

Bending the arc of public policy to make government a partner with communities and faith: The need for new creativity, new energy, and new reforms

Paper Three in a Three-Part Series

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While the US social assistance system has undergone a series of innovative reforms that have broadened its network of partners and allowed it to reach more of those in need of its aid, other needs and challenges continue to emerge, and it will take “all hands on deck” if society and government are successfully to respond to them, to use the terminology of presidential candidate Obama when he promised to maintain the faith-based initiative.¹ Three major sets of “hands” are on the margins today: faith-based organizations rooted in religious communities that maintain traditional views about human sexuality and sexual identities; historic urban houses of worship with properties costly to maintain and with declining memberships and resources but that extensively serve their communities both directly and indirectly; and small urban houses of worship in minority communities that are resource-poor yet play outsized roles in serving their neighbors as well as their members. I will briefly discuss these challenges and suggest ways to enlarge the welcome.

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

The most fundamental reform of the faith-based initiative was to reverse the church-state funding rules from “no aid” to “no exclusion.” In parallel with the rolling reinterpretation of the First Amendment’s religion clauses, federal statutory provisions, regulatory requirements, and programs and practices have been extensively revised so that even “pervasively sectarian” organizations may partner with government to provide social services while beneficiaries are able to access services without being pressured into unwanted religious teaching and activities. Yet some proportion of faith-based organizations are being excluded from partnerships due not to conventional church-state restrictions but because of requirements coming from another angle: the enactment of new LGBTQ equality rights.²

¹ “Obama Delivers Speech on Faith in America.”

² I should note another area of concern for some faith-based organizations: regulations and government programs that prioritize reproductive freedom—elective abortions. One prime example was the Obama administration’s requirement, stemming from the Affordable Care Act, that employer health care plans must cover all contraceptives, some of which act as abortifacients, with only a minimal accommodation for religious organizations. This requirement set off a long series of court challenges brought by religious colleges, faith-based organizations such as the Sisters of Charity, and secular employers with religion-based claims. The court cases resulted in multiple government defeats and changes to the requirements. The difficulties were due in part to the administration’s initially very narrow definition of “religious organization.” See Stanley Carlson-Thies, “Which Religious

Those LGBTQ rights usually are being conceived within a simple discrimination framework that seemingly has nothing to do with religion.³ Yet the practices of the faith-based providers that cause their exclusion from partnerships are religiously grounded—they are rooted in the organizations’ religion-based moral convictions and practices. What is needed so that they can continue to contribute to the government-funded social service effort is a fresh exercise of creativity, a commitment to an enlarged public policy pluralism. To keep “all hands on deck,” a new policy is needed, a new “both-and” policy. Such a policy would enlarge LGBTQ civil rights protections in a way that enables continued government partnerships with faith-based organizations and houses of worship that are rooted in religious communities committed to upholding religion-based morally conservative teachings on sexual ethics. Some of these communities and organizations are of minority race, ethnicity, or religion. Of course, not only the congregations and charities hold to these views and values but also many or most of the families and individuals in these communities.

“Sexual minorities and religious minorities make essentially parallel claims on the larger society. . . [B]oth same-sex couples and committed religious believers argue that some aspects of human identity are so fundamental that they should be left to each individual, free of all nonessential regulations, even when manifested in conduct. . . . [N]o person who wants to enter a same-sex marriage can change his sexual orientation by any act of will, and no religious believer can change his understanding of divine command by any act of will.” — Douglas Laycock, “Liberty and Justice for All” (2019).⁴

Particularly concerning is the addition by the executive branch of a requirement of LGBTQ employment nondiscrimination in federally funded programs without the simultaneous addition of an adequate religious accommodation. This problem emerged first in federal contracting, a

Organizations Count as Religious? The Religious Employer Exemption of the Health Insurance Law’s Contraceptives Mandate,” *Engage* (Federalist Society) 13, no. 2 (2012): 58–64, <https://fedsoc.org/fedsoc-review/which-religious-organizations-count-as-religious-the-religious-employer-exemption-of-the-health-insurance-law-s-contraceptives-mandate>.

³ For the inaccuracies and inadequacies of the simple discrimination framework, see Jonathan Rauch, “Nondiscrimination for All,” *National Affairs*, summer 2017, <https://www.nationalaffairs.com/publications/detail/nondiscrimination-for-all>, and Richard W. Garnett, “Religious Freedom and the Nondiscrimination Norm,” in Austin Sarat, ed., *Legal Responses to Religious Practices in the United States: Accommodation and Its Limits* (Cambridge: Cambridge University Press, 2012), 194–227.

⁴ Douglas Laycock, “Liberty and Justice for All,” in William Eskridge Jr. and Robin Fretwell Wilson, eds., *Religious Freedom, LGBT Rights, and the Prospects for Common Ground* (Cambridge: Cambridge University Press, 2019), 24–37, at 26.

type of funding sometimes used to pay for services offered by faith-based organizations.⁵ Federal contracting has its own set of employment nondiscrimination rules, and, as noted before, to ensure the eligibility of faith-based providers, President Bush in 2002 added the Title VII religious organization exemption to the contracting rules. As (somewhat inconsistent) court rulings have held, this exemption protects not only religious employers' right to evaluate applicants' and employees' religious convictions but also their right to maintain religion-based conduct standards.⁶ When President Obama in 2014 prohibited LGBTQ employment discrimination in federal contracting, he left the religious organization exemption intact. But his administration interpreted the exemption narrowly, making it doubtful that, say, a religious research university remained eligible for federal research grants if it did not hire a job applicant because the person was in a same-sex marriage in violation of the religion's moral standards.⁷ The Trump administration issued a regulation strengthening the position of religious employers, but this has been reversed by the Biden administration.⁸

In the meantime, in *Bostock v. Clayton County* (2020), the Supreme Court ruled that the sex nondiscrimination in employment required by Title VII entails also LGBTQ nondiscrimination. The Court stressed that its ruling only concerned employment and only applied to secular employers, while noting that religious employers have a range of legal protections, including the Title VII exemption, the Religious Freedom Restoration Act, and the court-created "ministerial exception" that protects religious organizations' employment decisions about religious leaders and teachers. Further, in other decisions, such as *Fulton v. City of Philadelphia* (2021) and

⁵ See the discussion in fn. 165, above.

