making and in guidance documents provided by the federal government to faith-based and other groups, the Bush administration noted that government

funds may not directly pay for worship, religious instruction or proselytization. If an organization undertakes religious activity, it needs to be separated by time or space from activities that are paid for by the government through direct contract fees or grants. Groups paid indirectly for services through vouchers need not separate these activities.

The difficulty seen in this guidance, however, is that the term defines only a set of activities that may never be paid for by direct government expenditure and suggests a false conclusion that everything that is not “inherently religious” may be paid for with public funds. “Such an understanding is legally unsound,” Lupu and Tuttle write. “Training, education, counseling and other service activities are not ‘inherently religious,’ but they may be conducted in highly religious ways. Recent federal court decisions involving FBOs have held impermissible direct financing of social services that have explicitly religious content.”

There were calls for greater transparency and clearer guidelines on how government money could be spent by religious organizations. “The problem is not that federal money is going to religious entities, but that the rules have been changed and that money is going without constitutional protections in place,” said K. Hollyn Hollman, general counsel for the Baptist Joint Committee on Public Affairs, which had long opposed the use of tax dollars to advance religion.

The White House and its respective federal agencies discovered that in lieu of statutory authority, it could carry out the goals of its faith initiative through administrative actions.

“It would be great to have legislation, but there’s a ton of stuff I can do without it.” – Bobby Polito, director of the HHS Center for Faith-Based and Community Initiatives

With assistance from the White House Office of FBCI, federal agencies instituted a series of new regulations concerning service partnerships with faith groups. The Department of Veterans Affairs, for example, no longer required faith-based social service providers to certify that they exerted “no religious influence.” The Bush administration also allowed federally funded faith-based groups to build and renovate structures used for both social services and religious worship. The Justice Department permitted religious organizations to convert government-forfeited property to religious purposes after five years, replacing the previous policy prohibiting such conversions. And the Labor Department allowed students to use federal job-training vouchers to receive religious training leading to employment at a church, synagogue or other faith-based organization. Regulations at the Department of Education applied Charitable Choice principles to all federal- and state-administered grant programs, including academic mentoring of at-risk children and after-school computer labs.

The regulatory changes encompassed reversals of longstanding policy on constitutional interpretation by the government. One of these changes proved to be the most controversial action taken by the Bush administration in carrying out the Faith-Based Initiative: allowing faith-based groups receiving federal funds to consider religion when employing staff.

Religious-Based Hiring

A previous executive order signed by President Lyndon Johnson prohibited all government contractors from discriminating in employment based on race, creed, color or national origin.

Bush changed that by instructing federal agencies to revise their rules so that religious organizations contracting to provide government social services could, within the parameters of the law, hire and fire staff members based on their religious beliefs. As a result, HUD proposed changes to its regulations to state that religious organizations participating in HUD programs could take into account religion in hiring decisions. And the VA eliminated a requirement that religious organizations providing homeless services forfeit their religious hiring rights.

Opponents of these rule changes noted during a public review period that some ran afoul of existing federal law. For instance, after Rep. Barney Frank, D-Mass., pointed out that statutory provisions prohibited employment discrimination based on religion in two HUD programs, the proposed changes were not implemented for those programs. Other laws also prohibited job discrimination based on religion, including the Workforce Investment Act, which provides job-training grants.

Even among federal laws, there are conflicting prohibitions or allowances for religious-based hiring for federal programs, and several congressional attempts since 2001 to establish consistency in religious employment laws have stalled. To spur legislative action, the Bush White House in June 2003 sent Congress a report entitled, *Protecting the Civil Rights and Religious Liberty of Faith-Based Organizations: Why Religious Hiring Rights Must Be Preserved*. “President Bush believes that – regardless of whether government funds are involved – faith-based groups should retain their fundamental civil rights, including their Title VII right to take their faith into account when they make employment decisions,” the report stated. “As the Civil Rights Act of 1964 recognizes, for a faith-based organization to define or carry out its mission, it must be able to choose its employees based on its unique vision and beliefs. Such a right is rooted in the values of religious pluralism on which our nation was founded.”

In promoting these changes, the Bush administration pointed to the 1996 welfare reform law and four other federal laws passed between 1998 and 2000 that allowed for religious-based hiring in government programs. The laws were based on Title VII of the Civil Rights Act, which exempts religious organizations from the prohibition on religious discrimination in hiring contained in the nation’s nondiscrimination laws – an exemption upheld by the U.S. Supreme Court in 1987.

The Bush administration’s hiring rights report sparked immediate opposition from civil liberty groups and some members of Congress, who maintained that allowing religious groups to discriminate in hiring with government money would institutionalize further discriminatory employment based on race and gender. These critics argued that Title VII applies to employment by religious groups using private rather than public funds and that government funding should not be used to discriminate in hiring or firing. “I feel this support of discrimination with federal money by religious groups will spread throughout every nook and cranny of this country,” Democratic Rep. Edwards said of the report. “I think we all understand how important this battle is.”

The Bush report on hiring rights did not address a critical aspect of the debate: what happens at the state and local level, since state laws vary in their regulation of religious hiring practices, and these laws are not superseded unless expressly preempted by federal law. “The White House policy statement is aggressive about what the federal law should be but surprisingly passive

about state and local law,” said Roundtable legal scholars Lupu and Tuttle. “The White House stops short of urging Congress to preempt state or local nondiscrimination law. This is in contrast to earlier legislation that called for federal preemption of state and local law.”

Religious Buildings

Since at least 1991, federal policy had forbidden federal grants to be used for repair or preservation of structures devoted to worship or religious instruction. The government based this policy on principles of constitutional law, derived both from the history of the Establishment Clause and from several Supreme Court opinions dating to the early 1970s. But Bush administration changes in regulations and policy interpretations permitted the construction or rehabilitation of structures owned by religious organizations “to the extent that they are used for eligible activities” and awarded funds for the preservation of houses of worship.

The Bush administration asserted that HUD’s policy allowing the use of government funds to build centers used for religious worship or instruction would allow groups like California’s Orange County Rescue Mission to receive grants without forming a separate secular branch, renaming its chapel an “auditorium,” or discontinuing all religious activity at the facility. Legal scholars noted the policy required government officials to monitor the uses of buildings occupied by faith-based organizations and to characterize those uses as secular or religious, raising constitutional problems of potentially excessive entanglement between church and state.

To reinforce the policy change, the Bush administration awarded grants to faith-based organizations formerly denied federal funding for building renovations. For example, in December 2002 Bush announced that the Federal Emergency Management Agency had approved an emergency grant previously denied to the earthquake-damaged Seattle Hebrew Academy in Nisqually, Wash.

And the National Park Service changed its grant application process in 2003 to facilitate a series of new grants. In May 2003, the National Park Service announced a \$317,000 grant under the Save America’s Treasures program for the historic preservation of Boston’s Old North Church, where Paul Revere signaled the start of the American Revolution. “Today we have a new policy that will bring balance to historic preservation and end the discriminatory double standard that has been applied against religious properties,” announced Interior Secretary Gail Norton.

In November 2003, three more Save America’s Treasures program grants totaling \$950,000 were awarded for restoration of houses of worship. Grant recipients included the Touro Foundation, a nonprofit organization dedicated to preserving Touro Synagogue in Newport, R.I., the nation’s oldest synagogue; the Eldridge Street Project in New York City for restoration of the Eldridge Street Synagogue, the first constructed in the United States by Eastern European Jews; and Mission Concepción in San Antonio, Texas to improve water drainage to protect the oldest unreconstructed Spanish Colonial church in the United States. The grants departed dramatically from previous administrative and legal practice.

The U.S. Supreme Court had ruled in three cases since 1971 that grants to religious institutions could not be used to build a facility in which worship or other sectarian activities occurred. And

the Department of Justice had concluded since 1981 that the Constitution forbids the use of federal grants to restore properties actively used for worship or religious instruction. Some legal scholars say the funding of historically significant houses of worship is legally permissible because it will preserve American history, not advance religion or worship. But others maintain that it violates the constitutional separation of church and state because it puts public money into the collection plate for the church's building fund. The day after the Old North Church grant was announced, the Department of Justice released two opinions supporting the legality of the grants to both the Old North Church and the Seattle Hebrew Academy. Yet according to Lupu, "The question remains whether the law has changed enough to reverse Supreme Court rulings."

Other Regulatory Changes

Following publication of *Unlevel Playing Field*, each federal agency launched an aggressive campaign to revamp internal procedures that may have posed barriers to participation by faith-based groups. For example, many grant announcements pointed out that faith-based and community-based groups were eligible to apply for federal grants and made outreach to these organizations a priority.

HHS' Family and Youth Services Bureau eliminated a bonus point system favoring existing grantees, to open the door to new applicants, including FBOs. The Office of Refugee Resettlement's Social Services Notice encouraged state governments to contract with ethnic community-based organizations, including faith-based groups. Many programs simplified their applications to enable small faith-based and community organizations to participate. Some federal departments reduced the length and complexity of their grant applications while others simplified the language to facilitate newcomer applicants and encouraged faith-based groups to partner with other organizations that provided social services.

HHS PROGRAMS AFFECTED BY REGULATORY CHANGES

The *Unlevel Playing Field* report criticized HHS for doing little to ensure that state and local governments complied with the Charitable Choice directives in the 1996 welfare reform law. The faith-based directives in that law applied to \$20 billion in funding for Temporary Assistance for Needy Families, the nation's chief mechanism for welfare assistance and work opportunity services for needy families; the Substance Abuse and Mental Health Services Administration (SAMHSA); and the Community Services Block Grant. HHS responded to its own internal audit by issuing new rules for those three programs.

Of particular note was the rule governing employment in SAMHSA-funded programs, which took a much more expansive view of the controversial Religious Freedom Restoration Act (RFRA) of 1993 than previously asserted by the federal government or the courts. Although a statute appeared to prohibit religious-based hiring decisions in SAMHSA-funded programs, the rule interpreted RFRA to exempt religious grantees from that prohibition.

Unlevel Playing Field pointed to overly burdensome regulations requiring that Head Start programs housed in religious buildings remove or cover up religious symbols, and noted that HHS was extending such restrictions to new programs. For example, the agency had extended the restriction against contracting with "pervasively sectarian" organizations to the Adolescent

Family Life Program and to other abstinence programs funded through the Maternal and Child Health Bureau. Bush administration HHS rules eliminated all such restrictions and required equal treatment of faith-based providers in all HHS programs.

HHS and the Centers for Disease Control (CDC) put extra emphasis on abstinence-only programs in their approach to preventing unwanted pregnancies, HIV/AIDS and other sexually transmitted diseases among youths. HHS actively promoted the involvement of FBOs in abstinence programs. For example, faith-based, community and school-based programs were encouraged to apply for Adolescent Family Life demonstration projects, which promoted abstinence as the most effective way to prevent unintended pregnancy and sexually transmitted diseases.

The Bush administration's approach stirred controversy within the scientific community. In February 2004 a group of Nobel laureates and noted scientists issued a report criticizing the administration's use of "distorted" scientific information for policy goals, including promoting abstinence-only programs to prevent AIDS. The report chastised the administration for discontinuing outcome measures for abstinence-only programs and lamented that the CDC had ended its Programs That Work initiative, which provided comprehensive sex education to teenagers.

The Bush administration ranked mentoring children as a priority area in advancing the Faith-Based Initiative. The White House Task Force for Disadvantaged Youth released a report in 2004 recommending mentoring programs for high-risk youths, and the administration partnered with faith-based groups to provide such programs. Bush heralded the Amachi program, which oversees mentoring for children of incarcerated parents, as a leading example of faith-based efforts in action. Amachi works with a consortium of church members, faith-based organizations, and national youth programs to screen and match mentors with children in communities across the U.S.

Encouraging healthy marriage to alleviate poverty among children was another Bush administration priority. HHS redirected money within the Temporary Assistance for Needy Families program for this purpose. "We created a social service infrastructure that for the last 40 years has been afraid to bring up the subject of marriage," said Assistant Health and Human Services Secretary Wade Horn. "That's no longer the case."

SAMHSA was the first HHS agency to formally incorporate faith-based organizations in its discretionary block grant programs. SAMHSA's Community Substance Abuse Prevention Partnership Program was run by a full-time coordinator and enlisted more than 800 faith-based and community partners.

HUD PROGRAMS AFFECTED BY REGULATORY CHANGES

HUD responded to the 2001 White House report by making numerous rule changes that proved as dramatic and controversial as those at HHS. HUD's internal audit found that the department banned some participation by faith-based groups in its Section 202 and 811 programs, which support housing for the elderly and people with disabilities. According to *Unlevel Playing Field*, HUD maintained that "religious organizations or ones that have religious purposes" cannot be

project owners, although they may sponsor projects. The report specifically cited barriers to faith-based participation in HUD's HOME grants to states to provide affordable housing.

HUD's internal audit found that the department required faith-based organizations receiving Community Development Block Grants to avoid giving religious counseling and instruction and to exert no religious influence in providing government-funded services. The Bush administration cited an example of a homeless shelter denied a HUD grant because it offered voluntary prayers before meals and cited examples where HUD required groups to remove religious symbols and references to God in their mission statements. The audit also found that HUD required grantees to set up a separate secular entity and prohibited them from employing staff based on religion. According to the Bush White House, a lack of clear guidance prompted federal and state officials to apply these rules inconsistently.

To fulfill Bush's equal-treatment principles, HUD's revised regulations repealed most of these provisions and allow faith-based groups to compete under eight programs. The regulations ended a prohibition on religious preference in employment by faith-based grantees and allowed such groups to use public funds to pay for buildings used for both government-supported social services and religious activities, as long as the buildings (or particular, government-supported rooms in the buildings) were not a "principal place of worship." The change represented the first time the federal government approved public funding for social services in structures also used for religious worship and instruction. The rules further allowed faith-based service providers to retain their religious practices and identities.

LABOR PROGRAMS AFFECTED BY REGULATORY CHANGES

The Department of Labor issued rule changes nine months after HUD and HHS. For years Labor had required government contractors and subcontractors to take steps to treat employees and applicants without regard to race, color, religion, sex or national origin. Because Bush's executive order exempted religious corporations, associations and educational institutions from nondiscrimination requirements with respect to religion, the department changed its rules to allow federal contractors and subcontractors to hire on the basis of religion.

In July 2004, the Labor Department issued new regulations to clarify that faith-based and community organizations could participate in the agency's social service programs without regard to their religious character or affiliation. The revised rule stated that religious organizations could not use Labor Department money for inherently religious activities, and if those activities occurred, they had to be separated by time or space from government-sponsored services. "This restriction does not mean that a DOL [Department of Labor] social service provider cannot engage in inherently religious activities. Such activities are permissible, but DOL social service providers that receive DOL support directly must take steps to separate, in time or location, their inherently religious activities from services that they offer with direct DOL support." The restrictions on inherently religious activities did not apply when Labor Department funds were received through indirect means such as vouchers.

