



# **The Roundtable**

**on Religion and Social Welfare Policy**

## **The Policy Environment for Faith-Based Social Services in the United States:**

### **What has Changed Since 2002?**

**Results of a 50-State Study**

**By Mark Ragan, Senior Fellow  
David J. Wright, Project Director**

**An independent research project of the Rockefeller Institute of Government  
Supported by The Pew Charitable Trusts**



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*December 2005*

*The opinions expressed in this report are those of the authors  
and do not necessarily reflect the views of The Pew Charitable Trusts.*



# Table of Contents

<b>EXECUTIVE SUMMARY .....</b>	<b>i</b>
<b>PART I - INTRODUCTION.....</b>	<b>1</b>
Charitable Choice and the Faith-Based and Community Initiative .....	1
The Rockefeller Institute of Government and The Roundtable on Religion and Social Welfare Policy .....	2
Research Methodology .....	3
<b>PART II - STATE RESULTS AND ANALYSIS.....</b>	<b>7</b>
State Legislation.....	7
State Administrative Initiatives.....	9
State Liaisons .....	11
Grant and Contract Policies and Practices .....	13
Identification of Faith-Based Contractors and Grantees.....	13
Actions that Encourage FBO Participation in Government-Funded Programs .....	14
<i>Modifying Contract Processes</i> .....	14
<i>Scaling Down the Size of Contracts</i> .....	15
<i>Encouraging Contractors to Subcontract with FBOs</i> .....	16
<i>Adding FBOs to RFP Mailing Lists</i> .....	16
<i>Changing the RFP Notification Process</i> .....	17
<i>Providing Capacity-Building and Start-up Grants</i> .....	18
<i>Providing Technical Assistance</i> .....	19
Assessing Performance .....	21
State Policies Directly Affecting Faith-Based Service Providers.....	22
<i>Guidelines Regarding the Use of Public Funds</i> .....	22
<i>Guidelines Regarding Employment Decisions</i> .....	24
<b>PART III - CONCLUSIONS .....</b>	<b>29</b>
Comparing the Results of 2005 Research with Results from Our 2003 Research .....	29
<b>Appendix A: State Constitutional Provisions.....</b>	<b>35</b>
<b>Appendix B: Hiring Rights .....</b>	<b>38</b>



## EXECUTIVE SUMMARY

During the summer and fall of 2005, staff of the Roundtable on Religion and Social Welfare Policy gathered information on the status of state policies and initiatives related to social services provided by faith-based organizations (FBOs). State staff, primarily in state Temporary Assistance for Needy Families programs, were contacted in order to gather information about state contract and grant policies and procedures that affect faith-based service providers. In addition, staff in governors' offices and other state agencies, as well as officials designated as liaisons to the faith community, were contacted to determine the extent of recent state initiatives. We also did extensive research using the Internet to review state websites and to research state legislation and print media to determine which states had undertaken significant initiatives to increase partnerships with FBOs. The survey was a follow-up of a similar effort conducted by the Roundtable in 2003.

With the emphasis on the President's Faith-Based and Community Initiative at the federal level, as many federal agencies have created offices devoted to implementing and expanding the initiative in a wide range of programs, and as the issue came to the forefront in the last presidential election, we set out to determine how these factors had influenced state actions.

The area of state government that has seen the most change since our previous report is in state legislatures. Over the last two years, 27 states have enacted legislation that includes reference to FBOs, either as potential participants in social service program functions, or more directly in legislation intended to increase state/FBO partnerships. In six additional states, legislation was proposed, but not enacted.

In the executive branch of state governments, there has been substantial movement over the past two years toward expanding partnerships with faith-based organizations. Our 2003 Report noted that less than half – 48 percent – of the states for which we had information had designated an individual or an office as a liaison to the faith community. By the fall of 2005, 63 percent of states have done so.

In 2003, we found that a little more than one-third – 36 percent – of the states for which we had information had engaged in significant administrative activities to engage FBOs as providers of social services. And now in the fall of 2005, we find more than half – 53 percent – of the states engaged in significant administrative activities to affect government partnerships with faith-based social service providers.

Considerably more states have taken steps over the past two years to make it easier for FBOs to compete for grants and contracts. In some cases, the change is marked. For example, by 2003, less than 5 percent of the states had provided

capacity-building or start-up grants; by 2005, over 20 percent of states had done so (it is important to note here that the majority of these states are offering capacity building grants with federal funds). Between 2003 and 2005, the reported share of states modifying their contract process or reducing the scale of contracts to facilitate relationships with faith-based and community agencies had more than doubled.

In other ways, however, this scan of state activity in the fall of 2005 yielded much the same picture seen in 2003. Although a minority of states were activist, most states made few and incremental rather than sweeping changes in their service relationships with religious organizations. It remained rare for a state to identify the faith-character of its contractors or grantees, and equally rare for states to provide FBO contractors with specific guidance regarding permissible and impermissible uses of public funds.

There are a number of reasons that the Faith-Based and Community Initiative has not expanded in the states to the extent that it has in federal agencies. First and foremost, unlike the heady days of the late 90s, when welfare reform was a hot topic and states were flush with funds, both from economic good times and the significant reduction in the welfare rolls, states have been hurting economically. Programs, contracts, and staff have been cut. Maintaining a basic level of service has been the focus; new initiatives are a luxury that states have, for the most part, not been able to afford. There is less opportunity to form partnerships, particularly those involving funding for services, than there had been in the recent past.

A second, oft repeated reason that states have been less than aggressively pursuing initiatives to increase the involvement of FBOs in the social services delivery system is the long-standing involvement of FBOs in delivering services in many states. State officials frequently reiterated what we heard in 2003. FBOs have been involved in delivering services under contract and via grants for many years. They are integrated into local social services systems, and are treated as any other type of service provider. Staff in these states insist that there is already a level playing field, and thus no real reason for the initiative.

A third, and somewhat related, countervailing influence involves restrictions found in state constitutions that bar expenditures to, or for the benefit of, religious institutions. The majority of states – 37 in total – have some form of constitutional provision that prohibits the transfer of public funds to faith groups. Some of those states have nonetheless found ways to advance service partnerships with FBOs but others have perceived or experienced these provisions to be a very real barrier to faith-based initiatives.

The fourth, perhaps less explicit reason is political. As with any initiative driven by a governor, a change in the governorship, even if of the same party, can spell the end, or at least a significant pause. This dynamic has been in evidence in a

number of states over the last few years. A relatively active effort has lost steam, and in at least one case, more or less ended. A side effect of the heightened political debate surrounding particular faith-based initiatives can be a certain level of discomfort on the part of many state staff with the entire business.

This is not to say that much isn't happening around the country with regard to increasing the involvement of FBOs in providing services. To the contrary; as we report here, certain states are quite activist and some level of activity to expand opportunities for government relationships with faith-based social service providers has become increasingly common across the majority of states. Looking beyond state government would likely reveal a more detailed portrait of a broader range of activity, especially that involving newly-formed relationships with groups that have not traditionally provided services with public funding. But that is not the purpose of this report. We set out to determine what has been happening in state houses, in the governor's office, and in state agencies with responsibility for social service programs.

To the extent that state agencies have been active in this area, in most cases, it has been in programs where the federal government has taken the initiative. There is activity all around the country due to the perception that there are new federal dollars directed explicitly to faith-based and community service providers (e.g., the Department of Health and Human Services' Compassion Capital Fund), and where federal agencies have taken steps to encourage faith-based providers, with or without state involvement, to participate (e.g., the Department of Justice's Going Home Initiative: Serious and Violent Ex-offender Reentry Initiative.) Expansion of state/FBO service partnerships has followed where federal funds are available. State-only initiatives are few and far between.



# **Scanning the Policy Environment for Faith-Based Social Services in the United States: What has Changed Since 2002?**

## **Results of a 50-State Study**

### **PART I - INTRODUCTION**

During the summer and fall of 2005 the Rockefeller Institute of Government conducted a study of state policies and practices related to the provision of social services by Faith-Based Organizations (FBOs). Our goals with this research included: learning about state policies and administrative practices that affect FBO provision of social services; determining the extent of initiatives to develop new partnerships between state programs and FBOs; and determining the ongoing effects of Charitable Choice provisions included in several federal programs since 1996, as well as the Bush administration's Faith-Based and Community Initiative. This report is a summary of the results of that research.

#### **Background**

##### **Charitable Choice and the Faith-Based and Community Initiative**

In 1996, the U. S. Congress enacted landmark legislation that changed the nature of the federal public welfare system. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) created a new program, the Temporary Assistance for Needy Families program, replacing the Aid to Families with Dependent Children program, which since the New Deal had been the basic welfare program throughout the U.S. The overarching purpose of the legislation was to end welfare dependency by requiring participation of recipients in work-related activities. The legislation envisioned that states, given new flexibility to tailor the new program to meet local needs, would provide a wide range of services to support work. The statute also included a provision that requires states to contract with FBOs on the same basis as other contracted organizations in the provision of those services and with protections for the faith character of these groups and the religious liberty of program beneficiaries – Charitable Choice.

After 1996, Charitable Choice provisions were applied to additional programs, including the now expired Welfare-to-Work program, Community Services Block Grants, Projects for Assistance in Transition from Homelessness, and other discretionary grant programs for substance abuse prevention and treatment that

are administered by the federal Substance Abuse and Mental Health Services Administration.

In addition to programs with specific Charitable Choice language, the Bush administration encouraged contracting for services and providing grants to faith-based service providers in a broad range of programs funded by the federal government. This was accomplished through Executive Orders and other means, the objective being to eliminate barriers and provide information to FBOs on potential sources of federal funding. These efforts have expanded beyond programs in this country to include programs administered by the U.S. Agency for International Development (USAID).