⁶ Carl H. Esbeck, "Federal Contractors, Title VII, and LGBT Employment Discrimination: Can Religious Organizations Continue to Staff on a Religious Basis?" *Oxford Journal of Law and Religion*, no. 4 (2015): 368–97. See also the discussion of the religious exemption in Title VII in EEOC, sec. 12, "Religious Discrimination." I note that other experts, and the Biden administration, argue that the weight of court decisions, instead, is to narrowly limit the scope of the religious staffing right.

⁷ Executive Order 13672, July 21, 2014, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," 79 Fed. Reg. 42971 (July 23, 2014), <https://www.gpo.gov/fdsys/pkg/FR-2014-07-23/pdf/2014-17522.pdf>. The uncertainty is discussed in Office of Federal Contract Compliance Programs, Department of Labor, "Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption," Notice of Proposed Rulemaking, 84 Fed. Reg. 41677 (August 15, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-08-15/pdf/2019-17472.pdf>.

⁸ For the Biden administration's reversal, which also discusses the Trump administration's approach, see the Department of Labor Final Rule, Rescission of Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption Rule, 88 Fed. Reg. 12842 (March 1, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-03-01/pdf/2023-04150.pdf>.

Masterpiece Cakeshop (2018), the Court has emphasized that, while governments must protect LGBTQ people from discrimination, governments are required also to protect religious exercise.

However, the Biden administration, which on day one issued an executive order on “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,”⁹ has asserted that *Bostock* entails the prohibition of LGBTQ discrimination everywhere a law prohibits sex discrimination, not only where Title VII applies and not only with regard to employment, while it has simultaneously de-emphasized the religious freedom of faith-based organizations. Accordingly, it has asserted in multiple places via regulatory action a requirement for nondiscrimination on the bases of sexual orientation and gender identity in the provision of federally funded services, with minimal attention to religious accommodations.¹⁰ These actions are broadly concerning to morally conservative religious organizations because they threaten their eligibility for grants if their employment or service practices do not conform to contemporary views of sexuality.¹¹

⁹ Executive Order 13988, January 20, 2021, 86 Fed. Reg. 7023 (January 25, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>.

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

¹¹ Morally conservative faith-based providers generally are not opposed to LGBTQ rights for beneficiaries (everyone entitled to a service should receive it) but rather are concerned when such rights would interfere with their internal operations, in particular their employment practices. However, faith-based residential and family-oriented service organizations such as faith-based schools, colleges, adoption and foster-care agencies, and emergency shelters need the freedom to offer services that reflect their morally conservative views about sexuality, in the context of multiple options for LGBTQ people seeking services. Similarly, religious congregations with sex-segregated ministerial roles and worship seating need to, and fortunately can, access FEMA disaster-recovery support and Nonprofit Security grants without changing their religion-based practices. With respect to foster care services, see the US Supreme Court’s 2021 decision in *Fulton v. City of Philadelphia*, vindicating a Catholic foster-care agency’s insistence on maintaining its faith-based policy not to place children other than with married opposite-sex couples against the LGBT nondiscrimination requirement in Philadelphia’s foster-care contracts. The Court noted the multiple options available and spoke of religious freedom as an essential element of American pluralism.

A congressional bill, the Fairness for All Act,¹² has proposed in detail a better way forward: adding to federal civil rights law comprehensive LGBTQ protections while strengthening corresponding protections for religious organizations to enable them to maintain their religion-based convictions and practices concerning human sexuality, including if they provide federally funded social services. In the specific case of marriage equality, in 2022 Congress passed, with full Democratic support, and President Biden signed, the Respect for Marriage Act that in the same way pairs statutory protection for same-sex marriage with strong protections for religious organizations committed to traditional marriage.¹³

“The [Respect for Marriage] Act is a model for pluralistic approaches that protect both sides in the culture wars. State legislatures have passed many gay-rights bills with protections for religious liberty. But neither side has been able to pass gay-rights bills without such protections, or absolute religious liberty bills with no allowance for gay and lesbian rights. The Respect for Marriage Act is an encouraging return to the practice of protecting liberty for all Americans—both the LGBTQ community and the conservative religious community.” — Douglas Laycock, Thomas Berg, Carl Esbeck, and Robin Fretwell Wilson (2024).¹⁴

The drive of LGBTQ persons to live consistently with their convictions and identity is fundamental and strong—as is the drive of religious people to live consistently with their convictions and identity. And, notably, some people are both religious and LGBTQ in convictions and identity. Charitable Choice legislative provisions and the parallel Equal Treatment regulations, and the faith-based initiative broadly, have created ways for religious as well as secular organizations to participate in the delivery of federally funded services while protecting access to services by all beneficiaries. These changes have improved the government’s social assistance system by increasing the opportunity for it to engage the best providers and by

¹² See H.B. 5331, the Fairness for All Act of 2019. For an analysis of the bill, see Chris Stewart and Gene Schaerr, “Why Conservative Religious Organizations and Believers Should Support the Fairness for All Act,” *Journal of Legislation* 46, no. 2 (2020): 134–206, and the materials at the Fairness for All website, <https://fairnessforall.org>. For a comparison of this approach with the better-known Equality Act, which minimally protects religious freedom, see Stanley Carlson-Thies, “Fairness for All is a Better Way than the Equality Act,” Institutional Religious Freedom Alliance, March 23, 2021, <https://cpjustice.org/fairness-for-all-a-better-way-than-the-equality-act/>. For extensive discussions about how the two sets of rights can be protected at the same time, see the essays in Eskridge and Fretwell Wilson, *Religious Freedom, LGBT Rights, and the Prospects for Common Ground*.