The revised rules clarified that religious organizations receiving Labor Department funds were exempted from provisions of the Civil Rights Act that forbid discrimination in employment based on religion. The revised rule, however, did not affect statutory language in the Workforce

Investment Act that prohibits religious discrimination in hiring. The rules gave state and local Workforce Investment Boards the ability to issue vouchers for job training and permitted beneficiaries to choose to use their vouchers to seek employment at churches, synagogues, temples and other faith-based organizations, provided that religious training resulted from private, independent choice and that providers were on a state or local list of eligible entities.

EDUCATION PROGRAMS AFFECTED BY REGULATORY CHANGES

The *Unlevel Playing Field* report found that statutes did not exclude faith-based nonprofit groups from participating in Education Department programs, but the agency had not specified that they were eligible to receive funding on the same basis as other organizations. The department changed its rules to clarify that it would not consider the religious character or affiliation of qualified grant applicants. The agency also removed rules prohibiting grantees and sub-grantees from using federal funds to pay for the activities of a religiously affiliated school or a divinity department. The Education Department allowed grantees to use federal funds to pay for construction, remodeling, repair, operation and maintenance of any part of a facility used for department-related activities. It also encouraged parents of low-income children to use vouchers provided through its Office of Innovation and Improvement to obtain after-school help from state-approved providers, which included faith-based groups. The agency's Center for FBCI helped faith-based and community organizations become state-approved providers.

JUSTICE DEPARTMENT PROGRAMS AFFECTED BY REGULATORY CHANGES

The Department of Justice focused on expanding partnerships with faith-based organizations to address juvenile delinquency, prisoners and their families, the victims of crime, domestic violence, and drug-related issues. Because faith-based organizations often work directly with neighborhood residents, the department emphasized partnering in programs that help released prisoners reenter their communities, mentor the children of inmates, and reduce and prevent drug use and crime.

Unlevel Playing Field found that the complexity of the agency's application procedures hampered the ability of faith-based groups to apply for grants. The application for one assistance program was 58 pages, accompanied by 1,000 pages of federal statutes. Another grant program for which faith-based organizations were eligible distributed a 74-page application with references to 1,300 pages of federal statutes. An internal audit also found restrictions on faith-based participation in property forfeiture, in which the government transfers low-income housing and community centers valued at \$50,000 or less to local groups offering social services. The department prohibited faith-based entities in perpetuity from using such properties for religious purposes.

The agency responded by simplifying its grant application process and changing the asset forfeiture policy. The revised rules treated religious and non-religious organizations the same.

USAID PROGRAMS AFFECTED BY REGULATORY CHANGES

The U.S. Agency for International Development (USAID) revised its rules to ensure that faith-based organizations could compete for government funds on the same basis as secular organizations. The revised rules stated that FBOs could participate in USAID programs and still

retain their religious character. Because of the potential implications for U.S. foreign policy associated with USAID programs, a provision was added that permitted the secretary of state to waive all or any part of the rule in a particular case “where the secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.”

USAID also placed a stronger emphasis on behavior changes, such as abstinence and fidelity, in its sexual education and sexually transmitted disease prevention programs and shifted an initial \$350 million in AIDS funding to faith-based and community providers. USAID reports sought to document the contributions of FBOs and strongly supported behavioral change as a method for preventing HIV/AIDS and unwanted pregnancies and faith-based organizations as agents of that change.

USDA PROGRAMS AFFECTED BY REGULATORY CHANGES

Consistent with Bush’s December 2002 executive order, the Department of Agriculture (USDA) revised its rules to allow faith-based organizations to participate in a variety of USDA programs, as long as they did not use federal funds directly to support inherently religious activities. Like HUD, the USDA also revised rules regarding the use of federal funds to build centers available for both social programs and religious worship. The revised rules further clarified that faith-based organizations receiving federal grants were, as provided by the Civil Rights Act of 1964, exempt from a prohibition on religious discrimination in hiring.

The USDA also clarified aspects of its rules concerning the participation of faith-based organizations in The Emergency Food Assistance Program (TEFAP). Congress created TEFAP in 1993 to make USDA commodities available to public and nonprofit emergency food banks – the vast majority run by faith-based organizations. The new language stated that the groups could make political speeches or offer public prayers before a meal if they made clear that such activities were not part of TEFAP or endorsed by the USDA, ensured that participation was not a condition of receiving TEFAP services, and made sure that the activities did not interrupt the services. In this regard, USDA rules quoted the Bush White House Office of FBCI manual for faith-based groups, which stated: “A church that receives direct government aid to provide shelter to homeless individuals may not require those individuals to attend a Bible study or participate in a prayer preceding a meal as part of the government-funded services they provide. But they may invite those individuals to join them, so long as they make clear that their participation is optional.”

VETERANS PROGRAMS AFFECTED BY REGULATORY CHANGES

The Department of Veterans Affairs (VA) revised a series of rules that were finalized on May 28, 2004, four days before the VA Center for FBCI was formally created by Bush. Among the rule changes was a reversal in regulations that allowed religious organizations receiving VA homeless awards to consider faith when employing staff.

“We had a provision that said you could not either restrict or discriminate, depending on your perspective, as to who you would hire in your organization,” said Peter H. Dougherty, director of VA homeless programs and chairman of the VA FBCI Task Force “Obviously, some religious-

oriented organizations wanted to have people of the same religious belief that they had. We did not find that that would interfere with their ability to provide service to veterans, and so we are deleting that provision in the new regulations. We did not delete the provision that said you cannot proselytize your religious belief, and you can't make it a condition of participation in a program. We took out what we thought was reasonable to take out and kept in what we thought was reasonable to protect the veteran.”

VA rule changes also specified that the application of regulations to voucher programs offered by the VA would comply with federal law. Based on public comments in reaction to the new rules, the VA modified its final rule to include a subsection that clarified that “restrictions on inherently religious activities do not apply where VA funds are provided to religious organizations through indirect assistance as a result of genuine and independent private choice of a beneficiary.”

HOMELAND SECURITY PROGRAMS AFFECTED BY REGULATORY CHANGES

In 2006, the Department of Homeland Security was the last agency instructed via executive order from Bush to establish a Center for FBCI and to engage in the process of agency and regulatory review to identify barriers to faith-based partnerships. Unlike the other departments, at the time of the FBCI Center's inception, the principal regulatory changes had already been made by the component of the Homeland Security Department most engaged in activities of interest to religious social service groups: the Federal Emergency Management Agency (FEMA).

In the aftermath of hurricanes Katrina and Rita, FEMA announced plans to reimburse faith-based organizations that assisted in the relief and recovery effort for expenses that the entities incurred to provide shelter, food, and other goods and services needed for disaster relief. FEMA deemed eligible for reimbursement a wide array of costs, such as those for basic provisions (food, water, blankets); facilities (rental, costs of operation, modification and repair); and services (medical care, counseling, security). Critics alleged that the reimbursement plan permitted FBOs to use funds for proselytizing, religious counseling or other religious activities, and they charged FEMA with providing constitutionally impermissible aid to religious entities. But FEMA defended the reimbursement plan as both constitutional and necessary given the enormity of the disaster and recovery effort along the Gulf Coast.

In their analysis of these actions, the Roundtable's legal experts, Lupu and Tuttle, distinguished three categories of aid in FEMA's plan, with varying issues. The first category comprised aid for specific goods provided to or required for the shelter of those displaced by the storm, such as food, water, medical supplies, bedding and similar items. Such goods posed a relatively low risk of being diverted to an FBO's religious use.

The second category included expenses directly related to the structures used for providing shelter to those displaced by the disasters. FEMA identified eligible activities for reimbursement as including: modifications to shelter buildings, including the addition of recreation equipment; facility lease or rental costs; facility operating costs, such as power, water and telephone service; and costs incurred to clean, maintain and make minor repairs to return the facility to its pre-shelter condition.

Lupu and Tuttle said that direct public financing of structures owned by religious entities and used for religious activities raised significant legal issues, since FEMA reimbursement might subsidize the congregation's religious functions as well. The government would likely have a difficult time drawing the line between religious and non-religious uses of the rooms and monitoring observance of that line. According to Lupu and Tuttle, where a program inseparably intertwines religious and secular activities, the government may not provide that program direct financial support. But where an FBO segregates its shelter from its religious activities, the costs of operating the shelter should be reimbursed.

The third category included services provided by FBOs through their employees or other agents. Some services had a secular character and were unlikely to be controversial, like shelter security, basic medical care and meal preparation. Others, like counseling, were more complicated. Lupu and Tuttle said that if the same individuals offered both secular and religious counseling, it might be impossible to reliably distinguish between secular counseling, for which an FBO may be reimbursed, and religious counseling, for which it may not receive aid.

A second and related regulatory change involving FEMA was less controversial. On Oct. 18, 2005, the White House announced that faith-based organizations would be eligible to apply for federal grants to repair or rebuild some facilities, including schools and nursing homes, damaged in the Gulf Coast hurricanes. In deciding that the government could finance the repair of a religious school or other facility operated by an FBO and damaged by the disaster, the administration relied on an earlier opinion from the Justice Department's Office of Legal Counsel, dated Sept. 25, 2002. The eligibility criteria cited in the Oct. 18 announcement was deemed to be solidly grounded in the applicable statute, regulation and recent agency practice.³⁰

D. TRAINING AND OUTREACH

To advance the Faith-Based and Community Initiative, the White House Office of FBCI spearheaded an outreach campaign during the eight years of Bush's two terms as president by sponsoring more than a dozen regional conferences in cities such as Atlanta, Denver, Chicago, Minneapolis, Philadelphia and Los Angeles, and national conferences in Washington, D.C. Tens of thousands of religious leaders attended these conferences to learn how to compete for a piece of the government pie, and Bush appeared at a number of them, stressing his resolve to aggressively pursue his faith-based agenda.

The White House Office of FBCI published a 67-page catalogue of almost 150 federal grant programs representing more than \$50 billion for which faith-based and community organizations could apply. Bush administration officials conference organizers distributed tens of thousands of these catalogues and also posted the information on the White House Office of FBCI website, which included legal dos and don'ts because "dealing with the federal government isn't always easy," it said on the site.

The catalogue also mentioned that more money was available for programs administered by states and localities than from the federal government, with the \$25 billion awarded in direct grants by HHS in fiscal 2001 far surpassed by the \$160 billion awarded to states and localities, much of which passed through to nongovernmental organizations. "So, in addition to finding out

more about grants from the federal government, you will probably want to look into partnering with your state and local government,” the catalogue advised.

To encourage participation in providing government services, the White House Office of FBCI sent e-mail updates to more than 13,000 faith-based organizations announcing conferences, grant postings, grant review opportunities, technical assistance and the availability of resources. One 12-page message, for example, promoted a Smart Marriages Conference Grant Writing Workshop in Dallas; A Pastor’s Guidebook for HIV/AIDS Ministry Through the Church, published by The Ark of Refuge of San Francisco; and HIV/AIDS prevention grants awarded through the U.S. Conference of Mayors.

Critics complained, and a Wisconsin association of agnostics and atheists filed a lawsuit contending that faith-based groups received favorable treatment in competing for dwindling social service funds. But the White House insisted that it was only trying to ensure a level playing field.

FBCI offices in each federal agency also sponsored dozens of national, regional and local workshops offering technical assistance in applying for federal funds. Some of these sessions were infused with overt religious messages and references. One conference in Washington, D.C., sponsored by the Justice and Health and Human Services departments, featured a gospel singer and a preacher, and according to attendees, resembled more of a tent revival than a government-sponsored information session. “The Lord Jesus deserves our praise,” the soloist sang at the conference podium, as 100 faith-based providers rose to their feet, pumped their palms in the air, and chanted “Amen” and “Hallelujah.” A federal employee sat next to the singer on the dais and swayed and clapped her hands to the rhythm of the music.

Critics accused the administration of using these efforts to build political cachet among low-income constituencies. In the summer preceding the close 2002 congressional elections, federal faith-based officials appeared at Republican-sponsored events and alongside Republican candidates in at least six states. The events often targeted black audiences, including one South Carolina event sponsored by the state Republican Party and attended by 300 black ministers, who later received letters on GOP stationery containing instructions on how to apply for grant money. In the days before the election, White House Office of FBCI Director Jim Towey also made a 20-city tour to promote the Faith-Based Initiative.

The same patterns and criticisms were seen with respect to the presidential election in 2004, and the congressional midterm elections in 2006; White House Office of FBCI regional conferences were held in battleground states where votes might prove decisive in the outcome.

Bush steadfastly maintained that his Faith-Based Initiative was apolitical, and he cited as proof his appointment of Towey, a self-avowed Democrat who said he put service to the needy above politics. Upon naming him faith-based czar in February 2002, Bush said that Towey “understands there are things more important than political parties. And one of those things more important than political parties is to help heal the nation’s soul.” White House officials pointed out that Towey spoke to groups regardless of race or political affiliation, citing one appearance with a Democratic House member in New York. Yet Rep. Elijah E. Cummings, D-Md.,

countered that it was naïve to think the faith initiative wasn't political. Much to his dismay, he said, he was no longer welcome to speak to some black congregations in his district that receive federal grants because they recognized Republicans as the source for government money.

Wilson Goode, the former Democratic mayor of Philadelphia who works with Amachi, the federally funded faith-based mentoring program, acknowledged the initiative's political overtones. However, he pointed out that faith communities were working to provide social services long before Bush became president. "We need to be practical on how we're going to help people in our neighborhoods," he said. "I take money from the government because it's my money too."

The HHS Center for FBCI had a particularly active public outreach campaign – including press conferences, workshops and seminars – to promote the department's emphasis on prevention and to recruit faith-based partners. For example, John Walters, the national drug czar, appeared at a press conference with Towey to announce Pathways to Prevention, which promoted faith as a deterrent to substance use among youths. "Faith plays an important role when it comes to teen marijuana prevention," Walters said. "We are urging youth ministers, volunteers and faith leaders to integrate drug prevention messages and activities into their sermons and youth programming." He cited a study reporting that only 2 percent of congregations had supported substance abuse programs in a single year.

Pathways to Prevention featured a website for faith communities and parents, an e-mail newsletter, brochures and a 100-page activity guide for faith youth leaders. In one exercise, leaders were instructed to bring a six-pack of beer to student group sessions and suggest that students say a prayer and ask for divine help in deciding what to do with the beer. Another activity suggested that students imagine a dialogue between the six-pack and a holy book. "What values does the holy book communicate regarding alcohol? What stories does it tell? What would the alcohol say in return?" the guide listed as questions to ask the students.

The largest Compassion Capital Fund intermediary, the Institute for Youth Development, sponsored workshops in dozens of cities to help faith-based and community organizations produce competitive grant applications. The HHS Center for FBCI also coordinated free workshops for nonprofits, such as the all-day Smart Marriages Conference Grant Writing Training Program. The White House Office of FBCI, the Compassion Capital Fund, and the HHS Center for FBCI websites also listed a full menu of grants as well as workshops, such as "The Faith-Based Initiative and Your Organization," "Grant Writing, How and When to Borrow Money" and "Servicing Ex-Offenders."