The federal government's efforts to expand Charitable Choice extended beyond programmatic actions to a broad-ranging administrative effort that has resulted in the creation of a White House Office of Faith-Based and Community Initiatives (WHOFBCI) in 2001, as well as FBCI offices in a number of cabinet-level departments by the time of our last report in 2003. Between 2003 and the summer of 2005, additional federal agencies established such offices, including the Departments of Agriculture and Veterans Affairs, as well as USAID.

Although there has been a dearth of new funding in the more than 150 programs that federal agencies have listed as potential sources of funding for FBO-provided services, limited funding has been made available through the Compassion Capital Fund. The Fund provided approximately \$154 million for capacity building and related activities between 2002 and 2005.<sup>1</sup>

Federal agency management and staff have also been involved in activities designed to promote the Faith-Based Initiative. Program correspondence, conferences, meetings, and other activities have made the initiative more than a high-level exercise. It has become a significant activity throughout many federal agencies.

But how has all of this activity on the part of the federal government translated in the states. Have the states followed suit, and if so, to what extent? With this research, we hoped to answer these and related questions.

### **The Rockefeller Institute of Government and The Roundtable on Religion and Social Welfare Policy**

The Rockefeller Institute of Government has for years been involved in conducting research on how, and how effectively, federal social welfare programs

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<sup>1</sup> A more complete catalog of the Bush administration's actions to implement the Faith-Based Initiative throughout the federal government can be found in *The Expanding Administrative Presidency: George W. Bush and the Faith-Based Initiative*. This report, by the Roundtable on Religion and Social Welfare Policy, is at [http://www.religionandsocialpolicy.org/docs/policy/FB\\_Administrative\\_Presidency\\_Report\\_10\\_08\\_04.pdf](http://www.religionandsocialpolicy.org/docs/policy/FB_Administrative_Presidency_Report_10_08_04.pdf).

are administered at the state level. The Institute conducts studies and special projects to assist government and enhance the capacity of states and localities to meet critical challenges. Through its conferences, research, and publications, the Institute works with the best experts and top officials at all levels of government to forge creative solutions to public problems. The work of the Institute focuses on the role of state governments in the American federal system. Since 1996, the Institute has conducted ongoing research on the implementation of the TANF program across the country by employing indigenous researchers in many of the states.

With the support of The Pew Charitable Trusts, the Institute is currently sponsoring the Roundtable on Religion and Social Welfare Policy. The Roundtable conducts in-depth nationwide research on the role and efficacy of faith-based social service programs. The goal is to fill broad gaps in knowledge about the relative effectiveness and capacity of faith-based services, and the constitutional issues involved in public funding. The Roundtable's independent and non-partisan research seeks to contribute to a more informed debate on this important issue among policymakers, stakeholders, journalists and the public. In addition to this study, other current research is underway to determine the effectiveness of services provided by FBOs. Additional information on the Roundtable, as well as publications, policy analyses, news updates, and interviews can be found at <http://www.religionandsocialpolicy.org>.

### **Research Methodology**

In the summer of 2003, the Roundtable on Religion and Social Welfare Policy sponsored research to examine the nature and extent of state initiatives to increase the involvement of Faith-Based Organizations in the delivery of social services. Researchers in all 50 states were asked to gather information on the policy environment for faith-based social service delivery at the state and local level. They were also asked to determine the extent to which changes had been adopted in law, regulation, and administrative processes to facilitate collaboration with FBOs as a result of the Charitable Choice provision of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and to subsequent expansion of this provision to several additional federal programs.

In the summer and fall of 2005, staff of the Roundtable contacted officials in all of the states. The purpose of these contacts was to gather information on the policy environment for faith-based social service providers in each of the states, and to update legislative and administrative initiatives to increase FBO partnerships since the state scan of 2003. The focus was on state law, regulation, and administrative practices that affect social services provided by faith-based organizations. We continued to be interested in the states' responses to the Charitable Choice provision of the Personal Responsibility and Work Opportunity Act of 1996, which created the Temporary Assistance for Needy Families

(TANF) program, and in the subsequent expansion of this provision, both statutorily and administratively, to additional federal programs.

We were interested in detailed information regarding state policies and processes related to contracts and grants for services provided by faith-based organizations. Topics included: the extent of information available from central (or other) sources on faith-based contractors, guidance offered to them on permissible activity supported by public funds, the nature of state oversight of what they do, and administrative actions, such as appointment of state liaisons to the faith community.

Our research on state contract and grant policies and practices focused on state agencies responsible for the TANF program. This is typically the state agency responsible for administration of a range of human services programs, though in some states the workforce development agency or other agency is also involved in contracting under the TANF program. Our expectation was that, because the TANF program has the longest history at the federal level of legislative and regulatory provisions and initiatives related to Charitable Choice, states would most likely have established policies and procedures in reaction to federal efforts in their TANF programs. In addition, in 2003 we found that the TANF program was far and away the most common funding source for services provided by FBOs. Thus, it is important to note that Part II of this report is based for the most part on information obtained from state officials responsible for policy and practice in state TANF programs.

Our reasoning was in no small part a reflection of our experience with research conducted in 2003. It was often difficult to locate state officials with responsibility for policies and procedures for contracts and grants for every program that might potentially work with faith-based social service providers. And the information that we gathered was, to a large extent, redundant within each state. That is, policies were the same or similar across programs. We therefore determined that we could use information from the TANF program as a guide for the larger range of state programs that could potentially contract with or provide grants to faith-based social service providers, and that doing so would greatly simplify the task of gathering information. This was true, though as we describe below, it was nevertheless a challenge to secure information, even though our research regarding grant and contract policies targeted only one program.

Among the offices, officials, and staff we contacted in the states were: officials with responsibility for policy related to contracts and grants in the TANF program; staff in governors' offices; staff in the office of state officials with overall responsibility for human services and/or employment programs, state staff appointed or otherwise designated as liaisons to the faith community, some associated with the governors' offices and others housed in state agencies; and individuals outside state government with knowledge of the status of state/FBO

activities. Two states – Florida and Texas – have a quasi-public, quasi-independent agency with organizational responsibility for their state’s faith-based initiative.

We relied on the Internet for additional information, conducting research on state legislation, news of state initiatives, and other related information. We also accessed the official websites of governors’ offices, as well as the websites of human services and other state agencies.

Our research was conducted from late May through the end of November, 2005. It is therefore possible that activities that would have affected responses for a state might not be reflected in our findings, because they occurred after the date that we completed research for the state. But given our intent to reflect state policies and other actions for all of the states, rather than to provide a report card on each state individually, changes that occurred after our research would not have had a significant impact on overall findings.

It is also important to understand the other limitations of this study. We did not set out to determine the extent of faith-based organizations’ involvement in the delivery of social services, with or without public funding. Our intent was to determine how, if at all, states have acted over the last two years to expand service relationships with FBOs, in reaction to the federal Faith-Based and Community Initiative or otherwise. We asked specific questions that included examples of reasonable steps that a state might have taken to increase the involvement of faith-based and community organizations in the delivery of services, such as simplifying contract processes and adding FBOs to contract mailing lists. We also searched for evidence of such activity in the media and on the states’ various websites. (Often there are a number of different websites

**In many cases, state officials were reticent to provide information, even though our questions involved straightforward requests for information on public policy or on public actions that a state either did or did not take.**

that include information about state programs and initiatives. For example, all of the governors have websites, the umbrella agency responsible for the human services programs, including the TANF program, have websites, and state initiatives, such as a state’s faith-based initiative, might also have a website.)

We are also mindful of acknowledging that the state activity we attempted to identify and examine arises in a local context. The majority of states follow not only new developments in federal law and legislation that they may themselves seek to modify, but also the dictates of their own state constitution.

In total, 37 states have a provision in their state constitution explicitly barring state financing of religious organizations. In some cases, with lenient court decisions and varying traditions over time, states have proceeded to advance

service partnerships with faith-based organizations despite such provisions. In others, however, the fact or perception of state constitutional provisions has been a more foreboding impediment for proposed expansion of government relationships with FBOs. Appendix A provides a summary discussion of these state constitutional limits, based on research by the Roundtable's legal research team at George Washington School of Law.

One additional caveat. It is hard to avoid the conclusion that the Faith-Based and Community Initiative has become a politically sensitive subject in some states. The impact of this indirect effect of the initiative had a bearing on the collection of information for this study. In some cases, state officials were reticent to provide information, even though our questions involved straightforward requests for information on public policy or on public actions that a state either did or did not take. There was an undercurrent of unease on the part of many state officials, a defensiveness that in one case resulted in the refusal of state officials to provide information, and in many cases involved lengthy delays in securing information. It seemed that many state officials were uncomfortable responding in a way that indicated that the state, or at least the agency in which they worked, had not taken affirmative steps to increase their involvement with FBOs. We were able to secure responses to all of our questions for almost all of the states, though for a few states, we were unable to secure a response to every question. Thus the numbers in certain charts below do not total 51 (all of the states and the District of Columbia).

## PART II - STATE RESULTS AND ANALYSIS

### State Legislation

We reviewed legislation, both proposed and enacted, that would affect government (state) partnerships with faith-based social service providers. The starting point was the beginning of 2003, given our previous research.

