TESTIMONY

OF

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BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING

"FAITH-BASED INITIATIVES: RECOMMENDATIONS OF THE PRESIDENT'S ADVISORY COUNCIL ON FAITH-BASED AND COMMUNITY PARTNERSHIPS AND OTHER CURRENT ISSUES"

THURSDAY, NOVEMBER 18, 2010

Chairman Nadler, Ranking Member Sensenbrenner, and members of the subcommittee, I would like to thank you for the invitation to testify before you today. I am grateful for your interest in the work of the President's Advisory Council on Faith-Based and Neighborhood Partnerships and for your leadership on constitutional and civil rights issues. In particular, I would like to thank the members of this subcommittee and your staffs for your leadership on the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA), two landmark federal free exercise statutes.

My name is Melissa Rogers. I direct the Center for Religion and Public Affairs at Wake Forest University's Divinity School and serve as a nonresident senior fellow at The Brookings Institution. I also serve as chair of President Obama's Advisory Council on Faith-Based and Neighborhood Partnerships. In the past, I have held positions as executive director of the Pew Forum on Religion and Public Life and general counsel of the Baptist Joint Committee for Religious Liberty.

I do not speak today for any of these institutions or organizations. Instead, I speak as someone who has long worked on issues related to partnerships between the government and community organizations, both religious and secular. I also speak as one who believes that the American imperatives of serving our neighbors and respecting religious freedom are scriptural imperatives as well.

In this testimony, I will describe some of the Advisory Council's recommendations to President Obama and his administration. I will also touch on some related issues the Council did not address.

I. Advisory Council Recommendations

In early 2009, President Obama created the Advisory Council on Faith-Based and Neighborhood Partnerships, a body of twenty-five leaders affiliated with secular and religious organizations. The members of the Advisory Council are:

- Diane Baillargeon, President and CEO, Seedco
- Anju Bhargava, President, Asian Indian Women of America; Founder, Hindu American Seva Charities
- Bishop Charles Blake, Presiding Bishop, Church of God in Christ
- Noel Castellanos, CEO, Christian Community Development Association
- Dr. Arturo Chavez, President and CEO, Mexican American Catholic College
- The Rev. Cannon Peg Chemberlin, President, National Council of Churches; Executive Director, Minnesota Council of Churches
- Fred Davie, Senior Director, The Arcus Foundation
- Nathan J. Diament, Director of Public Policy, Union of Orthodox Jewish Congregations of America
- Dr. Joel C. Hunter, Senior Pastor, Northland, a Church Distributed
- Harry Knox, Director, Religion and Faith Program, Human Rights Campaign Foundation

- Bishop Vashti Murphy McKenzie, Bishop, Thirteen Episcopal District, African Methodist Episcopal Church
- Dalia Mogahed, Senior Analyst and Executive Director, The Center for Muslim Studies, Gallup
- The Rev. Otis Moss, Jr., Pastor Emeritus, Olivet Institutional Baptist Church
- Dr. Frank Page, Vice-President of Evangelization, North American Mission Board; Past President, Southern Baptist Convention
- Dr. Eboo Patel, Founder and Executive Director, Interfaith Youth Core
- Anthony R. Picarello, Jr., General Counsel , United States Conference of Catholic Bishops
- Nancy Ratzan, President, National Council of Jewish Women
- Melissa Rogers, Director, Center for Religion and Public Affairs, Wake Forest University Divinity School
- Rabbi David Saperstein, Director and Counsel, Religious Action Center of Reform Judaism
- The Rev. William J. Shaw, President, National Baptist Convention, USA, Inc.
- Father Larry J. Snyder, President and CEO, Catholic Charities USA
- Richard E. Stearns, President, World Vision United States
- Judith Vredenburgh, Immediate Past President and CEO, Big Brothers Big Sisters of America
- Jim Wallis, President and CEO, Sojourners
- The Rev. Dr. Sharon E. Watkins, General Minister and President, Christian Church (Disciples of Christ) in the United States and Canada