¹³ H.R. 8404, Respect for Marriage Act. For a detailed explanation of the act’s religious freedom protections, see Douglas Laycock, Thomas C. Berg, Carl H. Esbeck, and Robin Fretwell Wilson, “The Respect for Marriage Act: Living Together Despite Our Deepest Differences,” *University of Illinois Law Review* (March 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4394618.

¹⁴ Laycock et al., “The Respect for Marriage Act,” italics deleted.

expanding the types or styles of services available to beneficiaries, many of whom value services delivered by faith-based organizations and even services that incorporate religious elements. Further modifying the federal rules and practices so that morally conservative as well as morally progressive organizations can participate, while ensuring that all beneficiaries, whatever their sexual orientation or identity, have access to services, would protect the “all hands” and pluralistic character of the collaboration system as LGBTQ rights become comprehensively protected in federal law.¹⁵

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

I noted above that when journalists and researchers in the early 1990s turned their attention to civil society, they discovered that people needing help very often count on assistance provided by houses of worship—churches, synagogues, mosques, temples, gurdwaras, and the like. Brian Grim and Melissa Grim, assessing a wide range of studies, estimated in 2016 that religious congregations mobilized some 7.5 million volunteers to offer to their members and neighbors 1.5 million social programs.¹⁶ Yet congregations, though they may offer well-run, quality programs, are not specialized service providers. They serve in response to a divine call and not because of the availability of external funding, but, of course, their services, staff, and facilities require funding, which is typically in short supply.

The gap between available resources and the volume of social good provided seems the most acute at the upper and lower ends of congregational size and organizational complexity. In urban downtowns there are often historic houses of worship with shrinking congregations and declining giving by members but with buildings that are large and expensive to operate and maintain. The congregations themselves offer formal and informal services to their

¹⁵ Cf. Stanley Carlson-Thies, “Broad Freedom for Faith-Based Organizations is the Way to Balance LGBTQ Rights and the Freedom of Religious Exercise,” *Human Rights Magazine* (American Bar Association) 47, no. 3/4 (2022), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/intersection-of-lgbtq-rights-and-religious-freedom/broad-freedom-for-faith-based-organizations/; Stanley Carlson-Thies, “The Common Good Requires Robust Institutional Religious Freedom.”

¹⁶ Brian J. Grim and Melissa E. Grim, “The Socio-Economic Contribution of Religion to American Society: An Empirical Analysis,” *Interdisciplinary Journal of Research on Religion*, 12 (2016): article no. 3, pp. 1–31.

neighborhoods and make an additional major contribution by providing space in their facilities for multiple other service organizations and programs, often at low or no cost: child care providers, Head Start, marriage counseling, English as a second language (ESL) programs, youth clubs, Alcoholics Anonymous and Narcotics Anonymous recovery groups, food distribution, neighborhood meetings, advocacy organizations, and others.

A 2016 study of ninety historic congregations in Chicago, Philadelphia, and Fort Worth found that, on average, they each generated more than \$1.7 million in economic benefits. Some of this is conventional economic value attributable to the congregations: salaries, utility payments, and the purchase of supplies, and attributable to those who come to the building for worship or other activities: purchases at gas stations, local shops, and restaurants. But much of the value is unique to these sacred places. It is generated by the operations of daycare centers and Head Start and private preschool or elementary school programs often subsidized by the congregations and by the events and activities of the community organizations assisted by the low-cost or free space provided by the congregations. And there are thousands of volunteer hours donated by members of the congregations and by the many people recruited by them or by the multiple programs and organizations they host. In the 2016 study, nearly 90 percent of the visits to the locations were not for worship and nearly 90 percent of the beneficiaries of the services and events did not belong to the respective congregations.¹⁷

At the other end of the spectrum of size and formality are urban, often inner-city, houses of worship: Hispanic and Black churches, Islamic centers and mosques, Asian American congregations, Sikh gurdwaras, and diverse other religious congregations, sometimes in storefront facilities or sharing space with a more established congregation. They offer not only worship and religious teaching but also moral and spiritual leadership. And they offer a wide range of human services, despite typically fragile finances and sometimes bi-vocational clergy stressed for time. A recent study of Hispanic Protestant congregations showed that more than 90 percent of them offer a range of social services to their neighbors, “from short-term relief programs involving Healthcare and Food Security, to longer term programs (Child and Youth Development, Adult Programming), and community development initiatives (Immigration-Related, Homelessness, Individuals affected by the justice system—i.e., incarcerated or formerly

¹⁷ Partners for Sacred Places, “The Economic Halo Effect of Historic Sacred Places,” *Sacred Places: The Magazine of Partners for Sacred Places*, November 2016, <https://sacredplaces.org/uploads/files/16879092466251061-economic-halo-effect-of-historic-sacred-places.pdf>.

incarcerated [persons]).”¹⁸ A 2011 study of mosques notes that, beyond worship activities and religious education, many engage in community-supporting activities such as affordable housing, anti-drug programs, health fairs and health clinics, tutoring and literacy programs, job training, and more.¹⁹ Black churches in urban neighborhoods are disproportionately involved in neighbor-serving programs, doing more with less.²⁰ Interviewed about his own multiracial inner-city church’s programs, a Black pastor recently said, “I am a pastor *comma*, not a pastor *period*, because I like to do more than help people worship. I like to help people. That’s why this church exists.”²¹

“Our findings, in broad strokes, suggest that black congregations are smaller and less resourced [than non-Black Philadelphia congregations] but are eagerly involved in social services provision, and that while some of their programs are of a smaller scope, they provide more programs overall that focus more on the neediest city residents and their neighbors. In other words, black congregations are still a major agent of change and strength for the quality of life in the black community.”
— Ram A. Cnaan, Stephanie C. Boddie, Charlene C. McGrew, and Jennifer Kang, “Black Congregations in the City of Brotherly Love” (2006).²²

These congregations, large and small, contribute essential services to their communities but with little support from government. They are eligible to compete for government funding thanks to the changed church-state rules of the faith-based initiative. Yet large historic congregations and small minority congregations need more than the formally level playing field. That is, a new creativity is needed in the faith-based initiative—innovations in grantmaking, program design, communications, and training initiatives so that greater support can be given to these vital

¹⁸ Robert Chao Romero and Fernando Villegas Rivera, *How Latino Congregations Are Transforming Communities: A Survey Report by the Brown Church Institute, Fuller Centro Latino, and Urban Strategies* (Washington, DC: Urban Strategies, 2022), 5. See also the earlier study by Amy L. Sherman, *The Community Serving Activities of Hispanic Protestant Congregations* (Hudson Institute’s Faith in Communities Initiative and the Center for the Study of Latino Religion, Notre Dame University, December 2003).