We first searched for any proposed state legislation that would have affected state partnerships with FBOs. Legislative proposals ranged from relatively modest bills that would have affected, for example, a single program, or were not specifically directed toward increasing the level of FBO participation in the delivery of services, to more far-reaching legislation intended to have a more direct effect on such activities. An example of the former was a bill to create a “coalition to assure consistency of the public health and private sector approach to dealing with programs that address the problems that affect overweight and obese individuals”<sup>2</sup>, which included language indicating that the coalition should “Consider the resources of the local health departments and recommend ongoing relationships, as appropriate, between local health departments, family resource networks, faith-based organizations, cooperative extension services, farm bureaus and other health care providers...” An example of the later was a bill in Ohio which created the Governor’s Office of Faith-Based and Community Initiatives.<sup>3</sup>

Legislative proposals ranged from relatively modest bills that would have affected, for example, a single program, or were not specifically directed toward increasing the level of FBO participation in the delivery of services, to more far-reaching legislation intended to have a more direct effect on such activities.

As indicated in Figure 1, we found that in 65 percent of the states, legislation had been proposed that would have in some way affected partnerships between state government and FBOs.

Of the 33 states in which legislation was proposed from the beginning of 2003 until our review, legislation was passed by both houses of the state legislature and signed by the governor in 27 states. The legislation that was not enacted generally died in committee.

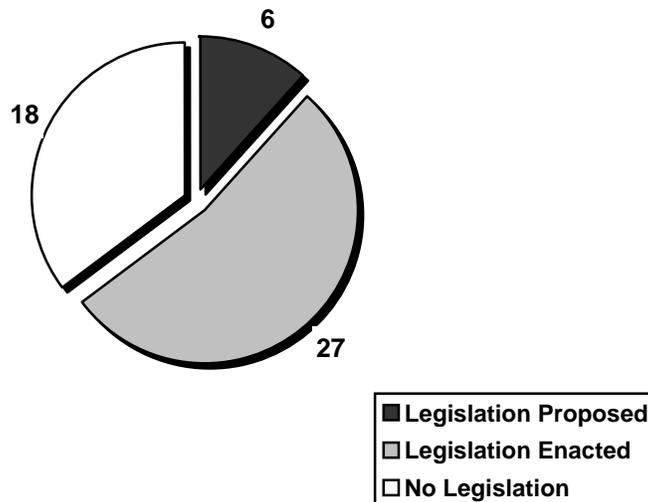
In one state, Maryland, the legislature took steps to limit the governor’s ability to implement a faith-based initiative. This was far and away the exception – in other

<sup>2</sup> West Virginia 2005 WV House.Bill 2816, signed by the governor on 5/2/2005

<sup>3</sup> Ohio 2003 House Bill 95, signed by the governor on 6/26/2003.

states proposed and enacted legislation was intended to acknowledge and in many cases encourage FBO participation in planning and delivering services.

**Figure 1 - States with Legislation Affecting State/FBO Partnerships**



Some bills, both proposed and enacted, specifically targeted FBO/state relationships, for example, creating a state office of faith-based and community initiatives, or directing state agencies to work with FBOs. The larger proportion of legislation was not directed specifically at FBO/state relationships. Instead, FBOs might be included in a list of members of a state board directed to review child welfare policies, or in a list of potential service providers in a bill to create an after-school care program.

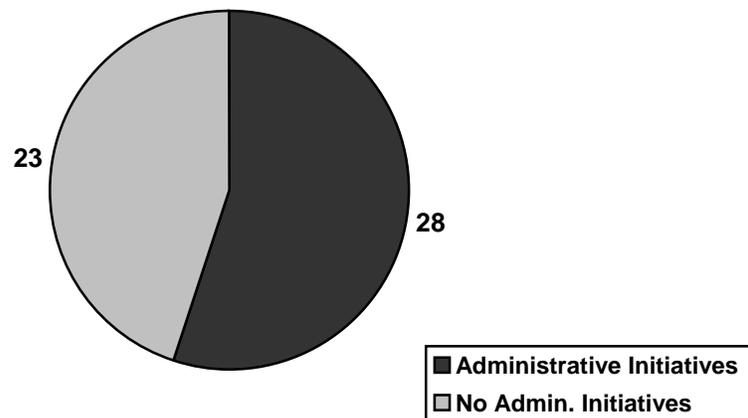
We cast the net broadly to determine whether there had been any legislative activity that would have affected FBO/state relationships. Many of the bills would not have substantially affected such partnerships. Nevertheless, by including FBOs in legislation affecting social services, it is clear that state legislators are more frequently acknowledging the role that FBOs can play both as service providers and as active participants in social service systems.

### State Administrative Initiatives

We determined whether there have been any significant administrative initiatives undertaken by the states since 2002 to affect government partnerships with faith-based social service providers. For the purpose of this question, a “significant” initiative included efforts personally identified with a governor, agency, or program head, as in our previous report. So, for example, if there had been an effort to enlist FBOs as providers in an agency initiative, but there was no evidence that an agency head or some other high-level official had been directly associated with the effort by, for example, showing a personal involvement on an agency website or in other media, we would not have considered such an effort as significant for the purpose of this question. On the other hand, an indication on a state website that the governor was personally involved in announcing and promoting an initiative was considered significant.

We found that there was evidence that significant administrative initiatives have been undertaken in 28 states since 2002.

**Figure 2 - States with Significant Administrative Initiatives**



Examples include:

- In Connecticut, the Governor’s Faith-Based Council was established to serve as an intermediary in support of the development and enhancement of all state collaborative efforts with faith-based organizations for the provision of social services;

- In New Jersey, the Secretary of State joined with faith-based organizations and community leaders from throughout the state for yearly Faith and Community Based Resource Expos, hosted by the New Jersey Office of Faith Based Initiatives, in partnership with the Governor's Office of Volunteerism;
- In Kentucky, the Governor announced a plan to reduce substance abuse – known as “Recovery Kentucky.” FBOs will be a component of the peer-driver effort, which enlists volunteers from the community and faith-based organizations and includes a mentoring component in which successful program graduates work with offenders in the program;
- In Louisiana, the governor convened a “Solutions to Poverty” summit in December, 2004, and community conversations prior to the summit. The objective of the community conversations was to assemble community stakeholders, including FBOs, to converse about problems and solutions to poverty within their regions.
- In Georgia, the governor announced a coordinated effort with the faith-community to provide supports to evacuees from the hurricanes battering Alabama, Florida, Louisiana, and Mississippi in the summer and fall of 2005.

We also gathered information on whether there had been active opposition in the states where there was evidence of a significant administrative initiative. In all but 7 of the 28 states where such initiatives commenced, there was little or no evidence of active opposition. One exception that stands out, as mentioned above, was in Maryland, where the state legislature took active steps to limit the governor's administrative initiative to development of an office of faith-based initiatives. The state budget contained language specifying that “no funds in this budget may be expended pursuant to, or in furtherance of, any policy, program, or office, so named or otherwise, to purposefully promote or facilitate the participation of faith-based organizations in state programs providing health, social, educational or other community services, unless that policy, program, or office is specifically authorized by an act of the 2005 general assembly.”<sup>4</sup>

It should be noted that the findings above are not an indication of the overall level of state involvement with faith-based service providers. In many of the states, while there was no evidence of a significant new initiative, there was evidence of longstanding relationships between state agencies and faith-based organizations and service providers.

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<sup>4</sup> Maryland 2005 House Bill 150, which became law without the governor's signature.

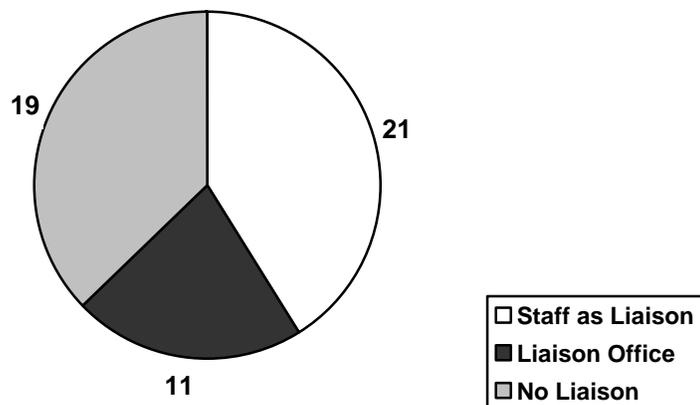
## State Liaisons

Just as there is variation in the bureaucratic structures of state government, there is variation in the organizational location, responsibilities, and resources of staff designated as a liaison to the state's faith community. Liaison offices range from a single individual working within the human service agency bureaucracy, to a relatively large office with over 20 staff in a quasi-independent non-profit agency, and include individuals who are not employed by the state, but serve as a liaison.

At the point that this report was prepared, 32 states had designated an individual or office with responsibility to serve as a liaison to the state's faith community.

Liaison offices range from a single individual working within the human service agency bureaucracy, to a relatively large office with over 20 staff in a quasi-independent non-profit agency, to individuals who are not employed by the state, but serve as a liaison.

**Figure 3 - States with a Liaison Office or Staff Designated as a Liaison**



In some cases, the liaison office is newly created, but for the most part, these offices existed previously with responsibilities that naturally meshed with new tasks. For example, an office previously responsible for community outreach and coordination for the state's human service programs was given the additional responsibility of serving as the point of contact between state government and the faith community. In some cases, new staff and/or resources came with these new responsibilities, but more often new tasks were absorbed by an office without

additional resources. In a few cases, the office was the recipient of federal Compassion Capital funds.

In some cases, the liaison office is newly created, but for the most part, these offices existed previously with responsibilities that naturally meshed with new tasks.