The Substance Abuse and Mental Health Services Administration also sponsored workshops and conferences for faith-based organizations. One conference in Washington featured medical experts who emphasized that religion can help people recover from substance abuse. Abdul Basit, director of the Division of Multicultural Mental Health Services at the University of Chicago's Center for Psychiatric Rehabilitation, said at the conference that religion and spirituality have become prominent and accepted aspects of efforts to cure addiction. "I wouldn't have been able to make this speech here 10 years ago," he said.

The HHS Center for FBCI issued guidebooks for faith-based and community applicants that listed funding opportunities, Web resources, information on the Compassion Capital Fund , and details on how nonprofits could become grant reviewers. *Developing Competitive SAMHSA Grant Applications: A Participant Manual* described the application process. A comprehensive HHS website – www.grants.gov – offered information on 800 grant programs involving all 26 federal grant-making agencies.

In another outreach effort, the Office of Child Support Enforcement produced a video on strengthening the role of faith-based organizations in collecting child support and encouraging parental involvement with children. HHS also issued a call for FBOs to help evaluate applications for Community-Based Abstinence Education Grants, the Compassion Capital Fund and the Mentoring Children of Prisoners program.

The HUD Center for FBCI in worked with 71 field liaisons and 10 regional liaisons within the department to help faith-based organizations apply for grants. The agency also sponsored outreach programs, including live Internet webcasts that explained the Faith-Based Initiative.

The Department of Labor launched an active campaign to recruit and educate faith-based organizations in the grant application process and to nurture partnerships among such groups, the private sector and the government. The department sponsored workshops to enable FBOs to tap federal funds to help foster economic development. The groups receiving these funds seek employment for hard-to-serve populations, including ex-offenders, welfare recipients and out-of-school youths. The agency also offered faith-based and community groups information on developing strategic partnerships with businesses in high-growth industries.

The Labor Department published two guides as part of its effort. One guide outlined business models and provided advice on fostering employment. The guide also described best practices such as Job Partnership, a program in 27 cities through which faith-based groups referred workers to jobs and then mentored those workers until their employment was secure. The guide cited a faith-based program in Ohio that included 40 hours of job-skills training and mentoring both inside and outside the workplace. The guide further suggested that faith-based organizations might become headhunters, offering fee-for-service arrangements to businesses. The second guide offered technical assistance to enable Workforce Investment Boards in Memphis and Milwaukee to integrate faith-based groups into planning and contracting.

Other efforts by the Labor Department included “strategic business partnership conference calls,” in which corporate representatives talked with faith-based and community organizations about fulfilling private workforce needs. In one such call, representatives of the Save-a-Lot grocery chain talked about jobs in the industry and the skills people needed to obtain them. In another call, a representative of CVS Pharmacy and the pastor of a Washington, D.C. church and interfaith network discussed a partnership through which churches would host job fairs to help meet the needs of area businesses.

Labor’s Center for FBCI also began the Touching Lives and Communities website to facilitate dialogue between faith-based and community organizations, Workforce Investment Boards, One-Stop Career centers and businesses. Registered visitors were able to tap into and contribute to a

“discussion area” and a “learning circle” on mentoring programs, prisoner reentry programs, success stories and business partnerships. Specific topics included the role of “tough love” and techniques for boosting retention rates for ex-offenders enrolled in high school equivalency programs. The department offered a 10-minute webcast highlighting the faith-based Exodus Transitional Community prisoner reentry program, based in East Harlem, N.Y., which was part of the Ready4Work program.

E. LIFTING UP AND REACHING OUT

During the last years of the Bush administration, efforts on the Faith-Based Initiative shifted from an emphasis on federal grant-making to extolling the work of nonprofits in their communities. This came at the direction of Jay Hein, the White House Office of FBCI’s third director following DiIulio and Towey. “Jay Hein has worked hard to recapture the original vision, to support the dozens of state and local faith-based offices, and to reposition his own office while yet building on the good things that Jim Towey was able to do,” said DiIulio, now the Frederic Fox Leadership Professor of Politics, Religion and Civil Society at the University of Pennsylvania.

“Jay Hein took up his post with a particular passion to make sure that the good intentions of the Faith-Based and Community Initiative are translated as much as possible into improved practice,” said Stanley Carlson-Thies, founder and president of the Institutional Religious Freedom Alliance, a nonpartisan think tank, who worked at the White House Office of FBCI under both DiIulio and Towey. Carlson-Thies said that Hein directed the federal office to work closely with states, examined the internal workings of federal agencies to ensure that they were consistent with the initiative’s goals, and showcased inspiring stories of faith-based organizations’ work. “There have been fewer fireworks inside the Beltway but, I think, more substantive reforms, a deepening of implementation of the principles,” Carlson-Thies said of Hein’s tenure.

“Jay realizes the time is short and we have to embed this initiative,” said Pam Pryor, then the vice president for government operations for We Care America, a Christian-centered social service organization since disbanded. “He understands he has to take this big idea and make it thrive at the state level so it will last beyond his time.”

“Hein is not as prominent in the media as predecessors like Towey and DiIulio, but he has appeared at workshops and conferences all over the country to spread the administration’s faith-based gospel,” said Rev. Barry Lynn, executive director of Americans United for Separation of Church and State, among the most consistent and vocal opponents of Bush’s faith initiative from its inception.

Hein’s strategy for advancing the initiative – which included promoting the work of faith-based organizations and expanding similar efforts at the state and local level – was on full display in November 2007 when the White House Office of FBCI hosted a series of conferences, forums and workshops with a frequency that rivaled a rash of holiday parties. The events began on Nov. 5 and 6, as more than 800 faith-based and community leaders joined Indiana Gov. Mitch Daniels and Hein in Indianapolis for a regional White House conference on faith-based initiatives. It was

the 33rd conference sponsored by the White House since 2001, and it placed greater emphasis on the states' role than events of previous years. "When we take a White House conference to a state, we're able to say specifically to the governor and the nonprofits in that state, 'How can we help you in this region grow deeper and stronger?'" Hein said at the time.

A similar White House conference in Alaska was hosted by Gov. Sarah Palin and Lt. Gov. Sean Parnell; another in Arizona in May 2007 was hosted by Gov. Janet Napolitano. In the middle of November of that year, Hein opened the doors to the White House three times in nine days to business leaders, faith-based service providers and a group called Conservatives for Social Justice to highlight the work of religious organizations and encourage partnerships among the government, nonprofits and the business community.

One of the three events was a Compassion in Action Roundtable, a monthly event that Hein hosted beginning in January 2007 to praise the work of faith-based and community organizations on a specific area of social service. Depending on the theme – HIV/AIDS, homelessness, substance abuse, human trafficking, job training or malaria – typically more than 100 nonprofit, government and business leaders were invited to join in a two-hour presentation of success stories.

At the end of November 2007, the staffs of the White House Office of FBCI and several federal agencies flew to Los Angeles to host a national summit on prisoner reentry. It mirrored another White House-hosted national summit in September in Washington, D.C. on Hispanic youth, which was attended by 1,500 people, by focusing on a specific theme of social service delivery.

Training sessions were held year-round. But in November 2007, federal agencies sponsored at least eight training workshops in: Atlanta, Ga.; Montgomery, Ala.; Takoma, Wash.; Nashville, Tenn.; and Jackson, Miss. Participants learned how to write grants or become after-school tutors or substance abuse treatment providers. Other three-day workshops taught participants how to measure, manage and communicate the results of job-training programs. Another forum in Houston showcased faith-based and community organization models of economic development in poor neighborhoods. Federal agencies hosted another five workshops in various cities in December of that year. The U.S. Agency for International Development's Center for FBCI even held its first international outreach conference, in the Eastern European country of Moldova.

In addition, the federal FBCI centers were also busy holding training and capacity-building sessions for faith-based and community organizations throughout the nation. The Bush White House estimated that since 2001 the White House Office of FBCI had hosted 40 regional, national and international conferences and trained more than 35,000 nonprofit leaders from all 50 states. In addition, the White House Office of FBCI and federal agencies combined had trained more than 150,000 faith-based and community leaders in workshops since 2001.

A June 2008 White House Office of FBCI conference in Washington served to highlight the research and policy changes under the Faith-Based Initiative, especially in areas of welfare assistance, job training, housing, marriage promotion, HIV/AIDS prevention and disaster relief. The White House intended the session as a way to provide information about challenges to moving forward and the factors that contribute to successful service delivery.

In an address at this June conference, Bush ranked his administration's efforts to encourage more partnerships between government and religious groups among the most significant accomplishments of his presidency. "I truly believe the Faith-Based Initiative is one of the most important initiatives of this administration.... We've laid the foundation for an effort that will continue transforming lives long after I've been back to Texas," he told an audience of about 1,500 people.

III. PROGRAMMATIC INITIATIVES

The administration of George W. Bush put in place a number of targeted federal initiatives to provide services through new partnerships with religious groups. Often these efforts were made in the context of broader programs and in concert with other sorts of service providers, such as the Healthy Marriage and Fatherhood initiatives, Supplemental Education Services and the expansion of Community Health centers. Of particular note were new programs involving global outreach on HIV/AIDS, building the capacity of social service groups, mentoring children of prisoners, providing new approaches to substance abuse treatment, and easing the way for former prisoners to return productively to their communities.

A. GLOBAL AIDS RELIEF

The President's Emergency Plan for AIDS Relief (PEPFAR), described as the largest international health initiative ever established by one country, is considered by many to be the most lasting and successful accomplishment of the Bush presidency. Bush announced the effort in the beginning of his first term, calling for \$15 billion for AIDS treatment, care and prevention in 15 countries in Africa and the Caribbean. It was authorized by Congress through the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003.

The initiative got off to a somewhat slower start than intended. The House appropriated \$2 billion rather than the expected \$3 billion in the first year, with one-third of the money to be allocated for programs that taught abstinence as a preventive method. Rep. Jim Kolbe, R-Ariz., said then he was confident that Congress would fund the \$15 billion Bush had promised over the next five years to fight AIDS abroad but that the projected level was unrealistic at a time when the program was just beginning.

Speaking in Uganda in July 2003, Bush said, "Over the next five years, my country will spend \$15 billion to fight AIDS around the world, with special focus here on the continent of Africa. We'll work with governments and private groups and faith-based organizations to put in place a comprehensive system to prevent, to diagnose and to treat AIDS. We will support abstinence-based education for young people in schools and churches and community centers. We will provide comprehensive services to treat millions of new infections."

By late 2008, PEPFAR had provided drug treatment for more than 1.4 million people infected with HIV, 30 million people had received counseling and testing, and 6.7 million had received other care. The extension of the program in 2008 authorized nearly \$50 billion in additional funding over five years and provided money for tuberculosis and malaria programs, in addition to those addressing HIV/AIDS. Bush had requested \$30 billion for HIV/AIDS prevention and treatment, double the initial U.S. commitment in 2003. Congress estimated the new funding would support prevention of 12 million new HIV infections and provide treatment and care for 15 million infected people. It added 14 Caribbean countries to the 15 nations that had previously received PEPFAR assistance.

Despite its successes, PEPFAR was criticized by some religious and AIDS activist groups because of a requirement that one-third of its funding for prevention efforts be spent on programs that promote sexual abstinence until marriage. Religious groups played a large role in providing the abstinence message.

Compromise legislation was approved at the close of Bush's tenure – the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis and Malaria Reauthorization Act of 2008, signed into law on July 30 of that year. That law authorized the program for another five years – through the end of 2013 – and provided up to \$48 billion more to combat global HIV/AIDS, tuberculosis and malaria.

The new law also eliminated the one-third abstinence-only funding requirement. Instead, the act provided “balanced funding” for abstinence, behavior-change and condom prevention approaches without a fixed funding proportion for any single focus. The measure required programs to report to Congress if, in countries that have generalized HIV epidemics, they spent less than 50 percent of funding for abstinence and behavior-change interventions.

The increased spending was intended to move the PEPFAR program beyond the emergency phase and make it sustainable by strengthening health systems and nutrition programs, among other things. The measure included \$4 billion for programs that benefit orphans and vulnerable children, \$9 billion for bilateral programs that address tuberculosis and malaria, and \$4 billion for Global Fund programs for these diseases. Of the total funding, \$37 billion was directed to AIDS programs.

The PEPFAR reauthorization law also specifically called for a strong continued partnership with faith-based and community organizations (FBCOs) in providing nutrition and food support; child health services; HIV/AIDS prevention and treatment services; and medical, social and legal services for victims of violence. The law stipulated that technical assistance about U.S. foreign programs had to be made available on a regular basis to FBCOs, especially indigenous organizations new to partnering with government.

Bush's PEPFAR initiative found an important fan in the administration of Barack Obama – the new president himself. In a campaign appearance sponsored by a group of religious leaders in April 2008, then-Sen. Obama said referring to Bush: “I actually think that the PEPFAR program is one of the success stories of his administration.”³¹

B. COMPASSION CAPITAL FUND

The Compassion Capital Fund (CCF) was established in 2002 by appropriation to the Department of Health and Human Services (HHS) and operated under the HHS secretary's discretionary authority. It had originally been included in the Community Solutions Act of 2001, but that attempt at comprehensive faith-based legislation failed to win congressional approval. The CCF represents the most extensive capacity-building program and the most significant funding stream set up expressly as part of the Bush administration's Faith-Based and Community Initiative.

The CCF provided grants along with intensive training to build the capacity of FBCOs by increasing their effectiveness, enhancing their ability to provide social services, expanding their organizations, and creating collaborations to better serve those most in need. Since the program began in 2002, according to numbers reported by the Bush administration, more than \$349 million was awarded to over 5,000 organizations in all states as well as the U.S. Virgin Islands and Puerto Rico. The CCF incorporates three components:

- **CCF Targeted Capacity-Building Program**

Under the Targeted Capacity-Building Program, competitive grants of up to \$50,000 were provided directly to grassroots FBCOs engaged in service to distressed communities. Organizations with a range of programmatic emphases, including at-risk youth, homelessness, healthy marriage and social services for rural communities, were eligible to apply. The grants did not fund client services directly, but rather supported the service capabilities of the organization through focused development in at least one of five areas: leadership development, organizational development, program development, revenue development strategies or community engagement.