¹⁹ Ihsan Bagby, *The American Mosque 2011: Activities, Administration and Vitality of the American Mosque* (Islamic Society of North America, 2012).

²⁰ Ram A. Cnaan, Stephanie C. Boddie, Charlene C. McGrew, and Jennifer Kang, *The Other Philadelphia Story: How Local Congregations Support Quality of Life in Urban America* (Philadelphia: University of Pennsylvania Press, 2006), ch. 7, “Black Congregations in the City of Brotherly Love.”

²¹ Joya Schreurs, “A Pastor, Comma, Not a Pastor, Period: An Interview with Joshua Robertson about the Learning Center at Allison Hill,” *Shared Justice* (blog), Center for Public Justice, October 17, 2023, <https://cpjustice.org/a-pastor-comma-not-a-pastor-period-an-interview-with-joshua-robertson-about-the-learning-center-at-allison-hill/>.

²² Cnaan et al., *The Other Philadelphia Story*, ch. 7, p. 153.

congregational sources of social blessing. Government may not fund a house of worship in order to support its religion, no matter the social benefits of the religion. But there are legitimate ways to increase support for these institutions.

What can be done? Here are some possibilities.

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

- grant programs are designed without input from grassroots organizations that daily wrestle with the issues;
- government officials do not grasp the particular advantages of partnering with neighborhood-rooted faith-based organizations, nor the challenges such organizations face in seeking to compete for government funds;
- grassroots organizations find it challenging to keep informed about relevant grant opportunities; and
- federal funds often pass through state and local agencies before being awarded and these agencies sometimes mis-state federal requirements and add inappropriate additional conditions.²³

1. Further expand access to existing programs.

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

²³ Comment submitted by Pastor Cheryl Gaines, Esq., ReGeneration Church in the Field, Washington, DC; Chelsea Langston Bombino, director of the Sacred Sector Project at the Center for Public Justice; and Stanley Carlson-Thies, Institutional Religious Freedom Alliance, on November 24, 2017, <https://www.regulations.gov/comment/HHS-OS-2017-0002-8096>. This was submitted in response to the HHS Center for Faith-Based and Neighborhood Partnerships Request for Information, HHS-9928-RFI, 82 Fed. Reg. 49300 (October 25, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-10-25/pdf/2017-23257.pdf>.

have been particularly active in connecting with faith-based and community-based organizations, including houses of worship.²⁴

2. Vigorously use the public-official platform.

While governments themselves cannot specifically fund houses of worship, private foundations and corporate philanthropy can do so. There is no First Amendment barrier to their support, although such misinformation may still exist.²⁵ Government leaders should encourage private support, neither dismissing the social good provided by houses of worship as inferior to government-designed programs nor treating some congregations as harmful because they do not embody majoritarian beliefs.

In 1997, the United Way of Massachusetts Bay (UWMB) created the Faith and Action Initiative “to fund faith-based organizations working with inner-city youth specifically *because* their programs encouraged religious or spiritual belief.” Previously, UWMB funded only secular services. Why the change? To achieve its social change/social justice goals, it had decided it should fund the entities—Black churches—whose faith-full services were located where the needs existed and that showed promise of achieving significant results.²⁶

3. Provide congregational-support tax credits.

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

²⁴ For more details, see <https://www.dhs.gov/faith> and <https://www.va.gov/CFBNP/collaborations.asp>.

²⁵ For a discussion about why such donors are often reluctant to support faith-based organization and yet why they ought to, see Jeri Eckhart Queenan, Peter Grunert, and Devin Murphy, *Elevating the Role of Faith-Inspired Impact in the Social Sector* (The Bridgespan Group, January 2021), <https://www.bridgespan.org/insights/role-of-faith-inspired-impact-in-the-social-sector>.

²⁶ “United Way Mass Bay and the Faith & Action Initiative (A): Should Faith Be Funded?” and its “Sequel,” Kennedy School of Government Case Program, case studies C16-04-1759.0 (2004) and C16-04-1759.1 (2004), and “United Way Mass Bay and the Faith & Action Initiative (B): Going for the Gold?” case study C16-04-1760.0 (2004). The latter case study documents an ironic decision made by the faith-based organizations supported by the Faith & Action Initiative. To participate in the initiative, they had to offer faith-inclusive services. They decided they should not apply for a Bush-administration Compassion Capital Fund grant to support training and technical assistance because CCF funds specifically could not be expended on activities that included religion!

inclusion of religious schools in such tuition tax-credit programs.²⁷ Congress, the states, and municipalities should design similar programs to incentivize greater giving to houses of worship of any faith, along with other community facilities that anchor social-good programs, supporting them and thereby their many works of service.