In some states, the liaison is directly associated with the governor’s office. In fact, in one state the liaison is the governor’s chief of staff. In others, the liaison is housed within the human services agency, though in some of the later examples, responsibilities go beyond those programs within the authority of the human services agency. In a number of states, designation of liaisons extends into program bureaucracies, with liaisons designated for each relevant program within state government and at the local level as well.

Responsibilities generally include:

- Outreach
- Coordination
- Information Sharing

Resources permitting, technical assistance is offered, generally in the form of instruction in grant application and contract proposal writing, and in some cases, organizational development and other capacity-building assistance. In a few states, the liaison’s office is responsible for funding decisions regarding some state grants and contracts.

**Figure 4 - State Liaisons to Faith-Based and Community Organizations**



## Grant and Contract Policies and Practices

As indicated above, it is important to note that the research for this section of the report focused on each state's Temporary Assistance for Needy Families program.

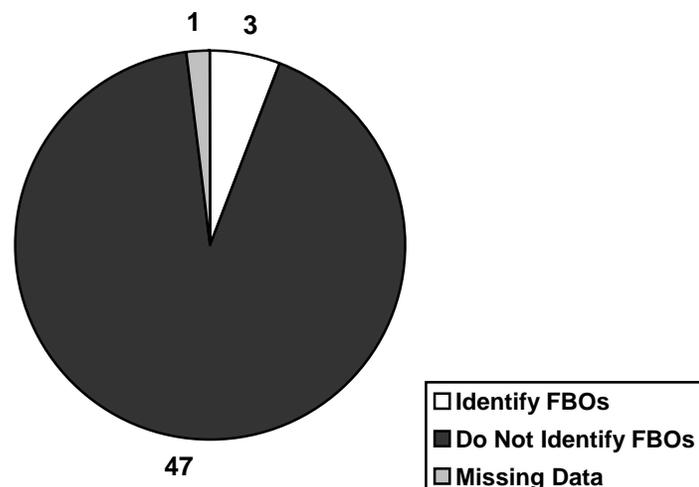
### *Identification of Faith-Based Contractors and Grantees*

Efforts to address the question of the relative efficacy of services provided by faith-based organizations have been hampered by the lack of information regarding the faith character of contractors and grantees. The state of the art in many cases is the use of the name of an organization as a proxy for determining whether an organization should be considered faith based. (A more complex related issue is the lack of a broadly-accepted definition of the designation "faith based.")

Few states have information that would permit identification of faith-based service providers.

We asked state staff whether there were mechanisms in place to identify the faith character of organizations applying for contracts or grants. The response was almost universally that there was no mechanism in place for making such determinations. Only five states indicated that there were procedures in place for ascertaining whether a contractor or grantee should be identified as a faith-based organization. In at least one state, there is theoretically a basis for determining the character of contractors and grantees in that they are required to complete a state tax form on which they designate whether they are faith based.

**Figure 5 - States in Which the Faith Character of Contractors or Grantees is Known**



However, there is currently no mechanism in that state for consolidating and analyzing the information, which is maintained in paper-based files. According to state staff, for all intents and purposes there is no reasonably-efficient method for accessing the information.

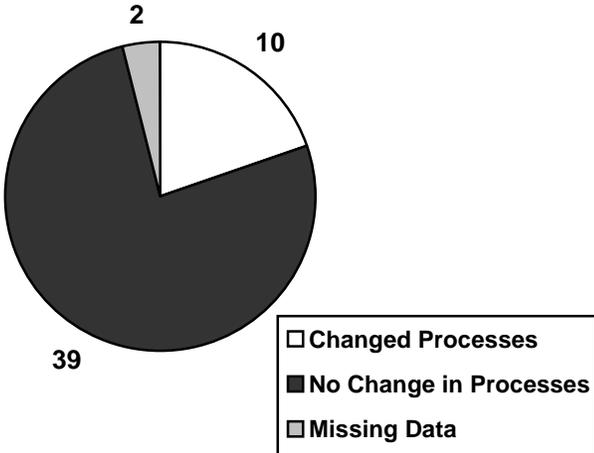
*Actions that Encourage FBO Participation in Government-Funded Programs*

We asked a number of specific questions designed to determine whether states have taken concrete steps to change grant-making and contracting processes to make it easier for FBOs to compete for government funding for services. While in general states are responsible for contract and grant policies and processes for federally-funded programs, it is important to note that in a number of states, a significant level of contracting for services is the responsibility of local offices, including offices of other governmental entities, most frequently counties. Thus it is reasonable to assume that there is variation within states relative to the processes covered in this section.

*Modifying Contract Processes*

We asked whether states have modified contracting processes to make it easier for faith-based providers to participate (e.g., cutting red tape, simplifying RFPs and contract language). The response to this question was mixed. Ten states have made some changes to grant and contract processes in order to permit access by smaller organizations as well as organizations that had not previously been funded to compete for funding. Thirty-nine have not. In a number of the states in which staff indicated that contract and grant processes had been modified, the changes

**Figure 6 - States that Have Modified Contract Processes**

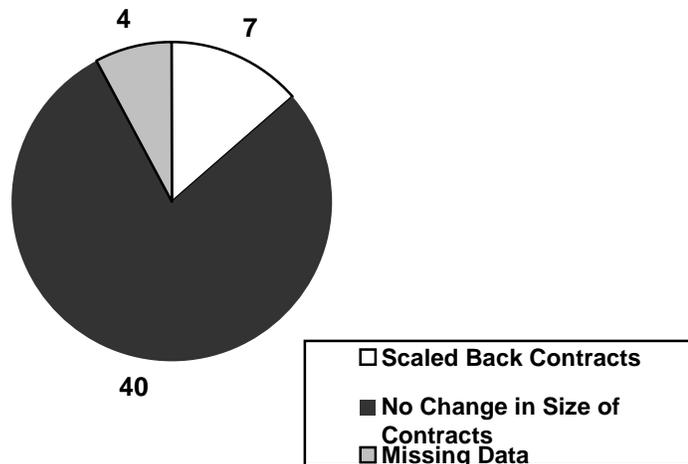


were not intended necessarily to increase the involvement of FBOs in state-funded services, but rather were more general changes in processes to enable smaller, more local providers to successfully compete.

#### *Scaling Down the Size of Contracts*

We asked whether states have reduced the scale of some contracts (fewer dollars and clients) to enable smaller or novice providers (FBO or otherwise) to compete. The response was generally negative. In seven states, the state has reduced the size of some contracts in order to encourage participation of novice and smaller service providers. Forty states have not done so.

**Figure 7 - States that Have Scaled Back the Size of Service Contracts**



*Encouraging Contractors to Subcontract with FBOs*

We asked whether states have encouraged contractors to subcontract with FBOs. In response, officials in 13 states indicated that they had done so. Officials in 37 states reported that they had not.

**Figure 8 - States that Have Encouraged Contractors to Sub-Contract With FBOs**

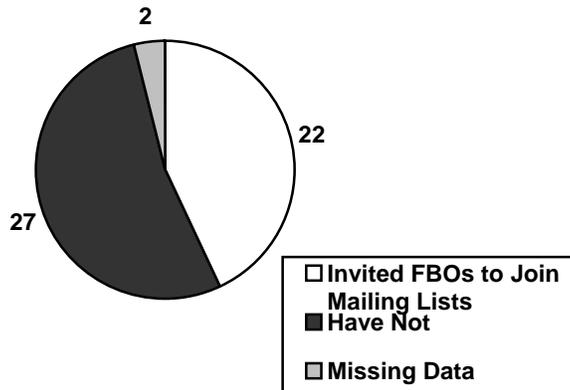


*Adding FBOs to RFP Mailing Lists*

We asked whether states have recruited or otherwise invited FBOs to join service contract mailing lists. Twenty-two states had done so. Twenty-seven had not.

With the expanding use of the Internet as a vehicle for providing information to the public and to potential service providers, many states indicated that rather than mailing lists, they use listservs to inform potential bidders of the availability of contracts and to announce grant opportunities. Some states have informed FBOs

**Figure 9 - States That Have Invited FBOs to Join Contract Mailing Lists**

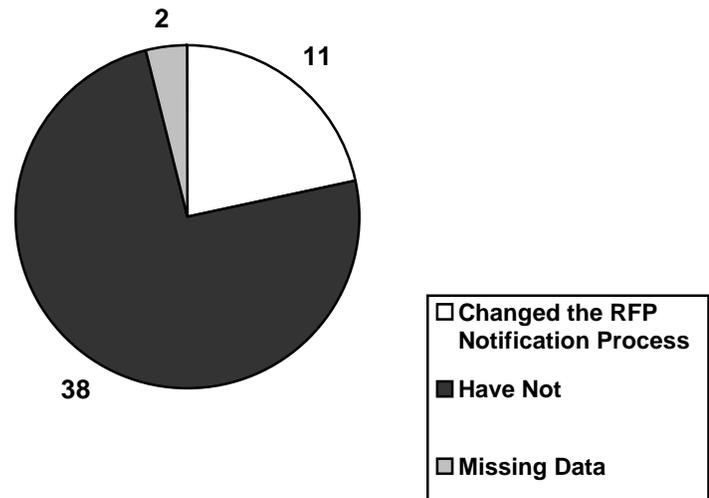


that listings of available contracts and grants are maintained on agency websites. We included such positive steps in the totals above, even though no actual mailing lists were involved.

#### *Changing the RFP Notification Process*

We asked whether states had changed the RFP notification process to improve communication with FBOs. We determined that 11 states have done so, while 38 states have not. As with other examples of changes in contract and grant processes, in some of the states that have altered the RFP notification process, the changes were not necessarily intended specifically to improve communication with FBOs, but were intended to improve communication with all potential bidders, including FBOs.