From fiscal 2003 to fiscal 2007, nearly 1,000 competitive grants were awarded under this program for a total of more than \$48 million. In fiscal 2007, the Administration for Children and Families provided more than \$10.3 million to 219 organizations. No funding was available for new mini-grants in fiscal 2008. A 2008 retrospective, HHS-financed study of this program conducted by Branch Associates, a research and evaluation consulting firm in Philadelphia, found that 66 percent of FBCO respondents indicated that the CCF support enabled them to serve more clients. More than half of the respondents used the funds to start new programs, nearly 90 percent of which were sustained after the grant ended. The study also found that almost all FBCOs reported improvements in important capabilities such as financial management systems, outcomes tracking and long-term planning as a result of the technical assistance and training they received along with the grant funding.³²

- **CCF Demonstration Program**

The objectives of the CCF Demonstration Program were similar to the Targeted Capacity-Building Program. However, the Demonstration Program provided grants to “intermediary” organizations that, in turn, made competitive sub-awards to grassroots FBCOs. Grantees selected at least one social service priority area of need to address, such as at-risk youth, prisoner reentry, homelessness, or families in transition from welfare to work.

A large portion of the FBCOs that received sub-awards from intermediary organizations would not have been capable of winning or managing even the modest-sized Targeted Capacity-Building grants. For many, the sub-award represented their first receipt of federal funds. The intermediary organization had primary responsibility for handling compliance issues, accounting, data reporting and other burdens that could be overwhelming to first-time grantees. As a result, this “intermediary model” allowed the program to reach out to the smallest front-line organizations. The intermediary organizations also provided extensive technical assistance and

training, both to their grantees and to other FBCOs from the community to help improve their programs.

For example, in 2004 the Ohio Governor's Office of Faith-Based and Community Initiatives became the first government entity to receive a federal CCF Demonstration Program grant as an intermediary organization. The purpose of this program was to assist FBCOs throughout Ohio in increasing their effectiveness and enhancing their ability to provide social services to people and families in need. All of the grant funds were used to support either training, technical assistance or mini-grants to Ohio FBCOs. Over the course of the federal grant period, the Ohio Compassion Capital Project awarded more than \$1 million in 100 sub-awards and trained more than 2,000 FBCOs in 11 key areas of capacity-building.

Similarly, the Black Ministerial Alliance of Greater Boston, an alliance of 83 FBCOs with a 40-year history of serving the black community in Boston, received three CCF Demonstration Grants between 2002 and 2008. The grants supported activities such as delivering workshops annually to as many as 200 local FBCOs; providing technical assistance to 25 organizations; and distributing \$200,000 per year in mini-grants. The alliance calculates that, along with its partners, it has reinvested \$7,400,000 in the community since 2002 through these activities.

The OneStar Foundation in Texas, a private organization that serves as the state's faith-based initiatives office and liaison to the White House, received a CCF Demonstration Program grant in collaboration with the Texas Workforce Commission to build the capacity of FBCOs in four urban counties. With state funds, OneStar also implemented the Rural Texas Demonstration Project in the Council of Government regions of Central Texas, Heart of Texas and Brazos Valley. OneStar reported that through these two projects it had strengthened 37 diverse FBCOs through strategic training, coaching and networking opportunities, benefiting more than 1,000 FBCO staff members and volunteers.

From fiscal 2002 to fiscal 2007, 112 awards totaling \$154.8 million were made to intermediary organizations. These organizations, in turn, competitively awarded funds to more than 4,100 grassroots groups in 47 states and the District of Columbia. In fiscal 2008, the Administration for Children and Families provided more than \$17.5 million in continuation awards to 37 intermediary grantees under the Demonstration Program. No funding was available for new awards.

A 2007 HHS-financed evaluation of this program by Abt Associates, a research and evaluation consulting firm, revealed that 88 percent of FBCOs receiving sub-awards and training reported improved outcomes for their clients, and 90 percent reported an increased level and/or improved quality in the services they deliver.³³

- **CCF Communities Empowering Youth Program**

The CCF Communities Empowering Youth (CEY) Program was created in 2006 to strengthen existing coalitions of nonprofits working together to combat gang activity, youth violence, and child abuse and neglect in local communities. CEY capacity-building grants were awarded to a

“lead organization,” which provided both financial support and capacity-building training to their coalition of FBCO partners.

CEY grantees were to assist their collaborating partners in addressing gang involvement, youth violence, and child abuse and neglect and generally to foster positive youth development, primarily through technical assistance and training. From 2006 to 2008, approximately \$90 million was awarded via competitive grants to 131 projects. In fiscal 2008, no funding was available for new awards.

C. MENTORING CHILDREN OF PRISONERS

An estimated 2 million children and youths in the United States have at least one parent in a federal or state correctional facility and often struggle with the economic, social and emotional burdens of the incarceration. Mentoring programs seek to provide these children with opportunities to develop a trusting relationship with a supportive, caring adult and a stable environment that can promote healthy values and strong families.

A successful program in Philadelphia, called Amachi, recruited mentors from churches and other faith-based organizations (FBOs) for children of incarcerated parents, with the volunteer mentors trained and organized in concert with Big Brothers/Big Sisters. Former Philadelphia Mayor Wilson Goode and University of Pennsylvania Professor John DiIulio, the first director of the White House Office of Faith-Based and Community Initiatives (FBCI), helped bring the Amachi program to the attention of Bush. As a result, he visited the program twice in his first years in office and used it as a model for a Mentoring Children of Prisoners program announced in his 2003 State of the Union address.

Congress established the Mentoring Children of Prisoners (MCP) program through the Promoting Safe and Stable Families Amendments. HHS began funding mentoring projects in 2003. In 2006, Congress reauthorized the MCP program for a second, three-year period under the provisions of the Child and Family Services Improvement Act of 2006. The MCP program dedicated \$50 million annually to mentoring children of prisoners. Grants were awarded to faith-based and community organizations that provided children and youths of incarcerated parents with mentors. The goal of these programs was to ensure safe and trusting relationships for these children; healthy messages about life and social behavior; appropriate guidance from a positive adult role model; and opportunities for increased participation in education, civic service and community activities.

The program directed grantees to recruit a diverse group of mentors who would commit to spending at least one hour per week with their assigned child for a period of at least one year, and required the grantees to screen volunteers extensively through appropriate reference checks, criminal background checks, and child and domestic abuse record checks. Outcomes for each participating youth were measured by such factors as academic achievement and avoidance of risky behaviors.

In fiscal 2008, HHS awarded \$58.6 million in funding to support 215 mentoring programs. Under the New Service Delivery Demonstration Program, MCP also began a new three-year

initiative in 2008 that uses program vouchers. The voucher program is administered by MENTOR, a national nonprofit resource organization. MENTOR's role includes certifying organizations eligible to receive the vouchers; working with mentoring organizations to identify children in need of mentors; and establishing a national call center to help families and caregivers choose a mentoring program best suited to their needs. Funded at \$5 million in its first year, the voucher portion was slated to increase to \$10 million in the second year and to \$15 million in the third year. The money, authorized by Congress, came with a requirement that HHS report annually to congressional appropriations committees on the progress of the voucher program.

Under law, government money cannot be paid directly to FBOs for inherently religious activities. But vouchers may allow clients to choose religious programs, provided they have a genuine, independent choice among providers and services are intended for a secular, public purpose. Critics have said vouchers improperly expand government-funded services to faith-based programs by circumventing laws that prohibit proselytizing when receiving direct government aid. With mentoring vouchers, critics are particularly concerned about the ability of vulnerable young clients to choose among programs and the chance that youths will be exposed to unwanted religious messages.

Other aspects of the Mentoring Children of Prisoners program were controversial as well. In 2005, a U.S. district judge found that an MCP grant to a faith-based mentoring organization in Arizona was unconstitutional because the group sought Christian mentors intended to introduce children in the program to Christ and nurture them with Christian messages. The program also was criticized by some of its strongest, early supporters – including David Kuo, the former deputy director of Bush's own White House Office of FBCI – for being too slow in delivering on its promise on the number of matches.

D. ACCESS TO RECOVERY

In his 2003 State of the Union address, Bush proposed spending \$600 million over three years on a new drug treatment voucher program, Access to Recovery (ATR), as part of his Faith-Based Initiative. The proposal sought to enable people to use vouchers to choose a substance abuse treatment program, a system of indirect funding that permits the government to fund services, including those with a religious element, provided by FBOs. The plan followed a late 2002 Supreme Court decision that upheld the use of education vouchers in Ohio at religiously affiliated schools. The court ruled that such funding was constitutional as long as the program served a secular public purpose and beneficiaries had genuine, independent choices between religious and secular providers.

The Bush proposal would have allowed more religious organizations to provide drug and alcohol rehabilitation services and generated criticism from some health care professionals and civil liberty groups, who were concerned that drug rehabilitation treatment by faith-based groups could diminish the quality of care. But National Drug Czar John Walters countered that vouchers, linked to client choice, reward programs that work and provide a format through which other federal money may be routed for effective social service programs.

The Office of Drug Control Policy and the White House Office of FBCI also teamed up to announce Pathways to Prevention, a faith-based marijuana prevention program for teens. The program encouraged more faith communities to participate in youth drug prevention programs by using faith as a deterrent to substance use. “Faith plays an important role when it comes to teen marijuana prevention,” Walters said in announcing the effort. “We are urging youth ministers, volunteers and faith leaders to integrate drug prevention messages and activities into their sermons and youth programming.”³⁴ Walters cited a 1998 National Congregations Study that said only 2 percent of congregations surveyed had participated in or supported substance abuse programs in the past year.

Walters’ enthusiasm for new faith-based partnerships in drug treatment was not universally shared. The announcement drew immediate fire from opponents of Bush’s faith initiative. “The Bush administration seems to think there’s a ‘faith-based’ solution to every social and medical problem in America,” said Rev. Barry Lynn, executive director of Americans United for Separation of Church and State. “The project is one very small part of a larger crusade that raises troubling constitutional concerns.”³⁵

Access to Recovery aimed to expand on the availability, methods and effectiveness of drug treatment programs administered by states. As its central feature, the program provided an incentive for states to deliver services through the use of vouchers that enabled clients to exercise “genuine, free and independent choice” among eligible treatment programs, including those administered by FBOs. The grant announcement quoted the Supreme Court’s criteria for using public funding to pay for religious school vouchers.

Three-year grants were awarded in 2004, subject to annual appropriations, to 14 states and one tribal organization for ATR programs: California, Connecticut, Florida, Idaho, Illinois, Louisiana, Missouri, New Jersey, New Mexico, Tennessee, Texas, Washington, Wisconsin, Wyoming, and the California Rural Indian Health Board. Congress appropriated \$100 million in both the 2004 and 2005 budgets to launch the ATR program, half the amount requested by the White House.

The Bush administration requested an increase to \$150 million for fiscal 2006, but Congress instead moved funding from ATR to the Substance Abuse Prevention and Treatment (SAPT) Block Grant, which all states receive for substance abuse treatment and prevention programs. The SAPT block grants represent 40 percent of total state spending on treatment and prevention, according to the House Government Reform Committee, and the block grant funds more than 10,500 faith-based and community organizations. A statement from the Senate Appropriations Committee said: “The committee is redirecting a portion of the proposed funding for the voucher incentive program to the SAPT Block Grant to ensure that all states and territories are afforded adequate resources for addiction treatment and prevention.”³⁶

That brought strong objection from supporters of ATR, including the chairman of the House subcommittee responsible for authorizing funding for the nation’s drug control efforts. In a statement Rep. Mark E. Souder, R-Ind., chairman of the Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources, said:

“I am very disappointed that the Appropriations Committee has not included an extension of the Access to Recovery drug treatment voucher program in its 2007 budget. For years, before ATR, individuals in need of drug treatment were unable to select the programs that they believed would be most effective in helping them stop abusing drugs once and for all. With ATR, individuals have been empowered to select the program of their choice. For some that might be a secular, traditional program; but for others it might be a faith-based program. Yes, more evaluation needs to be done, just as it needs to be done for traditional drug treatment programs. But at this critical juncture in our society – with drug abuse rampant and the ATR program only a few years old – it would be a step backwards to stop funding the program that shows immense promise for truly changing people’s lives. ATR is a model for how many social service programs should operate, and I am hopeful that we can restore and expand the program. If we want to truly make a difference in the lives of our citizens, I think we should let them have a choice in their treatment.”³⁷

Consolidating ATR with the state block grant, in the view of another advocate, risked stopping the program in its tracks before it could gain traction or prove its worth in helping patients overcome addiction. “This misses the whole logic of Access to Recovery,” said Stanley Carlson-Thies, founder and president of the Institutional Religious Freedom Alliance, a nonpartisan think tank, and an advocate of vouchers as a way to indirectly channel government money to FBOs. “The idea was to create a different program from the existing ones under the block grant program, and you can only do it if you agree to set up this system. This just goes back to the status quo.”

However, Wesley Clark, HHS director of the Center for Substance Abuse Treatment at the Substance Abuse and Mental Health Services Administration (SAMHSA), said: “It is premature to reach a conclusion that the issue has been resolved to the detriment of the Access to Recovery program. The president stands behind Access to Recovery, the voucher concept, the individual choice concept and the recovery concept.” The Bush administration believed there was a need for professional treatment but also a need to extend contact to the client from the community and that FBOs were important in that pursuit, according to Clark. “SAMHSA is still committed to emphasize that aspect of the program,” he said. “Nothing in the existing legislation keeps states from using vouchers.”³⁸

Critics of ATR said the program expanded government-funded services to faith-based programs, many of which did not meet licensing requirements or medically sanctioned standards of state-approved services. FBOs receiving government money through vouchers are allowed to use religiously based curriculum in treatment, and that raised concerns among religious liberty groups.

“The administration has invested much effort in attempting to alter the delivery mechanism for drug treatment services with its Access to Recovery voucher initiative and this year’s proposal to ‘voucher-ize’ treatment services delivered with Substance Abuse Prevention and Treatment Block Grant funding,” said Democratic Rep. Cummings. “But it has failed to make significant progress in closing the gap between the number of people needing treatment and the woefully inadequate volume of accessible treatment services.” According to Bush administration figures:

in 2004, 23.5 million people age 12 or older needed treatment for an alcohol or illicit drug use problem while an estimated 2.3 million of these people received treatment at a specialty facility.

The ATR program was slow in getting started in part, according to observers, because of resistance by the conventional systems to faith-based providers and because of the ongoing need for clarity about permitted activities in their partnerships with the government. There were also complications with FBOs meeting licensing or other requirements of the clinical treatment model for block grant-funded services.

E. PRISONER REENTRY INITIATIVE

Launched in 2004, Bush's Prisoner Reentry Initiative linked ex-offenders with religious and secular nonprofits that provide mentoring and other programs. This new program was an attempt to address growing rates of return to prison that have concerned law enforcement and justice officials across the country in recent years. More than 650,000 prisoners are released from the nation's corrections institutions each year, according to the federal government. Half of them are expected to return to prison within three years for committing new crimes or violating conditions of their release.