4. Strengthen congregations' capabilities.

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

5. Connect with civil society organizations.

An important way for the government to establish connections with new and unconventional partners is through nonfinancial partnerships, as the Obama administration demonstrated. Some of those nonfinancial partners may decide to explore government funding and, because of their nonfinancial collaboration, will be more able to find and connect with needed information and training. And governments should strongly encourage participation by civil society organizations

²⁷ For a survey of the programs, see the invaluable annual *The ABCs of School Choice*, e.g., the 2024 edition (Indianapolis: EdChoice, 2024). Supportive Supreme Court decisions are *Arizona Christian School Tuition Organization v. Winn* (2011) and *Espinoza v. Montana Department of Revenue* (2020). For assessments of these decisions, see, respectively, Nicole Stelle Garnett, "A Winn for Educational Pluralism," *Yale Law Journal Online* 121, no. 31 (2011); and Thomas C. Berg and Douglas Laycock, "Espinoza, Government Funding, and Religious Choice," *Journal of Law and Religion* 35 (2020): 361–79.

in the many coordinating councils and networks that the various levels of government maintain, such as the Continuum of Care for organizations providing services to the homeless and networks that provide information about services for veterans or for the elderly. Involvement by faith-based and community-based organizations, including houses of worship, should be encouraged because these organizations themselves provide essential services, because coordination improves services, and because such participation will facilitate access by the organizations to government information, training, and financial support.

The Department of Human Services of the City of San Antonio, Texas, has a faith-based initiative liaison, Rev. Ann Helmke, a Lutheran minister and former nonprofit executive, whose job is to connect secular and faith-based nonprofits, congregations, and city services. A major project, now a stand-alone nonprofit, is SACRD.org, the San Antonio Community Resource Directory, which provides for the city a vast, web-based, easily searchable listing of social service, health, and educational programs. Someone needing child care or looking for a way to help a struggling family down the block can type into the search box their zip code and the kind of service they seek and immediately see a list of nearby programs, governmental and nongovernmental, secular and religious. Rev. Helmke points out that SACRD.org also has another vital function: it aids houses of worship and service providers in locating organizations to collaborate with and gaps in service that need to be filled.²⁸

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

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

²⁸ Iris Dimmick, "City's First Faith-Based Liaison Aims for a More Compassionate San Antonio," San Antonio Report, September 29, 2019, <https://sanantonioreport.org/citys-first-faith-based-liaison-aims-for-a-more-compassionate-san-antonio/>; City of San Antonio Department of Human Services Faith-Based Initiative: <https://www.sa.gov/Directory/Departments/DHS/Faith-Based>; San Antonio Community Resource Directory: www.SACRD.org.

utilize grant tiers, enabling organizations with small capacity to compete with each other for small grants while large organizations compete for large grants.

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

c. Convert to “indirect” funding. Not surprisingly, social services provided by houses of worship often—though not always—incorporate a religious message and religious activities.²⁹ Government can fund faith-full services, which may be the first choice of many and acceptable to many others, by using some form of indirect funding rather than grant or contract funding. Setting up a full conventional voucherized funding system, as in federally supported child care (the Child Care and Development Block Grant program) is not always appropriate and is not always necessary. Beneficiary-Choice Contracting is one promising practice, as noted earlier.

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

²⁹ See the discussion in Jo Anne Schneider, *Social Capital and Welfare Reform: Organizations, Congregations, and Communities* (New York: Columbia University Press, 2006), 85–86, 105, and ch. 11.

required to include signed memoranda of understanding with the intended subgrantees and the program rules should specify a generous dollar amount for the subgrants.

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

The State of Ohio’s faith-based initiative has extensively employed intermediaries as a way to connect with, provide training to, and facilitate the flow of government funding to smaller community-based and faith-based organizations. The Ohio Governor’s Office of Faith-Based and Community Initiatives was established in 2003 and has been maintained on a bipartisan basis through multiple changes of administration. An early action was to provide specific training on Charitable Choice and the responsibilities and limits, as well as freedoms, it provides to faith-based organizations that receive government funds. This work was supported, in part, by a federal Compassion Capital Fund grant. In 2013, the Office funded a survey of faith-based and community-based organizations to document their locations, services, and funding sources. More recently, the Office has worked with a privately funded initiative to accelerate the development of city-based and regional networks of providers. The Office itself has designated regional representatives so that it can better coordinate with civil society initiatives.³⁰

We can denote some of these facilitators as *fiscal* intermediaries: they operate competitive grant systems, announcing and then awarding subgrants to neighborhood organizations. However, many local service-delivery networks pre-date any such process, existing as a set of neighborhood organizations gathered around a larger organization that has management and training expertise. We can call these *affinity* intermediaries, that is, intermediaries with partners that work together because of a common interest, faith, or ideology.³¹

³⁰ Byron Johnson and William Wubbenhorst, *Ohio Governor’s Office of Faith-Based and Community Initiatives: A Case Study* (Waco, TX: Baylor Institute for Studies of Religion, January 2007), <https://www.baylor.edu/content/services/document.php/40017.pdf>; Amy L. Sherman, Jay F. Hein, Laurel Christensen, and Kristin Owen, *Mapping Ohio’s Compassion* (Indianapolis: Sagamore Institute for Policy Research, January 2014), <https://search.issue-lab-dev.org/resource/mapping-ohio-s-compassion.html>; and the Ohio Good Community Project, Sagamore Institute, <https://sagamoreinstitute.org/faith-in-communities/>.

³¹ The Equal Treatment regulations do not distinguish between these two types of intermediaries or, rather, have in mind only the fiscal variety, calling them “pass-through entities.” See, e.g., the HHS regulations: 45 CFR 87.1(e).

“[T]he reality is that not all congregations can or should become social service providers Yet, even churches limited by small budgets can join with other congregations and church networks. Collaboration enables them to join hands and work together in a structure that provides the monitoring and evaluation necessary to promote effective service delivery.” — Harold Dean Trulear, *The African-American Church and Welfare Reform* (1999).³²

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

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

³² Harold Dean Trulear, *The African-American Church and Welfare Reform: Toward a New Prophetic Perspective* (Washington, DC: Center for Public Justice, 1999), 19–20.