**Figure 10 - States that Have Changed the RFP Notification Process**



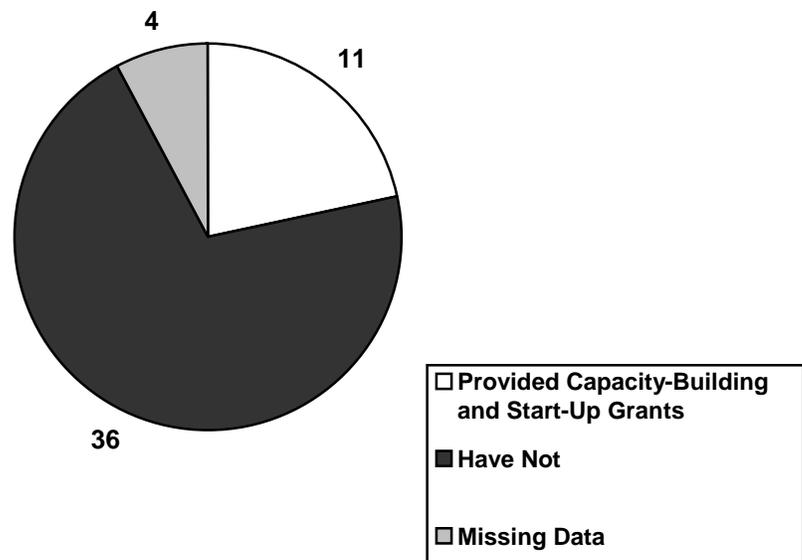
*Providing Capacity-Building and Start-up Grants*

We asked whether states had provided capacity-building or start-up grants to assist FBOs as novice service providers. Eleven of the states have done so, while 36 have not. In a few of the states, funding for such activities was provided by the federal government, either through the Compassion Capital Fund or through other programs. For example, in Texas and Ohio, the CCF funds such activities.

Of course, there is a great deal of additional activity in this area that does not directly involve state government. The Compassion Capital Fund has provided funding to hundreds of grantees for capacity building, either directly to FBOs or to intermediaries organizations.

In at least one state, North Carolina, the state legislature appropriated funds for capacity building of FBOs and other community-based organizations, in this case for the Community-Focused Eliminating Health Disparities Initiative.

**Figure 11 - States that Have Provided Capacity-Building and Start-Up Grants**



### *Providing Technical Assistance*

We asked whether states had provided technical assistance to assist FBOs as novice service providers, for example, with training in board development, operations management, etc. Officials in 23 states indicated that technical assistance has been provided to novice service providers, while in 26 states, technical assistance had not been provided. In many of the states that have provided technical assistance, assistance was not targeted to FBOs, but rather to any service provider that wished to participate. A number of states indicated that while technical assistance was not necessarily provided to new service providers, it would be provided if a grant or contract review indicated that a provider was having problems meeting objectives or complying with state requirements.

**In many of the states that have provided technical assistance, assistance was not targeted to FBOs, but rather to any service provider that wished to participate.**

**Figure 12 - States that Have Provided Technical Assistance to Novice Service Providers**

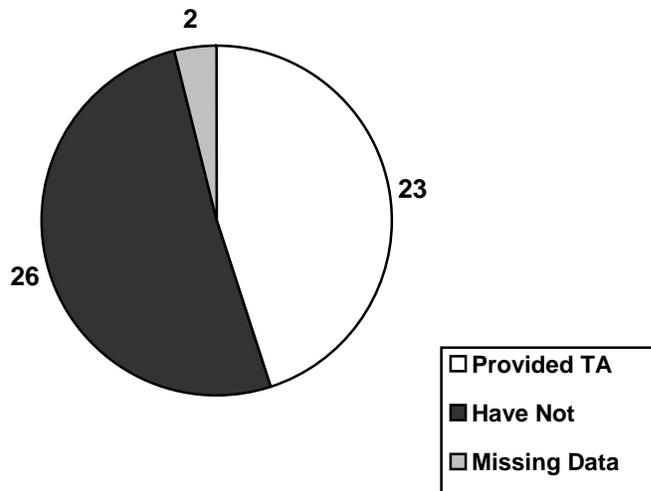
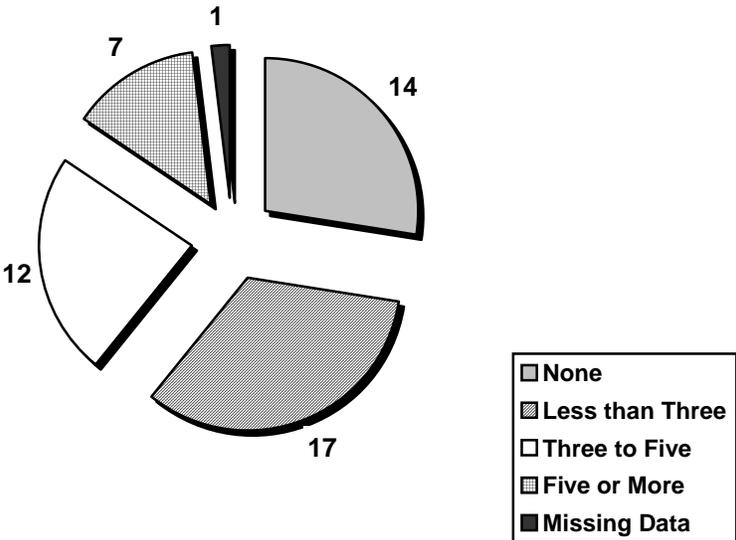


Figure 13 summarizes findings regarding state actions that encourage FBO participation in state social service programs from the previous sections of this report. As indicated above, we asked whether states had taken any of the following steps:

- Modified Contract Processes
- Scaled Down the Size of Contracts
- Encouraged Contractors to Subcontract with FBOs
- Added FBOs to RFP Mailing Lists
- Changed the RFP Notification Process
- Provided Capacity-Building and Start-up Grants
- Provided Technical Assistance

As the chart in Figure 13 shows, there is significant variation in the number of these steps that states have taken. At the extremes, 14 states indicated that they had taken none of these steps, while 7 states indicated that they had taken five or more.

**Figure 13 - State Actions that Encourage FBO Participation in Grants and Contracts**



### *Assessing Performance*

We asked a number of questions related to state processes for assessing the performance of contractors and grantees, including contracts and grants to faith-based service providers.<sup>5</sup> This information would potentially be useful for the purpose of further study of the relative effectiveness of services provided by FBOs compared to similar services provided by other types of providers, an issue for which there is a dearth of information.

We first asked for the basis for assessing the performance of service contractors and grantees. Almost universally, state staff indicated that contracts and grants include specific performance measures, which vary depending on the type of service provided. In some cases, measures involve processes (outputs), such as providing job skills training to a specified minimum number of clients. In other cases, the measures involve outcomes, such as the percentage of clients who were placed in a job.

All but one state employ some form of performance measures. In the single state that indicated that it did not, counties are responsible for most contracting, and may employ performance measures.

We then asked about the methods for assessing performance. The common response was that performance is assessed through a combination of processes, usually starting with review of regular reports submitted by contractors and grantees, and in most cases, supplemented by on-site reviews conducted by state or local staff. Only one state indicated that there were not standardized processes for assessing contractor and grantee performance. In this state, methods for assessing performance are left to the counties.

We asked whether payments made to organizations providing services under contract are affected by their performance. The response to this question was less universal. Twenty-nine states indicated that payments are affected by performance, while 16 states said that it was not. Although of the latter group, a few states indicated that a complete failure to perform could affect payment. Some states indicated that poor performance could be a basis for providing technical assistance to the service provider.

We asked whether the award of contracts and grants to faith-based organizations is based on their past service performance. Thirty-nine states indicated that past performance is usually a criteria considered in awarding new grants and contracts. In some cases, it is a specific weighted factor in such decisions. Only ten states

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<sup>5</sup> The information provided by state staff for the questions in this section apply to all contracts and grants, not only contracts and grants with faith-based services providers. A few states that provided responses indicated that they did not have any contracts or grants in the TANF program with FBOs. Information for those states is included in the analysis.

indicated that past performance is not considered in awarding contracts and grants.

*State Policies Directly Affecting Faith-Based Service Providers*

*Guidelines Regarding the Use of Public Funds*

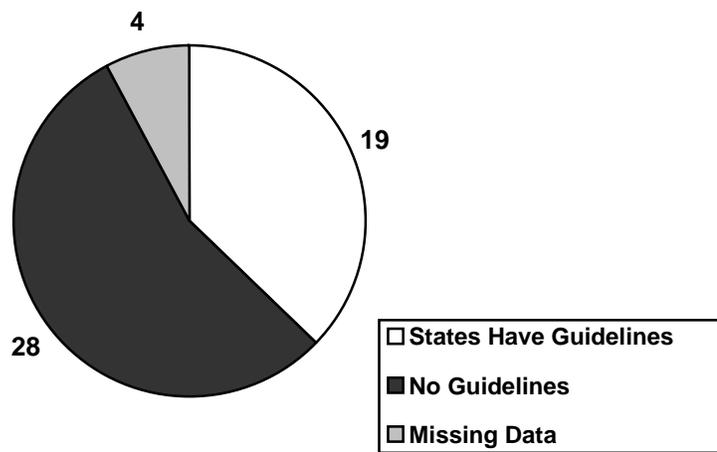
For most states, staff indicated that there were no express state guidelines regarding the use of public funds by faith-based service providers.

We asked whether there were express state guidelines and limitations on what faith-based organizations are permitted and not permitted to do with public funds. For example, do state contract or grant guidelines provide guidance regarding the preclusion of proselytization with government funding?