The administration highlighted the prisoner reentry program as a key feature of its Faith-Based and Community Initiative and supported the Second Chance Act in 2005. The measure was enacted in 2008 and authorized \$165 million annually over two years to support mentoring programs, substance abuse treatment, literacy classes, job training and other assistance intended to help ex-offenders pursue productive, crime-free lives after their sentences were up. The law authorized grant funding for fiscal years 2009 and 2010 for state and local governments to launch or continue programs to improve ex-offenders' return to society. It also allocated competitive grants to faith-based and community nonprofits to offer programs linking ex-offenders with mentors or helping them seek and keep jobs.

The Second Chance Act included funding authorization, at \$55 million per year, to continue state and local government demonstration projects aimed at promoting the successful reintegration of ex-offenders. The funds could be used for programs that help released prisoners find homes and jobs, overcome addictions, strengthen their families, and improve literacy and other skills.

The act also authorized funding for creation of new programs at the state and local level to improve prisoner reentry, at an annual amount of \$45 million. The grants would fund: "reentry courts" that would monitor offenders and provide access to reentry services; qualified drug treatment programs as alternatives to imprisonment; family-based substance abuse treatment for parent offenders; technical career training for prisoners; and evaluations of educational methods at correction facilities. Another \$15 million was authorized annually for grants to nonprofit organizations, including faith-based and community groups to provide mentoring and other transitional services to former inmates. Another \$20 million annually was included in the act for grants to nonprofits to assist ex-offenders in obtaining and retaining employment in coordination with the Labor Department's One-Stop Career centers.

The Second Chance Act also called for inmates to receive information on health, employment, personal finances and community resources upon their release. And it authorized the Justice Department to conduct research on the best practices available through prisoner reentry programs.

Bush had praise for the work of small religious and other nonprofit groups when he signed the Recidivism Reduction and Second Chance Act into law. “Our government has a responsibility to help prisoners to return as contributing members of their community. But this does not mean that the government has all the answers,” Bush said in a bill signing ceremony April 9, 2008. “Some of the most important work to help ex-convicts is done outside of Washington, D.C. in faith-based communities and community-based groups. It’s done on streets and small town community centers. It’s done in churches and synagogues and temples and mosques.”³⁹

Though the Second Chance Act had bipartisan support, it took three years from its initial introduction to pass, due to a debate over hiring rights for the religious groups that would provide services to ex-convicts. A provision to allow faith-based recipients of Second Chance Act funding to prefer members of their own religion in employment was periodically inserted into the bill by legislators who believed religious groups should retain such a right as a way of maintaining their identities. But, like debates over similar provisions in other legislation during the Bush administration, opponents said such religious hiring rights would amount to publicly funded employment discrimination and a violation of civil rights laws. In the end, the provision was removed in order to secure passage of the bill.

Along with employment nondiscrimination requirements, federal law mandates that groups that provide programs with public funds to offer those services to all eligible beneficiaries, regardless of their faith. Service organizations are also prohibited from using funds they receive directly from the government for religious activities. Consequently, Second Chance Act service providers – be they religious groups or other nonprofits – are required to offer only secular programs to assist former prisoners.

According to the White House, more than 12,800 ex-offenders enrolled in the prisoner reentry program, and 7,900 of them were placed in jobs. Eighteen percent of participants were arrested again within a year – less than half the estimated national average for recidivism.

A forerunner of the Prisoner Reentry Initiative, a demonstration project known as Ready4Work launched by the Labor Department and Public/Private Ventures, a respected private research organization based in Philadelphia, showed promise in reducing repeat offenses and improving prisoners’ ability to find jobs. Ready4Work operated in 17 sites over three years, linking adult and juvenile ex-offenders with faith-based and community organizations for mentoring, job training and placement, and referrals to housing, health care, drug treatment and other programs.

A May 2007 report by Public/Private Ventures on the 11 adult Ready4Work sites found that just more than half of the program participants connected with a mentor, much lower than the 90 percent matching rate that had been anticipated. But it found that ex-offenders who had mentors were more likely to find and keep jobs, which could be attributable to differences in

levels of motivation. Ready4Work sites relied on religious organizations to supply volunteer mentors.

More than half of Ready4Work participants held a job for at least one month while in the program, with 60 percent of that group holding the job for at least three months and 33 percent remaining employed for six months or more – results that Public/Private Ventures found to be “impressive given the many barriers to employment these ex-prisoners face.”⁴⁰

This research also found Ready4Work participants to be less likely to commit a repeat offense than non-participants. According to Public/Private Ventures, 2.5 percent of Ready4Work participants returned to prison within six months – compared to 5 percent nationally, as reported by the Bureau of Justice Statistics – and 6.9 percent were back in jail after a year – compared with 10.4 percent nationally.

The study by Public/Private Ventures also found that the program was cost-effective, with an annual price tag of about \$4,500 per participant, compared with the \$13,000-\$45,000 cost of keeping someone in prison. Public/Private Ventures President Fred Davie – who was present at Bush’s signing ceremony for the Second Chance Act and now sits on President Barack Obama’s Council on Faith-Based and Neighborhood Partnerships – called the legislation “a promising step forward to ensure the safety and economic viability of many of America’s communities by investing in our nation’s most precious resource: its people.”⁴¹

The day after Bush’s signing of the Second Chance Act, the Labor and Justice departments announced prisoner reentry grants totaling nearly \$3 million to criminal justice agencies for funding of faith-based and community groups to provide ex-prisoners with employment services. Twenty-three agencies in 22 states and the District of Columbia were awarded grants of \$130,434 each. States receiving grants were: Alaska, Arizona, California, Colorado, Florida, Hawaii, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Nevada, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, Wisconsin and Wyoming.

State and local governments also created their own efforts to draw on the resources of local FBOs in prisoner reentry. Ohio Gov. Ted Strickland, for example, signed into law an act encouraging faith-based groups and volunteers to provide reentry services in that state. In Alabama, Gov. Bob Riley appointed an advisory council of government and religious leaders to develop a statewide prisoner reentry strategy. The communities of Boston, Minneapolis and Durham County, N.C., are among those with their own prisoner reentry programs that engage faith-based groups.

In part, these programs resulted from increased attention to the issue of reentry, fostered both by growth in the numbers of returning prisoners and federal initiatives in the area. But pressure also is being felt on the fiscal side to reduce prison populations for budgetary reasons. In Ohio, the push to engage religious groups in reentry programs came as the state’s Department of Rehabilitation and Correction faced \$74 million in budget cuts in 2008, according to press accounts. In an attempt to close growing budget gaps, at least eight states were reported to be considering proposals that would permit an early release of convicts from prisons, including California, Kentucky, Michigan, Mississippi, New Jersey, Rhode Island, South Carolina and

Vermont. And that was *before* the current, now-still-deepening national recession pulled the floor out from under state revenue systems.

IV. THE SCOPE, FUNDING AND EFFECTIVENESS OF FAITH-BASED SOCIAL SERVICES

A. SCOPE OF FAITH-BASED SERVICES

What is currently known about the scope and scale – the characteristics and activities – of faith-based organizations (FBOs)?⁴² Broad answers are challenging given the enormous variation in types of FBOs, their activities and the amount of resources FBOs contribute through social services.

One way to conceptualize the scope and scale of FBO involvement in social services is through their resource contributions, such as the volunteers and technical assistance that congregations and FBOs provide. Faith-based organizations often depend on the support and contributions of volunteers for the delivery of social services. One study by Independent Sector found that approximately 23 percent of Americans volunteered for a religious organization. Other estimates indicate that approximately 74 percent of congregations provide volunteers to at least one FBO involved in service provision while about 60 percent of individual congregants reported that they volunteered to provide social services at least a “few times a year.” The 1998 National Congregations Study reported that approximately half of all congregations support some social services by providing volunteers.

FBOs also provide direct and indirect financial support for social service delivery. National estimates indicate that these organizations spend tens of billions of dollars annually on social service programs. The social service expenditures of congregations have predominantly been supported by contributions from private individuals rather than from private companies or government support. Larger state and national FBOs, by contrast, are considerably less dependent upon private individual contributions.

A number of studies have estimated the monetary value and the total replacement costs of local congregational social services. An Urban Institute study of FBOs in five cities estimated they spent between \$2.4 million and \$6.8 million on employment-related services annually per city. Considering the value of volunteer hours, paid staff, the use of buildings and services, as well as monetary contributions, a 1998 report on congregations in six cities estimated that congregations provide \$3,176.98 per month, per program. The Census of Philadelphia Congregations study calculated the replacement value of social services provided by congregations in Philadelphia – taking into account the value of paid and volunteer labor, the use of buildings and services, as well as monetary contributions – at \$246 million annually.

Past research has shown that many FBOs provide short-term, emergency assistance to individuals and families, such as food, clothing, shelter and financial aid. Other social services represent more long-term developmental assistance. Examples include child care, intermediate to long-term housing, individual and family counseling, employment assistance and training, youth mentoring and after-school programs.

Studies have also reported that FBOs play an important role in community economic and housing development designed to make longer-term changes in blocks, neighborhoods and regions. Specific activities include small-business development, housing renovation, the provision of low-income housing loans through community credit unions, and wide-scale employment training. FBO involvement in community economic and housing development has typically involved the creation of congregation-sponsored organizations commonly referred to as “faith-based community development corporations” or “faith-CDCs.”

A 2007 national survey conducted by the Rockefeller Institute’s Roundtable on Religion and Social Welfare Policy provided additional details on the scope and character of social services offered by or through American congregations. Almost 70 percent of the congregations around the country provided social services to their members or communities. Yet despite government efforts to encourage faith-based groups to use public funds for such offerings, relatively few congregations applied for or received government funds to provide those services, or knew about changes in federal law over the past dozen years meant to ease the way for them to do so. Most congregations provided some social service, but only 7 percent financed the service with government grants.⁴³

The findings of the report are significant in light of the goals of President George W. Bush’s Faith-Based and Community Initiative, which sought to encourage smaller religious charities to compete for government contracts to provide social services. Congregations are the very sort of smaller, grassroots-based groups that the initiative targeted. Government grant activity was not tremendously important for congregations, the survey showed, even though they were engaged in social services in a wide variety of areas.

Congregations’ low level of government contracting, according to the survey, did not appear to be due to a philosophical or theological opposition to partnering with state or federal agencies. Instead, most congregations were not competing for government funds for more practical reasons – they didn’t have enough staff or space to take on more work, they feared external control, or they simply didn’t know that they are eligible for such contracts.

The idea behind the Faith-Based Initiative – to promote collaborations among faith-based and secular nonprofits, the government and the private sector to help the needy – was something widely supported by American congregations, whether or not they were engaged in the activity. More than 80 percent of the congregations surveyed said that they agreed with the need for multi-sector collaboration, including faith-based groups and the government, to provide services for the needy.

For many congregational leaders surveyed, the government contracting process remained daunting. Almost 80 percent reported difficulty in applying for and managing public funding. Of those congregations that did not seek government grants, 22.5 percent said in the survey that it was because of concerns over external control of their organization, 17.4 percent said they lacked space for new programs, and 14.8 percent said they lacked staff or volunteers to handle new responsibilities. Only 5.3 percent stated they were opposed to partnering with the government on philosophical or theological grounds.

The 2007 survey also looked at whether congregations had the administrative practices in place that would allow them to work successfully with the government. About half the congregations reported having certain administrative practices needed to receive and manage public funds, such as a recently audited financial statement (53.1 percent), secure records storage and retrieval (52.8 percent), written personnel policies (52 percent), and capital improvement reserves (50.2 percent).

Other essential practices were less common, such as written conflict of interest policies (25.1 percent), a formal volunteer training program (24.2 percent), evaluation of program outcomes (24 percent), formal attendance records (22 percent), and formal policies for overhead charges (19.5 percent).

The survey also identified the types of services that congregations are engaged in. Of 26 social service program areas listed in the survey, marriage counseling was most commonly provided by congregations, offered by two-thirds of survey respondents. Vocational training was the least common, offered by just one-tenth. Nearly 65 percent of American congregations provide a food pantry in their communities. Almost half of the country's congregations offer emergency clothing. Nearly a quarter of congregations run a soup kitchen.

Congregations that were more active in social service delivery tended to have experienced growth over the last decade, were more diverse in terms of race and income, and had younger members than less active congregations. Larger congregations were also more likely to be providing services to community residents who were not among their own members. In one of the few areas in which the survey found distinctions among religious traditions, African-American churches were most likely to have familiarity with Charitable Choice provisions and to have attended a federally sponsored conference to promote partnerships between the government and religious groups. Conservative evangelical churches were less likely to seek collaboration with partners in providing services, more likely to mandate some religious content within their programs, and more likely to oppose restrictions against their preferring members of their own faith when hiring.

Most congregations that responded to the survey – almost 74 percent – reported that religious content in their programs was present and non-mandatory, or offered on a voluntary basis to program recipients. Just over 10 percent reported making religious content a condition of receiving services.

Other than full-time clergy and part-time professional office staff, most congregations had no paid employees. One-half of all the congregations reported agreement with religious/faith commitment being a requirement for hiring. Another one-quarter agreed that religious/faith commitment is preferred for hiring, and one-tenth of the congregations agreed that religious/faith commitment is not relevant to hiring.

B. PUBLIC FUNDING FOR FAITH-BASED SERVICES

The Bush administration's Faith-Based Initiative was intended to expand the participation of faith-based organizations in social services, in part, by increasing opportunities for public

funding of their efforts through government contracts and grants. The bulk of federal funding for social services flows through state and local governments, where administrative decentralization and the lack of capacity to identify the faith-character of grantees and contractors present significant obstacles for tracking the award of federal funds to religious groups. Thus, it is no small task to assess the extent to which FBOs have received federal discretionary grant awards.

Beginning in 2003, the Bush administration reported numbers indicating year-over-year increases in federal funding for FBOs. The data reported were based on a shifting, partial set of federal programs that do not support reliable trend analysis however. Reporting in the early years covered the five departments that were the first to house centers for Faith-Based and Community Initiatives (FCBI) created by a Bush executive order, and this expanded to 11 agencies in later years.

In its summary report on the faith-based legacy, the Bush administration indicated that there was a 41 percent increase in the number of competitive awards made to FBOs from those five agencies with the first FBCI centers: the departments of Education, Health and Human Services, Housing and Urban Development, Justice, and Labor.⁴⁴ But even within the subset of agencies in the reports from the beginning, the funding streams and programs that were covered shifted from year to year.

Moreover, the method used to identify the religious character of federal grantees – a data point that is generally not recorded in federal programs other than through self-identification begun during the Bush years – was not rigorous or even explained. Some of the harshest challenges of the veracity of the amounts claimed as grants made to FBOs have come from former Bush administration officials with a hand in creating the reports.