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

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

“Many of these churches and community organizations could provide the best services because they knew the needs of the community best and had the community’s trust. And yet, many of these groups didn’t know how to navigate the technical world of the Federal Acquisitions Regulations. [Through my work as a contractor, I was able to free up] smaller organizations from the hassles of back-end operations so they could do what they do best—serve.” — Pastor Cheryl Gaines, Esq., The Church in the Field, Southeast Washington, DC.³³

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

³³ Quoted in Chelsea Langston Bombino, “Black Ministries are Essential Services Now More Than Ever,” *Religion Unplugged* (blog), June 27, 2020, <https://religionunplugged.com/news/2020/6/24/black-ministries-are-essential-services-now-more-than-ever-3h7Kw>.

As noted earlier, Charitable Choice was added to the CSBG statute in 1998 at the urging of Senators Dan Coats (R-Indiana) and Ted Kennedy (D-Massachusetts).³⁴ A study released a few years later by a CAA association documented multiple financial and nonfinancial partnerships between these agencies and faith-based organizations, including congregations. CAAs often acted as fiscal intermediaries, bearing much of the administrative and financial management load while channeling some of the federal funds to diverse networks of faith-based and community-based organizations. And often, it seems, congregations, other faith-based organizations, and community-based organizations provided resources to the local CAA in the form of volunteers, in-kind gifts, and money.³⁵

The intermediary role of CAAs ought to be refined and expanded as part of a strategy of making federal funding more accessible to houses of worship to support their multiple good works. CAAs already exist in most communities, they are familiar with the intermediary role, and they typically have multiple connections with local houses of worship—although, it seems, often to receive support from them rather than to give it. The federal government should press CAAs to more extensively engage with diverse houses of worship, including by awarding the congregations subgrants to support their multiple community services.³⁶

³⁴ S. 2206, Coats Human Services Reauthorization Act of 1998. See Senate Report 105-206, July 1, 1998, <https://www.congress.gov/105/crpt/srpt256/CRPT-105srpt256.pdf>.

³⁵ National Association of Community Action Agencies, *Community Action Agencies and Faith-Based Organizations: A Legacy of Productive Partnerships* (Washington, DC: NACAA, 2001), 19, 28–29, 32–33, 36–37. The report is skeptical about the just-launched Bush faith-based initiative, suspecting it would give too much freedom to faith-based organizations, and has the tone of an apology: Bush officials need not interfere with the CAA movement—we’re already doing the right thing.

³⁶ The CSBG reauthorization bill adopted by the House in May 2022 (H.R. 5129), but not accepted by the Senate, proposed to remove the program’s Charitable Choice provision, with a CAA association arguing that, even with it, few faith-based organizations received CSBG funding (Memorandum from Community Action Program Legal Services, “The Community Services Block Grant (CSBG) Act and Charitable Choice,” January 24, 2019). But that minimal involvement, instead, indicates the need for the federal government to better hold CAAs accountable to facilitate involvement by small faith-based organizations and congregations in their networks of subgrant-supported services. The Minority Views section of the House Report on H.R. 5129 argued against deleting Charitable Choice and for a greater engagement of faith-based organizations in CAA services. House of Representatives Report 117-311, May 6, 2022, pp. 125–26, <https://www.congress.gov/117/crpt/hrpt311/CRPT-117hrpt311.pdf>.

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

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

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

On the positive side, Congress wrote the CARES Act, its first large pandemic response law, such that not only faith-based charities but even houses of worship were eligible for forgivable loans through the new Paycheck Protection Program (PPP) administered by the Small Business Administration (SBA). And when SBA regulations and administrative routines mandating secularism loomed as barriers to participation by religious organizations, Senator Bernie Sanders and others insisted on the eligibility of churches and other houses of worship.³⁷ And yet small, minority religious institutions, although equally eligible for the PPP loans, discovered that, without strong connections to banks, lawyers, accountants, and government officials, actually securing the loans was very challenging.³⁸ And some Muslim institutions found religiously challenging the specific character of the PPP support: should the funds be regarded as (unacceptable) interest-bearing loans or as (allowable) forgivable loans?³⁹ Officials from several of the faith-based Centers fielded calls about these matters and mediated discussions with their respective agency's officials to come up with solutions. Yet with more extensive interaction between government and civil society organizations, such difficulties might have been forestalled.

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

³⁷ See the April 2, 2020, letter from Democratic senators Schumer, Cardin, Coons, and Sanders to SBA Administrator Jovita Carranza asking, among other things, that houses of worship not be ruled ineligible.

³⁸ See, e.g., the observations of Rev. Cheryl Gaines recorded in Langston Bombino, "Black Ministries Are Essential Services Now More Than Ever."

³⁹ Chelsea Langston Bombino and Stanley Carlson-Thies, "Religious Literacy and Social Services," in Chris Seiple and Dennis R. Hoover, eds., *The Routledge Handbook of Religious Literacy, Pluralism, and Global Engagement* (London: Routledge, 2012), 241–53, at 247.

recently the Biden administration has proposed that various federal funding programs specify that recipient organizations must use part of the funding to pay for child care—but without a requirement of using some form of indirect funding that would enable participation by providers whose child care includes religious activities and stories.⁴⁰

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

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

One debilitating trend is the accelerating shift of the federal outreach to faith-based and community-based organizations from *equipping* to *mobilizing*. The several administrations, in addition to connecting with civil society organizations through meetings, email newsletters, publications, and web-based information, have organized recurring conference calls or video meetings to communicate with the government’s current and potential partners. However, increasingly, these recurring teleconferences are being used not so much to equip and inform about partnerships but as a way for the administration of the day to praise its own programs and policies and to seek grassroots support for its own policy priorities. For instance, while the topic of one of the regular conference calls during the Trump administration was an Office of Federal Contract Compliance draft regulation intended to protect participation in contracting by religious employers with morally conservative sexuality standards, the call was organized not by the Department of Labor’s faith-based Center but by the White House’s Office of Public Liaison (OPL). Judging from the questions, the audience was mainly pastors, although surely few, if any, houses of worship hold federal contracts. The pastors were not interested in the details of the proposed changes but wanted to hear how President Trump was battling secularism in the federal government.⁴¹

⁴⁰ Executive Order 14095, “Increasing Access to High-Quality Care and Supporting Caregivers,” April 18, 2023, 88 Fed. Reg. 24669 (April 21, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-04-21/pdf/2023-08659.pdf>.