In the majority of states, staff indicated that there were no express state guidelines. Staff from 19 states indicated that the state had such guidelines. Staff in 28 states indicated that the state did not have express guidelines regarding

permissible uses of public funds.

**Figure 14 - States that Have Express Guidelines on Permissible Uses of Public Funds**



We also asked how these guidelines/limitations are communicated to participating contractors and grantees. In most of the states, the response was that guidelines are included in standard contract and grant boilerplate in the initial announcement of the availability of grant funds and contract RFPs. In some cases, language is also included in contract documents.

We asked how compliance with guidelines and limitations is monitored and enforced. Most of the states that indicated that they have express guidelines related to the use of public funds by faith-based service providers said that, much as for performance, monitoring is conducted during on-site reviews. One state indicated that monitoring would occur only if there was a complaint. Another state indicated that there was no mechanism for monitoring the guidelines.

For those states that have express guidelines, language varies significantly. In Minnesota, grant language includes the following brief statement. “Grantee agrees that no religious based counseling shall take place under the auspices of this grant.” A few states indicated they rely on federal rules.

In other states, the language is more involved. For example, the following language was provided by staff from Alabama.

*CHARITABLE CHOICE (applies to faith-based organizations only): The applicant will not use funds received from the Department for sectarian instruction, worship, proselytizing or for any other purely religious activities that are not directed toward the secular social goals related to the services described in this RFP. The applicant will also serve all eligible members of the public without regard to their religious beliefs and, further, will not require clients’ active participation in any religious practice. (In carrying out the said services, the applicant will remain independent from federal, state and local governments; will retain control over the expression of its religious beliefs, and is NOT required to remove its religious writings or symbols of to alter its internal governance as a condition of doing business with the Department*

Another example is from Virginia.

*Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.*

Over the last three years, questions regarding the use of public funds by faith-based organizations in a court case in Georgia have created a situation that is more problematic than in most other states. Georgia’s state constitution provides that “No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.” This provision, by its terms, is focused on the character of the organization receiving state funds, rather than the character of the activities those funds support. The state Department of Human Resources was funding foster care

services provided by the United Methodist Children’s Home, one of the parties involved in the court case. The home appeared to be distinctly sectarian in its overall character, and the suit charged that the state constitution prohibits state payments to such an entity.

The suit illuminated what appears to have been an unrecognized problem: that there was a widespread, longstanding tradition of contracting with faith-based organizations for the delivery of social services in Georgia – especially in child care and child welfare, but across the board, including substance abuse treatment and prevention services – despite the constitutional provision that bars state funds from being disbursed to such groups. The governor and state legislators have tried over the last three years to amend the state constitution, not without opposition. To date, those efforts have not been successful.<sup>6</sup>

*Guidelines Regarding Employment Decisions*

We asked whether state service contracts and grant guidelines address whether religious organizations may, or may not, consider religious beliefs in their employment decisions.

Regarding the issue of whether religious organizations that contract with states may consider religious beliefs in employment decisions, there appears to be either a great deal of confusion, reticence on the part of state officials to implement federal policy, or a combination of the two.

This is an area where there appears to be either a great deal of confusion regarding federal policy, reticence on the part of state officials to implement that policy, or a combination of the two. Statutory and regulatory language for the TANF program provides that FBOs may consider religion in employment decisions, even if they receive government funding to provide services. In the final regulations implementing this provision, the Department of Health and Human Services wrote that this policy comports with the exclusion of FBOs from the anti-discrimination provisions of title VII of the Federal Civil Rights Act of 1964.<sup>7</sup> DHHS stated that the exclusion applies even to state-only and local programs that are considered as part of states’ maintenance of effort requirements for the TANF program, even if they receive no federal funding. This policy is

confusing when considered in light of other statutory language indicating that the TANF statute does not pre-empt state law. As Professors Ira Lupu and Robert Tuttle of George Washington University Law School have written:

<sup>6</sup> For a fuller discussion of the impact of state constitutional provisions on government partnerships with FBOs, please see Appendix A.

<sup>7</sup> Charitable Choice Provisions Applicable to the Temporary Assistance for Needy Families Program, Federal Register, September 30, 2003 (Volume 68, Number 189), p. 56457.

*This discussion [in the final regulation] is difficult to follow even for lawyers already well-versed in this area. The passage seems to indicate that HHS believes that the federal statute's exemption from employment discrimination rules preempts state or local laws that would prohibit faith-based organizations from preferring co-religionists in hiring. Such a reading, however, would be wrong – both a misunderstanding of the law, and a misreading of this confusing passage.<sup>8</sup>*

The fact that our research indicates that state policy in this area varies greatly is therefore not surprising. Some state staff provided information that suggests that state policy is based on the broader language of the Civil Rights Act that prohibits various forms of discrimination in employment decisions, including discrimination based on religious beliefs. For example, one official indicated that the state follows federal policy in the TANF program, and that therefore the state does not permit FBOs to consider religion in making employment decisions. However, this does not actually reflect federal policy, which, as stated above, permits consideration of religious beliefs in making such decisions.

An example of contract language that reflects the broader anti-discrimination language comes from Rhode Island:

*The provider agrees to comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.); Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794); American with Disabilities Act of 1990 (42 USC 12101 et. seq.); the Food Stamp Act, and the Age Discrimination Act of 1975, the United States Department of Health and Human Services Regulations (34 CFR, Parts 104 and 106); and the United States Department of Agriculture, Food and Nutrition Services (7CFR 272.6); which prohibit discrimination on the basis of race, color, national origin, (limited English proficiency persons), age, sex, disability, religion, political beliefs, in acceptance for or provision of services, employment, or treatment in educational or other programs or activities.*

In other states, policy related to contracting in the TANF program is more restrictive than state law. For example, in one state, the general policy that applies to employers is similar to the federal policy that exempts religious organizations from the anti-discrimination provisions regarding employment decisions. However, while the state constitution excludes religious organizations from employment discrimination laws, contract language does not appear to pass this exclusion on to service contractors.

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<sup>8</sup> *Legal Analysis of Final Rules and Notices of Proposed Rulemaking Concerning the Faith-Based Initiative*, Professors Ira Lupu and Robert Tuttle, George Washington University Law School, 10/09/2003 at [http://www.religionandsocialpolicy.org/legal/legal\\_update\\_display.cfm?id=18](http://www.religionandsocialpolicy.org/legal/legal_update_display.cfm?id=18).

A few states provided documentation that indicates that state contract policy reflects federal policy, either by referencing the federal policy or with language that spells out the policy. An example of the former is from Oregon, where contract language includes the following statement:

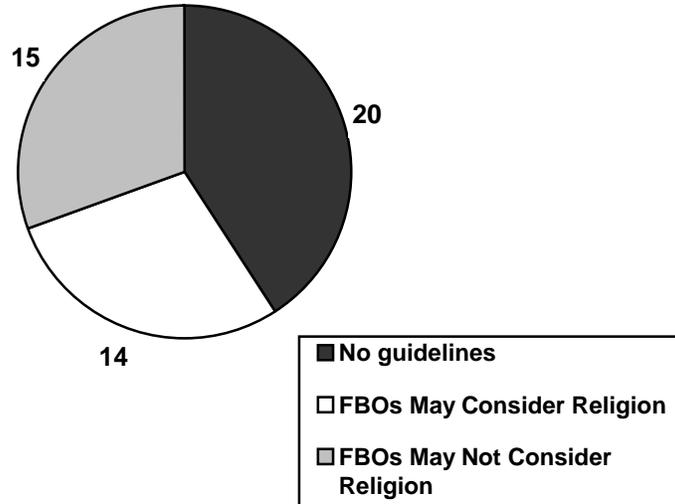
*Unless Exempt under 45 CFR part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Contractor shall comply, and as indicated, cause all subcontractors to comply with the following federal requirements to the extent that they are applicable to this contract, to Contractor, or to the Work, or any combination or the foregoing.*

An example of a state that spells out the policy is Virginia, where the following language is included in a Request for Applications (RFA) for Americorps grants (although this language was not included in some other state RFAs):

*The applicant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, or disabilities, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the applicant.*

On the other hand, in a significant number of states, staff told us that state grant and contract guidelines do not address this issue. Of the 29 states that indicated that they have such guidelines, 14 states permit faith-based service providers to consider religion in their employment decisions; 15 states do not.

**Figure 15 - State Contract and Grant Guidelines Regarding FBO Consideration of Religion in Employment Decisions**



This survey data, gathered from interviews with state program managers, complements other information that the Roundtable has gathered and reported on provisions in state law with respect to the hiring rights of religious organizations providing services as government contractors. The Roundtable's legal research team at George Washington University Law School has reviewed the statutes in each state, and has reported on whether religious organizations are exempted from restrictions barring employers from considering religion in their hiring decisions, and whether this exemption is lost when the organization is operating as a state contractor. This data is summarized in Appendix B.



## PART III - CONCLUSIONS

### Comparing the Results of 2005 Research with Results from Our 2003 Research

In 2003, the Roundtable on Religion and Social Welfare Policy published a report entitled Scanning the Policy Environment for Faith-Based Social Services in the United States - Results of a 50-State Study.<sup>9</sup> While there were significant differences in the methods employed in that study as compared with research in 2005<sup>10</sup>, a comparison of findings between 2003 and 2005 is instructive in a number of areas.