During a congressional hearing on legislation to establish the administrative apparatus of the Faith-Based Initiative in law, questions arose about how the Bush administration had compiled reports claiming that some \$2 billion in federal grant money had gone to FBOs during the 2004 fiscal year. “Who put that out there?” asked Rep. Cummings. “Let me tell you, everywhere I go, people say ‘Gee, that was really nice of the president to put all that extra money out there for faith-based.’”⁴⁵

“The answer is, the White House put that out there,” responded David Kuo, former deputy director of the White House Office of FBCI, who was testifying. “The problem is, the data on which that is based would not stand up to any scrutiny. The reason we asked Bobby Polito and the other [federal agency faith-based] centers to come up with data was to cover ourselves because the president’s promise of \$8 billion a year in new spending and tax incentives had not come through.”⁴⁶

Polito, the former head of the Center for FBCI at the Department of Health and Human Services, said in his own testimony that the numbers should have been produced by the Office of Management and Budget because “they do that well.” Instead, he said, they were done by the various federal agencies that had made the grants. “Having center directors and interns in our offices looking down sheets and saying ‘faith-based, not faith-based’ was insane,” Polito said at the hearing.⁴⁷

Critics sought to push the administration to “live up to promises of billions of dollars in increased aid to faith-based organizations,” adding some pressure for self-reported numbers to be as high as possible. For example, during the same congressional hearing, Kuo praised Bush for launching the faith initiative in 2001 but also charged that the campaign promises he made had not been fulfilled, including a pledge to pump \$8 billion a year into the program. “Four years later, rather than \$32 billion in new spending and tax incentives for the poor, we’ve seen a few hundred million at best,” Kuo told the House panel. “There is a chasm between what was promised and what has been delivered that cannot be glossed over by any new White House reports, initiatives, policies, conferences, speeches, pronouncements or purportedly objective data collection intended to make the failure look better.”⁴⁸

Only one formal trend study has been conducted on federal discretionary grant funding to FBOs – research tracking awards from a consistent set of grant programs over time, and with a formal, replicable method for identifying the faith character of recipient organizations.⁴⁹ The study, published in 2006 by the Roundtable on Religion and Social Welfare Policy, analyzed 99 federal programs over a three-year period and included an examination of more than 28,000 awards. This study found:

- There was a slight increase in both the number of FBOs receiving a grant from one or more of the programs studied and in the total number of grants received by the FBOs identified.
- In 2002, FBOs received 11.6 percent of the total number of grants awarded under the 99 programs in the study. By 2004, they received 12.8 percent of the total grants awarded.
- Federal grant awards shifted toward larger FBOs rather than congregations. The share awarded to congregation-based FBOs declined, the share to independent religiously affiliated organizations that were local or regional fell, and the share awarded to multi-state or national organizations with religious affiliations rose.
- The relative share of grant dollars going to FBOs remained flat. In 2002, FBOs received 17.8 percent of the total dollar amount awarded from the 99 grant programs in the study. In 2003, that share of dollars awarded dropped slightly to 17.1 percent, but then it returned to 17.8 percent in 2004.
- Total funding for the discretionary grant programs themselves dropped appreciably over this period, by more than \$230 million.
- Thus, while FBOs received 17.8 percent of program awards in both 2002 and 2004, the dollar amount declined from \$669,522,328 in 2002 to \$625,928,212 in 2004, a decrease of 6.5 percent.
- Federal grant funding to FBOs, like awards, shifted to favor larger organizations.

C. EFFECTIVENESS

There is a macro theory about the value of faith-based social service, which holds that, compared with secular nonprofit or government service providers, FBOs:

- Are more “holistic” in their approach, treating the “whole” person by stressing spiritual renewal and personal transformation;

- Are better at placing program recipients in an ongoing support network that provides role models and connects clients with the community;
- Have “front-line” workers who are more caring and more personal in their approach;
- Translate these features into effective service.

DiIulio notably said: “We do not yet know... whether America’s religious armies of compassion, local or national, large or small, measurably outperform their secular counterparts.”⁵⁰ That remains true today. Little is known about the role that “faith” plays in bringing about desired change in the lives of social service recipients. Does faith make a difference in the outcomes of services, and if so, how and for whom? There is almost no empirical research to support, or counter, the value of faith as a key to the delivery of effective social services, although answers to these central questions are beginning to emerge.

Ample research has been conducted on the role of religiosity in influencing desirable outcomes. Attending religious services or being raised by religious parents is associated with improved health, for example. (Questions remain as to whether this is due to religion or other factors.)

But only a small handful of studies have been conducted to test for the effectiveness of faith-based social services. And unfortunately these studies suffer from important shortcomings. They cover too few organizations to support rigorous quantitative analysis; cover very narrow geographic areas; fail to control for differences in approach, population served or environment that affect results; and tend not to separate the effects of religious belief and worship from religious content delivered through programs. Importantly, no comparative study has tracked effectiveness and connected measures of performance with statistical rigor to underlying program theories that relate to the faith character of the organization and the services delivered.

A religious connection may interact with many aspects of service organizations. Religion may influence the leaders and staff organizations recruit, the people they serve, their location and connection with the community, and the ways in which they deliver services. To understand the influence of faith on organizational effectiveness, we need to trace how faith affects organizational activities or capacities and how these alter effectiveness. Such influences may take several forms:

Impact on general effectiveness of the program: Religiosity may influence characteristics of the program that in turn affect the effectiveness of programs for most clients, regardless of their religiosity. These characteristics – such as staff commitment, service range, community ties and strength of relationships with clients – may also occur among secular programs, but faith-based elements in the program may increase the probability that such characteristics are found.

Resonance with religious clients: Religiosity may permit programs to respond more fully and effectively to the faith-related understandings and needs of those individuals receiving services and for whom religion is already important, i.e., prior to admission.

Transformation or conversion: By creating or strengthening religious belief and practices among people receiving services, faith-related programs may enhance individuals’ capacities to make fundamental changes in their lives.

The Rockefeller Institute's Roundtable on Religion and Social Welfare Policy sought to illuminate the effectiveness of faith-based social service providers in several specific service areas: housing programs, outreach and assistance to families on welfare, drug treatment, parenting programs, nursing homes and home health agencies.

Our case study of interim housing programs in Michigan found that FBOs were more likely to focus on values, treat their clients in a more comprehensive manner, and be perceived by their clients as more caring. Terms such as "loving," "nurturing" and "helping" were used to describe caseworkers in programs that scored high in faith integration. However, some recipients felt there had been too much intrusion in their personal lives, and the degree to which faith was involved tended to depend more on the front-line workers than it did on the programs themselves.⁵¹

We found that faith-based contractors involved in a New York City Charitable Choice demonstration program designed to help individuals who had lost their welfare benefits because of compliance problems had a difficult time making contact with the majority of the targeted group – many of whom had moved or were living in shelters after losing their welfare benefits. But once a client was reached, the success rate among the FBOs was, on average, half-again higher than anticipated, while certain individual FBO programs scored two and one-half times better than expected.⁵²

Using federal government data on nursing homes and home health agencies, the Roundtable was able to compare program characteristics and performance, based on multiple measures, of a large number of "church-related" (as defined by the federal Centers for Medicare and Medicaid Services), other nonprofit and government service providers located throughout the country. Substantial differences were found: Church-related providers had fewer deficiencies and better patient outcomes on average than other forms of service providers.⁵³

A set of case studies comparing faith-based to secular providers of drug treatment programs in the Puget Sound area, homeless housing programs in the state of Michigan, and parenting programs in the state of Mississippi found more similarities among service providers than the debate rhetoric would suggest, but some distinctive attributes as well. FBOs tended to serve more troubled clients and for longer periods. Moreover, FBOs with a high degree of religious integration in their programs and services tended to view their service as a moral endeavor, a process of client change involving "transformation from the inside out," rather than one of imparting technical skills.⁵⁴

The Roundtable's flagship project on comparative effectiveness involves an unprecedented study on substance abuse treatment services. The study goes well beyond observing the character of services in case settings and instead measures the actual impact of religion on the delivered service. It assesses differences in effectiveness in a way where such differences may validly be attributed to the religious character of the service organizations involved, and does so in a contextualized way.

The study uses a randomized trial to compare the effectiveness of faith-based and secular agencies providing drug treatments in Baltimore. Moreover, the random assignment experiment

is embedded in a study that uses extensive field research, semi-structured interviews and other data to understand the place and unique features of religious institutions and faith-based treatment organizations in the city's substance abuse system.

The project seeks to understand whether and how religiosity in substance abuse treatment programs increases, decreases or has no impact on the effectiveness of such programs in treating patients with substance abuse problems. In the context of this study, religiosity is defined in terms of frequency and range of expressly religious activities in treatment programs, institutional connections between religious institutions and treatment programs, and religiosity of program staff.

The experiment is designed not only to estimate the impact of using faith-based treatment organizations but also to shed light on the reasons for the impact, including the possibility of interactive effects between individual characteristics and assignments to FBOs. The size and structure of the substance abuse system, the large role performed by FBOs in the system, and cooperation of city officials assure that this comprehensive study of the role and effects of religion will produce a benchmark study of practical importance to the national debate over religion and social services.

The study gauges whether and how substance abuse treatment programs – characterized by different levels and forms of religiosity – produce different experiences for clients enrolled in the programs. It also looks at how these different experiences for clients relate to changes in client attitudes and behavior, including intensity of religious beliefs and practices. And, it will assess how changes in religious attitudes and behavior relate to changes in client outcomes. Finally it will examine whether and how religiosity in substance abuse treatment programs affects some clients more than others.

The Baltimore treatment study focuses on understanding the role of religion in state-certified substance abuse treatment and recovery support programs. Data sources included a phone survey of all substance abuse treatment programs and recovery support agencies in the study area; extensive structured interviews with program directors of secular as well as faith-based treatment programs and recovery support agencies; interviews with clients of 10 of the surveyed programs, including faith-based and secular agencies; and extensive administrative data on clients, including information on the services they received, the duration of their treatments, client characteristics, the severity of their substance abuse problems, and client outcomes at admission and discharge.

In a significant expansion from other research, the Roundtable's Baltimore treatment study consists of voluntary random assignment of publicly funded substance abuse treatment clients to different groups of programs operating in their communities. Participants in the experiment are volunteers among those individuals required to enroll in treatment programs in order to receive public assistance. If these volunteers are eligible to enroll in two or more treatment programs, and those programs differ significantly in faith-based characteristics, then participants are randomly assigned to a program.

The Baltimore treatment study measures several outcomes, including drug usage, as well as client histories and their experiences in the treatment programs. The study also monitors characteristics of the programs, including faith-related qualities as well as other aspects of their operations. The objective is to isolate observations on the effects of individuals being assigned to treatment programs with greater or fewer faith-related characteristics, including connections to religious institutions, expressly religious activities – such as scriptural study or prayer – or a strongly religious staff. In doing so, the study tests whether programs with greater faith-related characteristics generate different treatment-related experiences, and it examines the relationships between these experiences and client outcomes.

This randomization allows for a comparison to be made between two groups: one group – the treatment group – is assigned to faith-intensive programs, such as those with extensive faith-related activities, and a second group – the control – is assigned to secular programs that have neither strong institutional connections to FBOs nor faith-related activities during the course of treatment. Because of the random assignment, the study provides reliable measures of differences between clients in the treatment and control groups with respect to client outcomes, experiences, attitudes (religious and otherwise), backgrounds, and other client characteristics or changes. These are measured during a pre-test and post-tests at 3, 6 and 9 months following treatment.

The client outcomes assessed in the study include: a) sustained abstinence from drug use; b) criminal activity; c) independent living; d) employment; and, e) completion of treatment goals and/or length of stay in treatment. Added to the list of traditional outcomes are: f) marital status and stability, g) family functioning, h) continued involvement in the child welfare system, and i) connections to community-based resources that promote recovery and quality of life.

Gauging the relative effectiveness of faith-intensive and secular drug treatment programs and discerning the reason for these differing effects has several implications for public policy. First, having better insights into how certain types of programs benefit certain types of people may make it possible to match client characteristics to program characteristics to improve long-term outcomes. Second, discerning whether as well as how differences in performance occur may make it possible to distinguish specific practices associated with faith-intensiveness that are associated with good outcomes and that are transferable to secular programs (for example, finding that increased access to community-based resources promotes long-term abstinence). In such a case, increasing religiosity of programming might not be as necessary as increasing connections to the community post-discharge from treatment.

If clients enrolled in faith-intensive programs are more likely to strengthen their religious beliefs and practices, and if increased religiosity among clients produces better client outcomes, then public agencies would better understand the advantages of having faith-intensive services available to clients. Here, the design and development of consumer choice models may apply – with special care taken, given the condition of clients, to assure the requirements are met for the Supreme Court’s test of “genuine, independent choice” among providers.

If, on the other hand, faith-intensive providers of substance abuse treatment are more effective than others, not because clients strengthen their religious beliefs and practices, but because they

experience less staff turnover as a result of high levels of staff commitment, then more attention can be paid to increasing the stability of the client-counselor relationship over the course of a treatment episode across all types of providers.

By learning more about the context in which religiosity occurs in programs, policymakers will know more about the roles of individual choice and neutrality in faith-related activities, which have been important criteria in federal court decisions in recent years when resolving constitutional questions about the application of the First Amendment of the Constitution to the delivery of publicly funded services.

Clearly, more research like this needs to be conducted to assess the value of contracting with FBOs versus secular nonprofits to provide social services to those in need. In its absence, what is known is that faith-based and community initiatives have opened up broader competition over sources of public funding for social services and supports that in many respects are shrinking. Some regard that as an end goal in itself. However, it remains an open question whether better results come from the inclusion of FBOs as providers of public services.

V. TAKING STOCK OF THE BUSH FAITH-BASED AND COMMUNITY INITIATIVE

Since its inception, President George W. Bush's Faith-Based and Community Initiative prompted divisions over the extent to which religious organizations should provide government-funded services and how government money can and cannot be spent by religious groups providing services. Reviews of the success or impact of the faith initiative have been decidedly mixed.

Supporters say the initiative removed discriminating barriers against religious organizations or "leveled the playing field" – to use the Bush administration's own phrase – for them to receive government grants and brought more compassionate and personalized government-funded services to the needy. Critics charge the initiative was used to woo political support, violated constitutional provisions for the separation of church and state, and failed to provide promised money for social programs. Some of the most ardent attacks have come from early supporters – even former staff – of Bush's Office of Faith-Based and Community Initiatives (FBCI).

When Congress balked at approving legislation sought by Bush and his supporters to allow more religious organizations receiving government money to employ staff based on their religious beliefs, he changed the federal rules to allow religious hiring in a number of programs and prompted an outcry from civil rights and religious liberty groups. Debate over religious hiring rights stalled key legislation renewing the nation's principal workforce training programs as well as citizen volunteerism programs and delayed for years passage of bills to reauthorize public assistance, Head Start early childhood education, and expanded substance abuse treatment programs.

The Bush White House moved aggressively to implement administrative and structural changes within the federal government in ways that would enable the Faith-Based Initiative to have lasting impact. These included regulations intended to ensure that faith-based organizations (FBOs) could compete for government contracts on an equal footing with secular nonprofits and the establishment of centers within federal agencies whose mission included eliminating obstacles to the participation of faith-based groups in providing social services.