⁴¹ I listened to the conference call, August 16, 2019.

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

Weakened transformative energy: Reduced clarity of vital information.

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

Compare the Bush White House Office’s *Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government* with the Obama counterpart, *Partnerships for the Common Good: A Partnership Guide for Faith-Based and Neighborhood Organizations*.⁴² The Obama guide valuably profiled many ways that smaller and faith-based organizations could partner, financially or nonfinancially, with federal programs. But it gave little information about church-state requirements and freedoms, although it stated twice that “financial partnerships with the government must be characterized by their ability to both uphold the free exercise of religion and to prevent the establishment of religion.” But what did that mean, for example, for a mosque interested in funding to construct housing for low-income seniors? The Bush booklet did not give as much detail on partnership opportunities, but it did extensively explain the level playing-field rules. A community-based or faith-based organization interested in working with the government to provide some service would know that it was welcome to apply, that officials must not be biased against it, and that the organization’s religious identity and practices would be protected even as it was required to follow specific rules to protect the rights of beneficiaries. Such detail is, itself, a “you are welcome here” banner for organizations that have long regarded themselves as excluded because of their religion or lack of sophisticated knowledge of government requirements. However, such vital information is increasingly less visible on the websites associated with the faith-based initiative.

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

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

⁴² Office of Faith-Based and Community Initiatives, *Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government* (White House, 2003?), https://georgewbush-whitehouse.archives.gov/government/fbci/guidance_document_01-06.pdf; Office of Faith-Based and Neighborhood Partnerships, *Partnerships for the Common Good: A Partnership Guide for Faith-Based and Neighborhood Organizations* (White House, 2010?), <https://obamawhitehouse.archives.gov/blog/2010/02/18/a-vision-faith-based-and-neighborhood-partnerships>.

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

The federal rules, as stressed before, accompany the federal dollars to state and local government agencies and are meant to govern the award of the funds to private organizations. Do state and local officials know and follow these reversed church-state rules?⁴³ And equally important, have state and local governments worked to make their grant and contract systems more practically hospitable to smaller, locally focused, religious, and newcomer organizations when they expend the federal funds? A state and local commitment to both the church-state and the funding transformations of the faith-based initiative is essential to the success of the federal initiative not only because so much of the federal money is awarded by state and local officials. It is vital also because smaller and newcomer organizations will always be disadvantaged if they seek federal funding by participating in federal agencies' own grant competitions, where their competitors for the five or fifteen large grants are large, experienced, well-staffed, and federally savvy nonprofits and businesses. Better to compete at the state or local level where connections can be more readily made and the competition is more even. Moreover, it is administratively more practical for state or local officials, rather than federal officials, to connect with, assist, and monitor small, locally oriented organizations. Thus, the more committed state and local officials are to the vision, practices, and rules of the faith-based initiative, the greater its success will be in achieving innovative partnerships between government and civil society organizations.

⁴³ For an early report showing incomplete understanding, see Jonathan Jacobson, Shawn Marsh, and Pamela Winston, *State and Local Contracting for Social Services Under Charitable Choice: Final Report*, submitted to the Office of the Assistant Secretary for Planning and Evaluation, US Department of Health and Human Services (Washington, DC: Mathematica Policy Research, 2005), <https://www.mathematica.org/publications/state-and-local-contracting-for-social-services-under-charitable-choice>. In 2000, as part of a project tracking the consequences of the enactment of the initial Charitable Choice provision, a colleague and I sent out questionnaires that asked state officials whether they were adhering to the Charitable Choice rules when expending the covered federal funds. Based on their responses, the project could give passing grades to only a dozen of the states and territories. Stanley W. Carlson-Thies and Stephen Lazarus, *Charitable Choice Compliance: A National Report Card* (Washington, DC: Center for Public Justice, 2000).

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

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

“An important part of the Office’s and the Centers’ communications and training strategy with secular and faith-based organizations should be to clarify that State and local officials award most Federal social service funding and to help those organizations connect with those State and local officials. Outreach and training events and publicity and guidance documents should stress that church-state standards accompany the Federal funds, and these efforts also help community groups identify and connect with State and local agencies that award Federal funds.”⁴⁴

A significant number of states, cities, and counties instituted their own faith-based offices or designated faith-based officials during the years after Charitable Choice was first enacted and while the Bush and Obama administrations maintained a high-profile White House partnership Office and partnership Centers authorized for action.⁴⁵ After a decline and lull, such offices and officials are again being created and named, prompted in part by experiences such as Oregon’s and perhaps also by the renewed attention across the nation to addressing neglected needs and marginalized communities. Yet what I hear from these officials—this admittedly is very much an unsystematic sample—is that they are disconnected from the federal faith-based initiative, not knowing where to turn for guidance and information, not receiving much encouragement, not finding federal support when officials at their own level misunderstand or ignore federal intentions and rules.

⁴⁴ President’s Advisory Council on Faith-Based and Neighborhood Partnerships, *A New Era of Partnerships*, 124.

⁴⁵ In 2008, more than thirty states and one hundred municipalities had faith-based offices or faith-based liaison officials. White House Office of Faith-Based and Community Initiatives, *The Quiet Revolution: The President’s Faith-Based and Community Initiative: A Seven-Year Progress Report*, ch. 5, “Taking Root Across America,” <https://georgewbush-whitehouse.archives.gov/government/fbci/text/qr5.html>.