#### *Areas where there is a notable difference between 2003 and 2005:*

- **Legislation:** While our search for legislation in 2003 was narrower in focus than in 2005 – we found in 2003 that only 8 states had enacted legislation incorporating Charitable Choice language after 1996 – there does appear to have been an increase in legislative activity over the last two years. In 2005 we found that legislation affecting state/FBO relationships was enacted in 27 states, and proposed in another 6 states, suggesting an increase in activity on the part of state legislators.
- **Designating Liaisons to the Faith Community:** By 2003, 48 percent of the states for which we had information had designated an individual or an office as a liaison to the faith community. By the fall of 2005, 63 percent of states have done so.
- **Significant Administrative Initiatives:** In 2003, we found that 36 percent of the states for which we had information had engaged in significant administrative activities to engage FBOs as providers of social services. By the fall of 2005, 53 percent of the states engaged in significant administrative activities to affect government partnerships with faith-based social service providers.
- **Simplifying Grant and Contract Processes:** The question that we asked in 2005 regarding state efforts to simplify grant and contract processes were basically the same as in 2003, allowing a direct comparison of findings. As the table in Figure 16 shows, more states have taken steps to make it easier for FBOs to compete for grants and contracts. In some cases, the change is marked. For example, by 2003, less than 5 percent of the states

<sup>9</sup> The report is available on the Roundtable website at [http://www.religionandsocialpolicy.org/docs/events/2003\\_annual\\_conference/11-17-2003\\_state\\_scan.pdf](http://www.religionandsocialpolicy.org/docs/events/2003_annual_conference/11-17-2003_state_scan.pdf).

<sup>10</sup> In 2003, we employed researchers in all of the states. In 2005, we conducted the research centrally. In 2003, we contacted officials in selected local sites. This effort did not bear useful results. As a consequence, we focused efforts in 2005 at the state level.

had provided capacity-building or start-up grants; by 2005, over 20 percent of states had done so. (We note here that of the 10 states indicated that they had done so, at least six did so with federal funds. We also note that we have data for more states in 2005 for these elements, which may explain some of the differences in the findings.)

**Figure 16 – State Efforts that Encourage FBO Participation in Grants and Contracts – Findings from 2003 and 2005**

	2003 (percent)	2005 (percent)
<b>Modified Contract Processes</b>	<b>9.8</b>	<b>20.4</b>
<b>Scaled Back the Size of Contracts</b>	<b>4.9</b>	<b>14.8</b>
<b>Encouraged Sub-Contracting with FBOs</b>	<b>21.4</b>	<b>26.0</b>
<b>Encouraged FBOs to Join RFP Mailing Lists</b>	<b>40.5</b>	<b>44.0</b>
<b>Changed RFP Notification Process</b>	<b>23.8</b>	<b>22.4</b>
<b>Provided Capacity-Building/Start-Up Grants</b>	<b>4.7</b>	<b>21.2</b>

*Areas where there is little difference between 2003 and 2005:*

- States That Have Taken Few Steps to Encourage FBO Participation in Grants and Contracts: What the chart in Figure 16 does not show is that there has not been a significant change in the percentage of states that have taken less than three of the steps included in the list. In 2003, we reported that 65 percent of the states had taken two or fewer of these steps; in 2005, 61 percent of the states for which we have data reported a similar level of activity.
- Identifying the Faith Character of Contractors and Grantees: For our previous report, we asked researchers to attempt to quantify the level of funding of FBO services. With few exceptions, the researchers found this to be nearly impossible because information about contracts and grants was not centralized, but also because the faith character of contractors and grantees was not identified. The situation has not changed much since that time. Only five states have information that would permit identification of faith-based service providers.
- Policy Guidance: We reported in 2003 that “most states have not provided FBO contractors with specific guidance regarding permissible and impermissible activities.” The situation has not changed significantly since then. For whatever reason, many states have not provided FBOs with explicit written guidance regarding permissible and impermissible practices, and whether religious beliefs can be considered in employment

decisions. In some cases, state documentation refers broadly to federal statutes and regulations, but does not spell out specific limitations.

For each state, we summarized our research by asking the following questions:

- In what ways are there differences in recent years as compared to before 2002 in the participation of FBOs in social services in this state?
- How have state politics changed in recent years as attention to this issue has increased at the federal level?

For the first question, looking over responses for all of the states, the general sense is that there is an increased awareness on the part of state officials of the roles that faith-based service providers and representatives of the faith community can play in social service systems. And there is an increased awareness on the part of FBOs of possible sources of funding for services and for capacity building activities. But at the same time, there is not a strong sense that there has been a significant increase in the actual involvement of FBOs in the delivery of services, at least services funded by states. While a number of states have recently created offices with responsibility to serve as liaisons to the faith community, this has not necessarily resulted in a significant increase in contracts and grants with FBOs.

Many of the states have a long history of working with faith-based service providers, and as a consequence, have not considered changing policies and processes with regard to such providers to be a priority. The delay in the reauthorization of the TANF program has caused some states to hold off on new initiatives in the program. Politics has also played a role – certain states have been more likely to pursue faith-based initiatives, while in others, staff in state agencies are in many cases wary of the subject.

**There is an increased awareness on the part of state officials of the roles that faith-based service providers can play. And there is an increased awareness on the part of FBOs of possible sources of funding for services. But at the same time, there is not a strong sense that there has been a significant increase in the actual involvement of FBOs in the delivery of services, at least services funded by states.**

To the extent that there is evidence of an increase in the involvement of FBOs in the delivery of services, as opposed to capacity-building activities, it is generally in programs in which the federal government has more direct influence. For example, prisoner re-entry programs, mentoring programs for children of incarcerated parents, parenting, fatherhood and healthy marriage programs, substance abuse treatment programs, many with some new federal funding attached, are where most of the action evident at the state level is taking place.

Responses to the second question were less uniform. While generally speaking, state politics related to working with FBOs, at least in the governors' offices and in executive branch agencies, have not changed significantly, this is not universally true. There have been changes, but not always in the direction that the federal government has encouraged. Many states have followed the federal lead, creating offices for faith-based and community initiatives, and initiating programs identified with governors and other high-level state officials. On the other hand, there are a few states that had been more active in the past, but have recently scaled back high-level activities. And of course, there are states where the absence of a change in state politics regarding increasing the involvement of FBOs in delivering social services does not mean that the state has not been active recently. In states like Texas and Florida, initiatives begun before 2003 have continued to mature and grow.

And there is certainly a good deal of activity when we look beyond the states. The federal government's efforts, particularly in programs where there is more direct involvement on the part of federal agencies in influencing the types of organizations that receive grant funding, appears to have affected the number of FBOs that are aware of and interested in public funding.

The fact that this report suggests that many states have not aggressively implemented policies and processes to increase the involvement of FBOs in delivering publicly-funded services is not entirely surprising. A number of factors, some well beyond the control of the states, have conspired to dampen the overall effort.

Unlike the heady days of the late 90s, when welfare reform was a hot topic and states were flush with funds, both from economic good times and the significant reduction in welfare caseloads, states have been hurting economically. As research in 2004 by the Rockefeller Institute of Government has shown, programs, contracts, and staff have been cut.

*[T]he relative surplus of state resources compared to social needs, found in the late 1990s, has largely vanished. State fiscal conditions deteriorated rapidly after 2001 and have not fully recovered, although there have been several quarters of steady revenue growth... One major potential source of funding for FBOs—the TANF block grant—has experienced increasing competition for service dollars, due to short-run economic changes as well as longer-run developments in the program.<sup>11</sup>*

Maintaining a basic level of service has been the focus; new initiatives are a luxury that states have not been able to afford. There is less opportunity to form

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<sup>11</sup> *Funding Faith-Based Social Services in a Time of Fiscal Pressure*, by Courtney Burke, James Fossett and Thomas Gais; The Roundtable on Religion and Social Welfare Policy, October 2004, p. 3. at [http://www.religionandsocialpolicy.org/docs/research/TEMP\\_10-26-02\\_Funding\\_FB\\_SS-FiscalPressures.pdf](http://www.religionandsocialpolicy.org/docs/research/TEMP_10-26-02_Funding_FB_SS-FiscalPressures.pdf).

partnerships, particularly those involving funding for services, than in the recent past. The exception appears to be in programs where the federal government has taken steps to ensure that faith-based providers are included when new funding opportunities are announced. While states' financial circumstances have improved considerably over the last year, the effects of this change on social service programs, particularly in light of potential reductions at the federal level, are unclear.

A second reason that states have been less than aggressive in pursuing initiatives to increase the involvement of FBOs in the social services delivery system is the long-standing involvement of FBOs in delivering services in many states. State officials frequently repeated what we heard in 2003. FBOs have been involved in delivering services under contract and via grants for many years. They are integrated into larger social services systems and are treated as any other type of service provider. Staff in these states insist that there is already a level playing field, and thus no real reason to take steps to change state practice.

A third, perhaps less explicitly stated reason is political. As with any initiative driven by a governor, a change in the governorship, even within the same party, can spell the end or at least a significant pause in the effort. This dynamic has been in evidence in a number of states over the last few years. A relatively active effort has lost steam, or in at least one case, more or less ended, with a change of governor.

Non-responsiveness of FBOs was also mentioned by some state staff as the reason that there was less activity over the last few years than in the immediately-preceding time period. In one state, an initiative to encourage faith-based providers to connect with welfare recipients lost steam when it became clear that no funds were designated for the effort. A related reason is the lack of capacity of many smaller FBOs and congregations, a problem that is the focus of capacity-building activity around the country.