THE UPSIDE

The management capability built by the Bush administration to implement its faith initiative received the most positive attention from observers of the effort. Supporters credited the initiative because it identified a key problem – pervasive institutional bias across a host of federal programs – and acted with dispatch and organization to address it. *Unlevel Playing Field*, the administration's overview of federal departmental barriers to government partnerships with religious charities, stated that "there exists a widespread bias against faith- and community-based organizations in federal social service programs." In a 2008 interview with the Roundtable on Religion and Social Welfare Policy, John Bridgeland, former head of USA Freedom Corps and White House domestic policy advisor, echoed similar concerns. "Legislation requires some restrictions on the full participation of faith-based organizations, but many of the regulations are needlessly burdensome administrative creations."

Bridgeland noted the Bush White House set out and advanced a management approach “to identify and eliminate barriers that impede full participation” administratively in agencies, by working with state and local governments implementing federally funded programs and moving on legislation where needed. The effort added a host of key programs to address important needs, such as mentoring children of incarcerated parents and prisoner reentry.

The Bush administration’s Faith-Based Initiative “went a long way, to use the phrase, to ‘level the playing field,’ ” said Nathan J. Diament, public affairs director for the Union of Orthodox Jewish Congregations. “They brought in a significant number of new partners by holding these conferences around the country, educating groups. It was useful in terms of enlarging the pool of partners for the government.”⁵⁵

“The heart – the core – of the Faith-Based and Community Initiative is a commitment to equal treatment of faith-based social welfare providers,” said George Washington University Law School Professor Robert Tuttle, co-director of legal research for the Roundtable on Religion and Social Welfare Policy, at a Dec. 2, 2008 presentation. “Now, eight years into this, it doesn’t seem like such a radical proposition.” Court interpretations were not enough to spur the flow of government funds to faith-based groups, Tuttle noted. For that to occur, “administrative energy” was required. That was what the Bush administration added, he said, by engaging in a multi-agency effort to remove the obstacles that had previously deterred faith-based groups from competing for government social service contracts.

The Bush effort undermined and overcame the “culture of resistance” that had existed in the federal government toward FBOs’ participation in social service contracts, Tuttle said. “Measured by that standard, the initiative has been, I think, a success that really doesn’t have a parallel in contemporary administrative law, where you have a complete change in culture,” Tuttle added.

“I think back to four, five, six, eight years ago, to the attitudes people had about the role of faith-based organizations in services, what the government can and cannot do,” said Stanley Carlson-Thies of the Institutional Religious Freedom Alliance and a former deputy director of the White House Office of FBCI, in an April 2006 interview with the Roundtable. “There wasn’t any encouragement that came from the federal level. You’d have to say that things were extremely thin. I think that attitude has really significantly changed, and you can see that in actual regulations and in outreach meetings and in partnerships that have developed. There’s just been a very significant sea change in attitudes.”

On the upside for advocates of faith-based services, there appeared to be increased openness among more government officials to the possibility of partnering with faith-based groups. Many governors, for example, took the Bush administration’s lead to advocate for similar initiatives at the state level. At the end of the Bush administration, 36 governors (19 Democrats and 17 Republicans) and more than 100 mayors had established FBCI offices or liaison positions.⁵⁶ And there has been increasing acceptance among many Democrats – President Barack Obama among them – about encouraging such partnerships while being careful about constitutional concerns.

The 2004, 2006 and 2008 elections saw more than a dozen new governors take office, including a sizeable number involving a changeover in party control. In no case during that period did a change in tenure result in a decision to end a state faith-based and community initiative in any of the roughly two-thirds of the states that had such a policy in place. Significant changes were made in isolated cases. Ohio Gov. Ted Strickland overhauled the Governor's Office of FBCI, replacing staff and ordering an audit of its contracts under the previous administration. He also ordered an investigation of a private organization that administered federal grants to small faith-based and community organizations through a contract with the office. But Ohio's faith-based initiative continued to advance.

MIXED REVIEWS

Other perspectives on the Bush administration's efforts were less positive. "The aim of Bush's [Faith-Based Initiative] to expand the role of FBOs in meeting human needs and to level the field for such organizations to compete for federal funding of service projects is perhaps more widely shared," said former Sen. Harris Wofford, D-Pa., in a 2008 Roundtable interview. "Progress has been made in that direction throughout the government, more notably in some departments and agencies than in others. The opposition to this approach, however, has become more entrenched.... A majority in Congress appeared to want a federal program that did succeed in leveraging more support to and from FBOs, consistent with the constitutional limits of the First Amendment. But the center did not hold, and legislation to facilitate that result got entangled in partisan politicization of the issue."

"The president's executive order and the White House Office of Faith-Based and Community Initiatives did get efforts underway by new units in the major pertinent departments and agencies, and valuable work was done in assisting and encouraging smaller faith-based organizations to apply and receive funds to expand their service programs," Wofford added. "But all this was clouded by charges of political bias determining the programs aided."

Critical comments about the politicization of the Bush faith initiative come from all across the political spectrum and include many strong supporters of expanded government aid for religious social service groups. Jim Wallis, a liberal evangelical Christian who is chief executive of Sojourners and an early supporter of the initiative, said in a July 2008 Roundtable interview that the initiative fell short of its promise for a variety of reasons: "No. 1, things weren't funded very well. No. 2, it became a substitute for good social policy instead of an addition. And No. 3, it became very partisan, very political."

Republican Rep. Souder, an early supporter of the initiative, said in a May 2008 interview that he lost confidence in the agenda as it became more politically oriented. "When [Bush] talks about it, it's the way he started, which is, 'Government hasn't been serving the needs of low-income groups, especially in the inner city, and churches and faith-based groups are far more effective, and we need to get some dollars in their hands because they leverage it, and it's just about getting the goods there.' Is the argument economic or is it social? It's both and Bush has never really wavered from that. But inside the administration, there has been bobbing and weaving. I think they tilted in the wrong direction," Souder said.

Many FBOs reported that the effort raised public awareness of their social service work, but that heightened visibility had both positive and negative impacts also. Yet, it is not at all clear that opportunities for FBOs to win federal contracts have actually increased. While the Bush administration spotlighted some new initiatives that encourage the participation of FBOs, it simultaneously cut funding to programs that traditionally supported social service providers, including faith-based providers.

While there is more attentiveness among federal officials in administrative agencies about “leveling the playing field” for FBOs to compete for government grants and more awareness of public funding, concerns were also raised about heightened hopes for grants that may not actually have expanded in availability.

In addition, other obstacles to government contracting appear to remain for the smaller, locally based faith groups that the initiative targeted. A research study conducted for the Roundtable by political scientist John Green of the University of Akron and released in December 2007 reveals that while nearly 70 percent of American congregations provide government services, only slightly more than 7 percent do so with government money. As reasons for not seeking government grants, congregation leaders cited practical considerations rather than philosophical opposition to the initiative. Their reasons included lack of staff or space for expanded services, fear of external control, or lack of knowledge regarding their eligibility for grants.

UNEXPECTED BENEFITS FOR INTERESTS GROUPS

Conflict over the Bush faith initiative translated into a big organizational boon to the entrenched interest groups arrayed on either side. Particularly as the issue gained prominence in political circles and the courts, special interest groups grew in size and wealth as they waged legal, legislative and public relations battles over religious liberty and the separation of church and state.

The Freedom From Religion Foundation gained thousands of members and increased donations by nearly 20 percent. The Alliance Defense Fund, a large and powerful Washington, D.C.-based group, saw its budget more than double for its legal defense and advocacy of religious freedom. The American Civil Liberties Union saw its membership more than double. Likewise, the Becket Fund for Religious Liberty, a Washington, D.C.-based legal and educational institute that supports free expression of religious traditions, saw its annual budget double. Americans United for Separation of Church and State reported an increase of more than one-quarter in their membership and about one-third in their annual budget.

LEGAL TRENDS

The legal trends and developing constitutional theories that undergird the Faith-Based Initiative had their origin long before the Bush administration. But there have been several significant developments over the past eight years in the law concerning government partnerships with religious social service providers.

The White House Office of FBCI faced a legal challenge in a case known as *Hein v. Freedom From Religion Foundation* that charged the office with advancing religious interests and

questioned its constitutionality. The case was never argued on its merits, as the U.S. Supreme Court decided in June 2007 that the taxpayers bringing the lawsuit did not have the right to challenge discretionary expenditures of the executive branch. The Supreme Court ultimately ruled that taxpayers may not mount legal challenges against the government over funding of religious organizations unless Congress has specifically authorized the programs that provide the money. That finding had its own impact, in limiting the number of lawsuits alleging church-state violations in courts throughout the country.

The Supreme Court decided two other cases with particular bearing on the Faith-Based Initiative during the Bush years. The court ruled that while the Constitution allows government funding of religious institutions, it does not require it. That was the lesson of *Locke v. Davey*, a case decided in 2004 that had profound implications for faith-based initiatives – especially had it been decided the other way.

In another ruling upholding a program of school vouchers in Cleveland, the Supreme Court in *Zelman* underscored a distinction in indirect vs. direct funding and outlined the course for the use of vouchers where there is a genuine, independent choice between service providers for a secular purpose. The decision provided the predicate for a number of programmatic initiatives advanced by the Bush administration to permit the use of vouchers for substance abuse treatment, mentoring children of prisoners and other services. Concern and controversy continue over questions about how best to structure vouchers so that well-informed decisions are made by consumers, free of limited information, coercion and limited choices.

Across a host of programs, concern continues to be raised about the adequacy of guidance provided to service groups about the types of activities that tax dollars can and cannot support. According to the Roundtable's legal experts, the guidelines provided are not wrong, but they are inadequate. While official documents warn religious groups that they must not use government funds to support "inherently religious activities," Professor Tuttle has noted that these guidelines fail to explain that programs containing religious content are also subject to legal challenge, even if the programs have a secular purpose.

Throughout his two-year stint as director of the White House Office of FBCI, from August 2006 to August 2008, Jay Hein said his office went to great lengths to inform, educate and train FBOs about the "legal dos and don'ts" of using government money, including the prohibition against using direct government grants for religious activities. Outside legal experts remain concerned that the federal government's limited guidance to faith-based groups that enter into government contracts has left many faith-based service providers defending themselves in court.

A Government Accountability Office report issued in July 2006 said that government-issued guidelines to religious organizations about separating government-funded social services from religious activities were ambiguous and confusing, and some organizations appeared to violate the stipulations. The report also questioned the effectiveness of the Faith-Based Initiative, saying that in fiscal 2005, five federal agencies that helped carry out the federal effort were spending most of their allocated funds on staff salaries and benefits.

“The Bush administration’s Faith-Based and Community Initiative was a very mixed program precisely because its lack of accountability evoked some public mistrust and allowed a bit of faith community misconduct,” said Robert M. Franklin, a scholar and ordained minister who is president of Morehouse College in Atlanta. “At the end of the day, I believe it did more good than harm, and many worthy people were assisted. The [Faith-Based Initiative] deserves proper credit for the laudable accomplishments – but we are disappointed by the good that might have been achieved had it been administered differently.”⁵⁷

WHAT REMAINS?

“I think the issues have been on the agenda,” said Professor John DiIulio, the first director of the Bush administration’s White House Office of FBCI in a Nov. 26, 2007, interview with the Roundtable. “ ‘Faith-based’ is in the public vernacular. Some good things have happened. Certainly some very good things have happened at the state and local level. I think we now have an opportunity to decide what the faith-based future is going to be and whether it is going to include significant centrist bipartisan efforts at all levels of government to work with religious organizations to serve the poor.”

Bush was not the first chief executive to create an office within the White House or to appoint Cabinet and sub-Cabinet-level staff in the federal agencies committed to carrying out his agenda. Activities like these, and the use of executive orders and budgetary powers, are hallmarks of activist presidents, from FDR to Ronald Reagan. But the innovation in the Bush Faith-Based Initiative is the connection of the White House Office of FBCI to mini-branches in the 11 government agencies, each empowered to oversee coordinated efforts to penetrate agency operations and win more financial support for faith-based and community groups. Finding ways to help small faith groups overcome obstacles will continue to be a challenge for any administration that seeks to further the initiative’s goals of encouraging more small, locally based faith groups to deliver social services.

Bill Galston, senior fellow at the Brookings Institution, urged attendees at a June White House conference to ask tough questions about the Faith-Based Initiative and to be cautious about accepting assumptions or stereotypes about faith-based service providers. Distinctions between secular and faith-based service providers tend to blur, Galston said. Little evidence exists to support the assumption that FBOs were ever discriminated against in contracting decisions, he added, nor that they seek out harder-to-serve populations or deliver better results, as some initiative proponents like to point out. And contrary to a common complaint of initiative opponents, most FBOs do not aggressively proselytize, he said.⁵⁸

Questions remain. The full extent of public funding for faith-based social services is largely unknown. The substantial majority of federal support for such purposes flows through contracts or grants awarded by state and local governments rather than in Washington, and few public programs record whether contractors are faith-based. Unresolved questions also persist regarding the capacity of religious groups to provide social services and the role faith plays in the effectiveness of services provided. Whatever the future may hold, however, and whether or not one agrees with the policy objective, the methodical character, breadth, depth and scale of the Bush Faith-Based Initiative mark it as a remarkable example of executive action.

VI. THE OUTLOOK FOR FAITH-BASED INITIATIVES IN THE OBAMA ADMINISTRATION

The message of change was front and center throughout President Barack Obama's campaign, inauguration and first days in office. From the decision to close Guantanamo Bay detention camp to lifting the restrictions on federally funded human embryonic stem cell research, sharp breaks from the past have been in abundant supply. But one signature effort of President George W. Bush may live on in fair measure under the Obama administration: the initiative to expand the participation of faith-based organizations in addressing poverty and other social problems.

Few topics have been more durably contentious over our nation's history than those involving intersections of church and state. And since few matters of domestic public policy were more controversial or more closely associated with Bush than his Faith-Based and Community Initiative, it is all the more surprising to see this effort continue despite sweeping change coursing through Washington with Obama's historic election. A closer look suggests time will reveal both continuity and change between the Obama and Bush approaches toward service partnerships between the government and religious groups.

SIGNS OF CONTINUITY

Candidate Obama surprised many in April 2008, when he said if elected, he would launch his own effort as president to expand government social service partnerships with religious organizations. The Bush White House Office of Faith-Based and Community Initiatives did not function without controversy, and questions remain about its operation. Obama appeared to be aware of these criticisms when he proposed his own faith-based initiative during the campaign. "I still believe it's a good idea to have a partnership between the White House and grassroots groups, both faith-based and secular," he said July 1, 2008, at a community ministry in Zanesville, Ohio.

Obama has adopted much the same operational structure for his own faith-based initiative as the Bush administration. Like Bush, he has set up a high-profile office within the White House that will coordinate with satellite centers within the principal regulatory and grant-making federal agencies.