How to restore transformative energy

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

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

What is missing and what is to be done? Responsibility for the lack of driving energy and for backsliding cannot be placed with the officials in the faith-based offices. It belongs with those above them—the president, chief executives of agencies, congressional appropriators—with all of the officials who set priorities, specify management goals,⁴⁶ allocate funds, determine staff sizes and responsibilities, use their authority to speed the mission of the partnership staff, or neglect to

⁴⁶ Tevi Troy, who was a high-ranking official in the George W. Bush administration with responsibilities including the success of the faith-based initiative and management reforms, has reminded me that Bush made achieving goals of the faith-based initiative a part of his management agenda. The management agenda gave agencies specific management targets such as greater participation by civil society organizations in federal funding and ensuring adherence to the Charitable Choice and Equal Treatment rules. See, e.g., Executive Office of the President, Office of Management and Budget, *The President's Management Agenda [FY 2002]*, January 16, 2002, government-wide initiative 6, “Faith-Based and Community Initiative,” 35–38; and the archived Department of Justice webpage showing the Department’s progress in achieving such goals, complete with red, yellow, and green indicators: <https://www.justice.gov/archive/ag/annualreports/ar2003/p2pma.htm>.

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

In the Bush administration, a President's Management Agenda (PMA) Scorecard was regularly updated to monitor agency progress in achieving key administration priorities. "Incorporating the faith-based initiative into the PMA did not attract the same press attention as its legislative strategy to increase tax credits, but it had deep and lasting impact on agency performance. For eight years of the Bush administration, cabinet secretaries were required to report regularly on their progress toward ending discrimination against faith-based groups and adding innovative programs." — Jay Hein, *Quiet Revolution* (2014).⁴⁷

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

- to educate federal and state officials about the vision, requirements, and value of partnerships and, at least as important, to counteract the persisting myths about the First Amendment's provisions;
- to appeal to the Attorney General and other Department of Justice officials mistaken or ungenerous interpretations of the freedoms due to faith-based organizations that may be insisted upon by an agency's legal and policy officials;
- to advocate on behalf of faith-based and community-based organizations that are denied fair opportunity;
- to get program officials to engage in a creative reconsideration of how services are designed and delivered, to create civil society pilot projects, and to fairly assess the value of drawing on the particular capabilities of civil society organizations;

⁴⁷ Hein, *Quiet Revolution*, 24–25.

- to actively solicit complaints from smaller, newer, and more sectarian grantees and to persuade agency officials to respond constructively;
- to clearly and publicly explain the transformed church-state rules, highlighting not only the responsibilities but also the freedoms that belong to faith-based applicants and grantees;
- to engage with, equip, and encourage state and local faith-based offices and officials; and
- to perform, as they believe are needed, partial or complete audits of programs, policies, and rules and to recommend necessary reforms.

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

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

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

community-serving nonprofits, most notably street-level urban faith-based organizations, typically get either nothing or get federal grant or contract crumbs as subcontractors or secondary vendors for both religious and secular nonprofits with multimillion dollar annual budgets.”⁴⁸ That is a sad, heartbreaking observation, nearly a quarter century after President George W. Bush launched the federal faith-based initiative in 2001 and more than a quarter century after President Bill Clinton for the first time signed the Charitable Choice provision into law, in 1996.

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

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

Conclusion: A heartening policy commitment reveals a disheartening reality

On September 12, 2023, Administrator Samantha Power of the US Agency for International Development (USAID) unveiled a new Biden administration policy on federal collaboration with faith-based organizations. USAID’s new “strategic religious engagement policy” is detailed in the document she announced, *Building Bridges in Development*.⁴⁹ The new policy is a commitment by USAID to expand its partnerships with US faith-based relief and development organizations and with overseas faith communities and religious leaders.

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

⁴⁸ John J. DiIulio Jr., “The Real Deep State,” *American Purpose*, October 13, 2023, <https://www.americanpurpose.com/articles/the-real-deep-state/>.

⁴⁹ USAID, *Building Bridges in Development: USAID’s Strategic Religious Engagement Policy* (Washington, DC: USAID, September 2023), https://www.usaid.gov/sites/default/files/2023-09/USAID-Strategic-Religious-Engagement-Policy-9-6-23_1.pdf.

In my travels to the communities that we serve around the world, I have seen how faith-based leaders are often the most trusted and effective changemakers in their communities. I've witnessed their unique ability to draw from wide networks to convene important, difficult conversations, to bring people together and to inspire action. And I've seen how during times of crisis, which sadly there are too many of these days, they are often the first to arrive and the last to leave. Many have committed their lives to fighting for justice and caring for those with the greatest needs. Grounded in the principles of their faith and living out their religious conviction in a way that uplifts humanity and inspires us all. And when we partner with these changemakers, the results can be extraordinary.⁵⁰

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

The internal reform is to assure, instruct, and train USAID staff not only that the agency *may enter into collaborations* with religious organizations and communities but also that it *must not avoid such collaborations* due to misinterpreting or ignoring constitutional principles and federal church-state rules. Faith-based organizations are as welcome as their secular counterparts to work with USAID and are equally eligible to compete for federal funding.

The communications reform is to spread that same message outward. USAID staff and publications must more vigorously and clearly convey to faith-based organizations and to

⁵⁰ USAID, "Administrator Samantha Power at the Launch of USAID's First-Ever Strategic Religious Engagement Policy," September 12, 2023, <https://www.usaid.gov/news-information/speeches/sep-12-2023-administrator-samantha-power-launch-usaids-first-ever-strategic-religious-engagement-policy>.

religious communities that USAID values their work of serving their neighbors and their social impact and that it desires to strengthen its collaboration with them. This must be active communication: not simply having an open door but creating ways to communicate about that open door to communities, leaders, and organizations that have thought they were excluded.

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

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

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

By adopting Charitable Choice rules as part of federal welfare reform in 1996, Congress and the Clinton administration set a new path for the federal government of equal access to funding for faith-based and secular providers. In inaugurating in 2001 the White House Office of Faith-Based and Community Initiatives and its counterpart faith-based Centers in various federal agencies, President George W. Bush committed the whole federal government to a new era of

partnerships with faith-based as well as community-based organizations to correct the conventional government bias of favoring secular providers. That Bush policy—a White House commitment and officials, Charitable Choice and Equal Treatment regulations, agency commitments and Centers, reforms to the grants process and innovative new programs—has been maintained by subsequent administrations, both Democratic and Republican.

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

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