The design of this study may have inadvertently played a role in influencing the picture of state activity reflected in our findings. As we explained above in the section on the study's methodology, the focus of research regarding state grant and contract policies and processes was the TANF program. It is the program in which Charitable Choice came to the fore. It is the program that, at least initially, was a focus of efforts to develop the federal Faith-Based and Community Initiative. States have had nearly a decade to implement policy and process changes to increase the involvement of FBOs in providing services. It is a program that by its very nature encourages the use of service providers to assist families as they move toward self-sufficiency. As the program has evolved, the percentage of clients who need a range of more intensive services has increased, and as families run up against the program's lifetime time limit, it is likely that other safety net programs, including those provided by FBOs, will be called upon to address client needs.

But a number of factors affecting the TANF program have had the opposite effect, resulting in less contracting for services than might have been expected. First, although the program was due to be reauthorized by Congress in 2002, what has happened instead has been a series of continuing resolutions that have left the program in a sort of limbo. The Bush administration has requested more strenuous work requirements, as well as funding for marriage and fatherhood initiatives, which would have likely meant a more significant role for FBOs in the program. Without reauthorization, none of this has happened. In addition, the overall level of funding for the program has become more of a question as the TANF rolls have plunged and the federal deficit has risen. So states have been in a holding pattern, to a certain extent, regarding taking on new initiatives in the program.

Changes at the state level related to working with FBOs are varied, incremental, and opportunistic, rather than universal, revolutionary, and fundamental.

In 2003, we summarized our findings as follows. “For the most part, the response to federal Charitable Choice legislation and the Bush administration’s more recent initiatives has been muted.” With regard to many of the states, the same can be said for the intervening two years. While the White House and an array of federal agencies have quite actively pursued the Faith-Based and Community Initiative, a number of states have been slow to respond. As indicated above, there are many reasons that this has been

the case, not the least of which has been the budget situation in most states since 2003.

But that is not the entire story. State legislatures have been relatively active in proposing and in many cases enacting, with the signature of their governors, legislation that includes and often targets FBOs. A number of additional states have designated staff and offices to serve as liaisons to the faith community. There are active initiatives in the majority of states, though many of these initiatives appear to be motivated by federal funding opportunities, rather than initiatives driven by a substantial infusion of state resources, either staff or financial resources. The changes at the state level are varied, incremental, and opportunistic, rather than universal, revolutionary, and fundamental. In the federal system in the United States, that is to be expected.

## Appendix A: State Constitutional Provisions

The Roundtable’s Legal Research team<sup>12</sup> compiled the non-establishment provisions in each of the fifty state constitutions. The full text of all constitutional provisions relating to the establishment of religion and the funding of religiously affiliated organizations, general comments containing a brief explanation of how the state attorneys general and high courts have interpreted their relevant constitutional provision, and citations for the cases or opinions mentioned can be found at [http://www.religionandsocialpolicy.org/resources/state\\_constitutional\\_provisions\\_resource.cfm](http://www.religionandsocialpolicy.org/resources/state_constitutional_provisions_resource.cfm).

Four questions were asked with respect to each state’s constitutional provisions, listed below. The table which follows summarizes the answers to these questions with gray shading indicating positive responses.

*1. Does the constitution have a general non-establishment clause?*

- These clauses tend to be very similar in both language and application to the Federal Constitution.
- Ten states have a general non-establishment clause.

*2. Does the constitution have a “no-funding” clause that prohibits funding of religious organizations?*

- Thirty-seven states have constitutional provisions that forbid expenditures that would benefit religiously affiliated organizations. Some of these are narrowly focused on places of worship and ministries.

*3. Does the constitution have an education-specific “no-funding” clause?*

- Twenty nine states have provisions restricting appropriations to private schools, and/or private schools with religious affiliations. Many of these provisions are the so-called Blaine Amendments.

*4. In its prohibitions on spending, does the constitution make a distinction between direct and indirect funding?*

- Ten constitutions contain language that specifically details what sort of benefits may be bestowed upon religiously affiliated organizations. Some forbid only direct benefits, while others forbid both direct and indirect benefits.

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**State Constitutional Provisions**  
 (Grey shading indicates a positive response)

	Non-Establishment	General – No Funding	Education – No Funding	Direct/Indirect Distinction
ALABAMA				
ALASKA				
ARIZONA				
ARKANSAS				
CALIFORNIA				
COLORADO				
CONNECTICUT				
DELAWARE				
FLORIDA				
GEORGIA				
HAWAII				
IDAHO				
ILLINOIS				
INDIANA				
IOWA				
KANSAS				
KENTUCKY				
LOUISIANA				
MAINE				
MARYLAND				
MASSACHUSETTS				
MICHIGAN				
MINNESOTA				
MISSISSIPPI				
MISSOURI				
MONTANA				
NEBRASKA				
NEVADA				
NEW HAMPSHIRE				
NEW JERSEY				
NEW MEXICO				
NEW YORK				
NORTH CAROLINA				
NORTH DAKOTA				
OHIO				
OKLAHOMA				
OREGON				

	Non- Establishment	General – No Funding	Education – No Funding	Direct/Indirect Distinction
PENNSYLVANIA				
RHODE ISLAND				
SOUTH CAROLINA				
SOUTH DAKOTA				
TENNESSEE				
TEXAS				
UTAH				
VERMONT				
VIRGINIA				
WASHINGTON				
WEST VIRGINIA				
WISCONSIN				
WYOMING				

## Appendix B: Hiring Rights

The Roundtable's Legal Research team at George Washington Law School compiled the relevant employment discrimination laws of all 50 states and the District of Columbia. The compilation is organized around four questions, all of which pertain to coverage of faith-based organizations (FBOs), exemption for FBOs from the prohibition on religious discrimination, and potential loss or waiver of that exemption for FBOs who enter into contractual relationships with state and local government. The text of the relevant employment discrimination laws, together with the comparable laws of a number of major cities, can be found on the Roundtable's website at [http://www.religionandsocialpolicy.org/docs/legal/reports/12-4-2002\\_state\\_of\\_the\\_law.pdf](http://www.religionandsocialpolicy.org/docs/legal/reports/12-4-2002_state_of_the_law.pdf).

As seen in the table below, the broad outlines of that survey reveal:

- Forty-seven states and the District of Columbia have enacted a set of their own employment discrimination norms. (Alabama's hiring provisions apply only to the state Legislature; in Mississippi, the hiring discrimination statute applies only to those seeking employment in state service; and according to the Attorney General in North Carolina, the state follows federal law.)
- Of these, forty-three recognize some form of exemption for FBOs from the state law prohibition on religious discrimination.
- Of these forty-three, however, eighteen states explicitly provide that FBOs that enter into contracts with the state do NOT retain their exemption from state nondiscrimination law.

Thus, in about one-third of the states religious organizations do not have or retain any right to prefer co-religionists in their hiring practices insofar as they relate to contracts with the government. One major question which we have not been able to answer definitively in these jurisdictions is whether the loss of the co-religionist exemption applies only to positions funded in whole or part by the government, or applies umbrella-like to all hiring by FBOs that have government contracts.

**State Laws Regarding Hiring Rights**  
(Grey shading indicates a positive response)

	Have Enacted Discrimination Provisions	Exemption for Religious Organizations	Exemption Relinquished When Receiving Public Funds
ALABAMA			
ALASKA			No provision
ARIZONA			
ARKANSAS			<i>Unknown</i>
CALIFORNIA			
COLORADO			
CONNECTICUT			
DELAWARE			
DIST. of COLUMBIA			
FLORIDA			<i>Unknown</i>
GEORGIA			<i>Unknown</i> <sup>13</sup>
HAWAII			<i>Unknown</i>
IDAHO			No provision
ILLINOIS			
INDIANA			
IOWA			
KANSAS			
KENTUCKY			
LOUISIANA			
MAINE			
MARYLAND			
MASSACHUSETTS			
MICHIGAN			
MINNESOTA			<i>Unknown</i>
MISSISSIPPI			
MISSOURI			<i>Unknown</i>
MONTANA			
NEBRASKA			
NEVADA			<i>Unknown</i>
NEW HAMPSHIRE			No provision
NEW JERSEY			
NEW MEXICO			<i>Unknown</i>
NEW YORK			

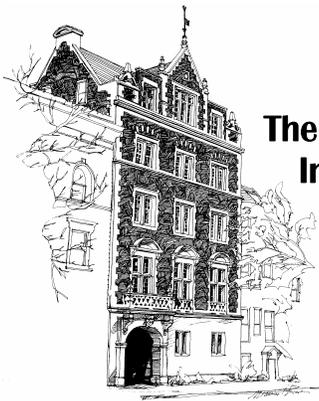
<sup>13</sup> The state of Georgia, Department of Human Resources, has agreed to end funding sectarian institutions that make hiring decisions on religious grounds as part of a settlement in a case involving a Methodist foster care agency. See [http://www.religionandsocialpolicy.org/legal/legal\\_update\\_display.cfm?id=22](http://www.religionandsocialpolicy.org/legal/legal_update_display.cfm?id=22) for analysis of this case.

	Have Enacted Discrimination Provisions	Exemption for Religious Organizations	Exemption Relinquished When Receiving Public Funds
NORTH CAROLINA			
NORTH DAKOTA			No provision
OHIO			
OKLAHOMA			
OREGON			
PENNSYLVANIA			
RHODE ISLAND			<i>Unknown</i>
SOUTH CAROLINA			No provision
SOUTH DAKOTA			No provision
TENNESSEE			
TEXAS			
UTAH			<i>Unknown</i>
VERMONT			<i>Unknown</i>
VIRGINIA			
WASHINGTON			<i>Unknown</i>
WEST VIRGINIA			
WISCONSIN			
WYOMING			<i>Unknown</i>





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