And like Bush, Obama also vowed to work more closely with state and local governments to encourage their efforts and move the faith initiative out of Washington. A study by the Rockefeller Institute's Roundtable on Religion and Social Welfare Policy found that more than half the states have enacted laws that identify faith-based organizations as potential participants in social service programs. And many states have special efforts underway to help religious organizations deal with the complexities of competing for grants and contracts.

SIGNS OF CHANGE

On Feb. 5, 2009, Obama signed Executive Order 13199 establishing the White House Office of Faith-Based and Neighborhood Partnerships to be headed by Joshua DuBois, who was acclaimed for his work on religious issues and outreach for Obama's campaign. At the same time the president created a 25-member Advisory Council, naming 15 of its members then and the

remaining 10 in concert with the first meeting of the council, which was held April 6, 2009. The members of the Advisory Council serve for one-year terms and include a host of people with significant experience and wide-ranging views on church-and-state matters, as well as accomplished innovators in social service delivery.

In announcing the office and the Advisory Council at the National Prayer Breakfast, Obama said, “The goal of this office will not be to favor one religious group over another, or even religious groups over secular groups. It will simply be to work on behalf of those organizations that want to work on behalf of our communities, and to do so without blurring the line that our founders wisely drew between church and state.” In this executive order, Obama authorized the director of the new office to seek guidance from the Justice Department on specific legal issues regarding constitutional questions and nondiscrimination laws.

Developments to date indicate that Obama intends to diverge from the direction taken by Bush to concentrate on “leveling the playing field” for federal contracting to faith-based and other service organizations. Instead, Obama has placed greater emphasis on involving religious groups in larger, more-extensive policy development roles. He placed both the White House Office of Faith-Based and Neighborhood Partnerships and the Advisory Council under the purview of the Domestic Policy Council. He also named four priority areas, each with considerable breadth and complexity: improving interfaith relations both at home and abroad, strengthening the role of fathers in society, reducing poverty and developing policies aimed at reducing the number of abortions.

But the pivotal difference in the Obama and Bush approaches to partnerships with religious groups is their stance on whether religious organizations hiring for positions funded with taxpayer money retain the right they have under the Civil Rights Act to base employment decisions on a person’s faith. The hiring rights question remains mired in cloudy and contradictory policies Obama has inherited. Proponents of religious hiring rights – Bush among them – argue that allowing such preferences in hiring is essential to maintaining a faith-based organization’s religious identity and part of what makes faith groups’ approach to providing services distinctive. Opponents counter that religious groups should not be allowed to discriminate against people of different faiths when they are funded with public dollars and that applicants for publicly funded positions should not be barred because of their religious beliefs.

The issue of hiring rights has already put Obama and his council in a quandary. During the campaign, Obama said he would not support the right of faith-based groups who receive public funding to “discriminate against...the people you hire on the basis of their religion.” Once elected, however, Obama said his administration would consider religious hiring questions on a case-by-case basis while his advisors and legal experts at the Justice Department study the policy and the regulations they inherited from Bush. “The president strongly believes this is the best way to really fully understand this issue and other legal issues and make a decision that will actually survive scrutiny,” DuBois told a group of Jewish leaders in April 2009. DuBois said his office would continue to consult with the White House counsel and the attorney general to analyze the legal and policy implications for each case as it comes.

UNRESOLVED ISSUES

There are other unresolved issues: whether and why religion influences the effectiveness of services provided by faith-based organizations, if and where such differences do exist. Although anecdotes abound, there is scant evidence measuring or distinguishing the ways in which religion may explain differences in organizational performance and program outcomes. It may be that faith-based organizations are effective because they possess a higher probability of having certain traits – such as staff commitment, service range, community ties and strong relationships with clients – associated with strong performance.

It may be that faith-based groups resonate in a different way than secular groups with some clients; they may be able to respond more fully and effectively to the needs of individuals for whom religion is already important. Or, it may be that by strengthening religious belief and practices among people in their care, faith-related programs enhance individuals' capacities to make fundamental changes in their lives and achieve secular goals of public social service programs. Unpacking these different pathways of influence on organizational performance will suggest very different avenues for public policy.

Other obstacles present themselves too. Resistance to government partnerships with religious organizations under the Obama administration may also come from the faith community, as it did under Bush. Some churches simply don't want to accept government support because they see it as a potential source of unwanted control. Others are unaware of or unprepared for public funding. As noted in this report, a survey sponsored by the Roundtable on Religion and Social Welfare Policy found that seven in 10 churches throughout the country sponsor social services, ranging widely from marriage counseling to food pantries. But relatively few congregations apply for or receive government funding to support such services. Many, in fact, don't even know about changes in federal law over the past 10 years that were intended to make it easier for religious organizations to participate in taxpayer-funded services.

Among congregations that have sought government funds for social services, more than three-quarters found it hard to apply for and manage grants, according to the Roundtable's survey. Few have the organizational capacity and practices necessary to properly receive, manage and account for public funds. Several of the members of Obama's Advisory Council are leading experts in working with and developing the capacity of smaller groups close to the community. It will be important to see what comes from this process.

MOVING FORWARD

Thus far, the Obama administration has begun to set out its own efforts to strengthen nonprofits and faith-based groups. The Strengthening Communities Fund, created by the American Recovery and Reinvestment Act of 2009, will make \$50 million worth of grants available for two programs:

- the Nonprofit Capacity-Building Program, which provides two-year matching grants of up to \$1 million to support faith-based and secular nonprofits.
- the State, Local and Tribal Government Capacity-Building Program, which provides two-year matching grants of up to \$250,000 to governments to help strengthen faith-based and

secular nonprofits that are aiding families and communities during this economic downturn.

On the legislative front, extension of citizens' service programs was accomplished swiftly through the Edward M. Kennedy Serve America Act of 2009. However, reauthorization is still due this year for the Workforce Investment Act, whose programs are implicated in major ways in the American Recovery and Reinvestment Act, the massive effort by Obama and the 111th Congress to stimulate the economy. The Temporary Assistance for Needy Families program – and the core Charitable Choice provisions it contains – comes up for reauthorization in 2010. Both of those bills were the subject of intense debate in Congress over religious hiring rights, and one wonders whether advocates in those debates will again take up their positions in the trenches or be pulled toward consensus in a new environment.

“The big picture is that President Obama believes faith-based and smaller secular neighborhood organizations can play a role in American renewal. They can work with the federal government to address big problems. We're also going to make sure we have a keener eye toward the separation of church and state,” Joshua DuBois said in a February interview with The Associated Press.

In the *Christianity Today* blog on April 13, 2009, Melissa Rogers, director of the Center for Religion and Public Affairs at the Wake Forest University School of Divinity and a member of Obama's new Advisory Council, summarized the president's approach this way:

“The Obama White House has said that ensuring that these partnerships are in compliance with the Constitution is a priority, as is making sure that they are effective and sensibly arranged for both providers and beneficiaries. It has said it won't measure success by how many religious groups or secular groups get government money, but by whether its policy goals (like bringing about an inclusive economic recovery) are being achieved through these partnerships.

“The Obama office has a much broader mandate. There is an effort to see, for example, where the areas of agreement are on issues like encouraging responsible fatherhood, reducing the number of abortions, and promoting good stewardship of the environment. And the administration is involving religious and secular communities not only in discussions about social service partnerships but also about what the government's policy should be on domestic and global poverty.”

The decisions of the new Obama administration and the next sessions of Congress will have a substantial effect on the continuation and expansion of the Faith-Based Initiative and related policies. The future rulings in the courts and the arc of interpretation of the First Amendment's Free Exercise and Establishment clauses will also shape the course charted by this new White House Office of Faith-Based and Neighborhood Partnerships. Of course, much also depends on the competing social and economic challenges and priorities facing the nation.

ENDNOTES

- ¹ Richard P. Nathan with the assistance of Elizabeth I. Davis, Mark J. McGrath and William C. O’Heaney, “The ‘Nonprofitization Movement’ as a Form of Devolution,” *Capacity for Change? The Nonprofit World in the Age of Devolution*. University of Minnesota and Indiana University Center on Philanthropy, 1996.
- ² Stanley J. Czerwinski, *Nonprofit Sector: Increasing Numbers and Key Role in Delivering Federal Service*. U.S. Government Accountability Office. Testimony before the Subcommittee on Oversight, Committee on Ways and Means, House of Representatives, July 24, 2007.
- ³ *Mitchell v. Helms (2000)*. Ira C. Lupu and Robert W. Tuttle, *The State of the Law: A Cumulative Report on Legal Developments Affecting Government Partnerships with Faith-Based Organizations*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, 2008.
- ⁴ Mark Ragan, Lisa M. Monteil and David J. Wright, *Scanning the Policy Environment for Faith-Based Social Services in the United States: Results of a 50 State Study*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, 2003.
- ⁵ Reported by Anne Farris. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, October 2003.
- ⁶ Ibid.
- ⁷ Ibid.
- ⁸ Anne Farris, *Bi-Partisan Group to Reintroduce CARE Bill*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, Jan. 31, 2003.
- ⁹ Ibid.
- ¹⁰ Anne Farris, *Faith Hiring Provision Draws Intense Debate on Hill*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, April 2, 2003.
- ¹¹ Anne Farris, *Workforce Bill Seeks to Exempt FBOs from Hiring Discrimination*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, March 18, 2003.
- ¹² Anne Farris, *Faith-Based Issues Make for Busy Week in Congress*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, April 1, 2003.
- ¹³ Anne Farris, *Full House Passes Jobs Bill with Religious Hiring Rights*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, March 7, 2005.
- ¹⁴ Anne Farris, *Overhauled Head Start Heads for Senate*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, July 29, 2003.
- ¹⁵ Ibid.
- ¹⁶ Ibid.
- ¹⁷ Anne Farris, *New Head Start Bill Rekindles Debate over Religious Hiring Rights*, Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, May 24, 2005.
- ¹⁸ Anne Farris, *Religious Hiring Rights Dominate House Debate on Head Start Renewal*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, Sept. 26, 2005.
- ¹⁹ Ibid.
- ²⁰ Ibid.
- ²¹ Ibid.
- ²² Ibid.
- ²³ Anne Farris, *Religious Hiring Rights Take Center Stage in Head Start Debate*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, March 20, 2007.
- ²⁴ Ibid.
- ²⁵ Anne Farris, *House Lawmakers Reject Religious Hiring in Head Start*, Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, May 8, 2007.
- ²⁶ Ibid.
- ²⁷ Anne Farris, *Congress Scrambles to Finish Bills that Fund Social Services*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, Dec. 18, 2007.
- ²⁸ Bryan Jackson, *Faith-Based Initiative Draws Praise and Fire*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, June 28, 2005.
- ²⁹ Anne Farris, Richard P. Nathan and David J. Wright, *The Expanding Administrative Presidency: George W. Bush and the Faith-Based Initiative*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, 2004.
- ³⁰ Ira C. Lupu and Robert W. Tuttle, *The Federal Emergency Management Agency and Faith-Based Organizations: Disaster Relief Following the Gulf Coast Hurricanes*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, Oct. 25, 2005.
- ³¹ Anne Farris, *Obama Would Keep Faith-Based Office at White House*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, April 15, 2008.
- ³² Barbara Fink and Cynthia Sipe, *An Assessment of the Compassion Capital Fund Targeted Capacity-Building Program*:

- Findings from a Retrospective Survey of Grantees*. Branch Associates. Prepared for: Administration for Children and Families, U.S. Department of Health and Human Services, June 2008.
- ³³ *Findings from a Retrospective Survey of Faith-Based and Community Organizations (FBCOs): An Assessment of the Compassion Capital Fund*, Abt Associates. Prepared for: Administration for Children and Families, U.S. Department of Health and Human Services, April 2007.
- ³⁴ Reported by Anne Farris. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, July 15, 2003.
- ³⁵ Ibid.
- ³⁶ Reported by Anne Farris. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, Aug. 15, 2006.
- ³⁷ Ibid.
- ³⁸ Ibid.
- ³⁹ Reported by Claire Hughes. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, March 18, 2008.
- ⁴⁰ Chelsea Farley and Wendy S. McClanahan, *Ready4Work In Brief: Update on Outcomes; Reentry May Be Critical for States, Cities*. Philadelphia: Public/Private Ventures, May 6, 2007.
- ⁴¹ Reported by Claire Hughes. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, March 18, 2008.
- ⁴² See Jason D. Scott, Lisa Montiel and Joyce Keyes-Williams, *The Scope and Scale of Faith-Based Services: A Review of the Research Focusing on the Activities of Faith-based Organizations in the Delivery of Social Services*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York.
- ⁴³ These data are from John C. Green, *American Congregations and Social Service Programs: Results of a Survey*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, 2007
- ⁴⁴ For a discussion see *The Quiet Revolution – The President’s Faith-Based and Community Initiative: A Seven-Year Progress Report*. Washington, D.C.: The White House. February 2008, p.87.
- ⁴⁵ Quoted in Bryan Jackson, *Faith-Based and Community Initiative Draws Praise and Fire*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, June 28, 2005.
- ⁴⁶ Ibid.
- ⁴⁷ Ibid.
- ⁴⁸ Ibid.
- ⁴⁹ Lisa Montiel and David Wright. *Getting a Piece of the Pie: Federal Grants to Faith-Based Social Service Organizations*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, 2006.
- ⁵⁰ B. Johnson, R. B Tompkins and D. Webb. *Objective Hope – Assessing the Effectiveness of Faith-Based Organizations: A Review of the Literature*. Center for Research on Religion and Urban Civil Society, University of Pennsylvania, 2002, p.6.
- ⁵¹ See Malcolm L. Goggin and Deborah A. Orth, *How Faith-Based and Secular Organizations Tackle Housing for the Homeless*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, 2002.
- ⁵² JoAnn Rock, *Stepping Out On Faith: New York City’s Charitable Choice Demonstration Program*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, 2002.
- ⁵³ Mark Ragan, *Faith-Based vs. Secular: Using Administrative Data to Compare the Performance of Faith-Affiliated and Other Social Service Providers*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, 2004.
- ⁵⁴ Steven Rathgeb Smith, John P. Bartkowski and Susan Grettenberger, *A Comparative View of the Role and Effect of Faith in Social Services*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, 2006.
- ⁵⁵ Ibid.
- ⁵⁶ *Innovations in Compassion: The Faith-Based and Community Initiative: A Final Report to the Armies of Compassion*. The White House. December 2008, p.40.
- ⁵⁷ Anne Farris and Claire Hughes, *At Finish, Bush Faith-Based Initiative Gets Mixed Reviews*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, Nov. 18, 2008.
- ⁵⁸ Claire Hughes, *White House Celebrates Faith-Based Initiative as President’s Term Nears End*. Roundtable on Religion and Social Welfare Policy, Nelson A. Rockefeller Institute of Government, State University of New York, July 1, 2008.



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