President Obama asked the Advisory Council to make recommendations to his administration for strengthening the partnerships the government forms with religious and non-religious groups in six issue areas:

- Economic Recovery and Domestic Poverty
- Environment and Climate Change
- Fatherhood and Healthy Families
- Global Poverty and Development
- Inter-religious Cooperation
- Reform of the Office of Faith-Based and Neighborhood Partnerships

In March 2010, the Council urged the government to take a wide range of actions to improve the lives of people in need.[1] For example, instead of requiring struggling families to travel to multiple sites to access Earned Income Tax Credit, food stamps, and medical, veterans' and other benefits, the Council called on the government to work with nonprofit partners so families may access all of these benefits at single sites. Instead of immediately locking up fathers who are delinquent on their child support payments, the Council advocated the extension of Fathering Courts, programs that identify barriers that

[1] The Council's report may be found at http://www.whitehouse.gov/blog/2010/03/11/a-new-era-partnerships-advisory-council-faith-based-and-neighborhood-partnerships-pr

are preventing fathers from making these payments and linking them with services, including education, counseling, and employment opportunities, that help them to overcome those barriers. In one Kansas City Missouri Fathering Court, 281 graduates and current participants have become significantly more involved in the lives of their children and have contributed more than $ 2.6 million in child support, while the state has avoided more than $2.8 million in incarceration costs. The diverse Advisory Council, made up of members of many different faiths, beliefs and political perspectives, was able to unite around more than 60 proposals like this that have the potential to bring about meaningful change for vulnerable people.

In its report, the Council also offered a number of recommendations aimed at strengthening the constitutional and legal footing of the partnerships the government forms with community-serving organizations, both religious and secular. That might sound improbable, given the religious and political diversity of the Council, as well as some serious differences among Council members about the proper relationship between government and religion. Through painstaking work, however, the Council was able to unanimously endorse a list of important reforms in this area, too.

In light of the jurisdiction of this subcommittee and the topic of today's hearing, my testimony focuses on these recommended reforms. This work began with a diverse taskforce of experts drafting recommendations under the auspices of the Reform of the Office of Faith-Based and Neighborhood Partnerships Taskforce ("Reform Taskforce"). The Reform Taskforce included leaders from both inside and outside the Council. These experts hold a wide variety of views on the proper relationship between church and state. For example, some members of the taskforce enthusiastically supported the faith-based initiative of the previous administration, others vigorously opposed it, and still others regarded it as a mixed bag. Members of the taskforce are:

- Dr. Stanley Carlson-Thies, Founder and President, Institutional Religious Freedom Alliance
- Noel Castellanos, CEO, Christian Community Development Association
- Fred Davie, Senior Director, The Arcus Foundation
- Nathan J. Diament, Director of Public Policy, Union of Orthodox Jewish Congregations of America
- Bridget McDermott Flood, Executive Director, Incarnate Word Foundation
- The Rev. Dr. Welton C. Gaddy, President, The Interfaith Alliance
- Harry Knox, Director, Religion and Faith Campaign, Human Rights Campaign Foundation
- The Rev. Barry Lynn, Executive Director, Americans United for Separation of Church and State
- Anthony R. Picarello, Jr., General Counsel, United States Conference of Catholic Bishops
- Melissa Rogers, Director, Center for Religion and Public Affairs, Wake Forest University Divinity School
- Ronald J. Sider, President, Evangelicals for Social Action

- The Rev. Brent Walker, Executive Director, Baptist Joint Committee for Religious Liberty
- Rabbi David Saperstein, Director and Counsel, Religious Action Center of Reform Judaism

As far as we know, the Council process was the first time a governmental entity convened individuals with serious differences on some church-state issues and asked them to seek common ground in this area. The Reform Taskforce did not consider or come to agreement on every issue. Nevertheless, we, and later the full Advisory Council, were able to unite around a number of recommendations for important reforms of the rules governing these partnerships. As noted in our report, policies that enjoy broad support are more durable, and finding common ground on church-state issues minimizes litigation and maximizes time and energy to focus on the needs of people who are struggling.

The Recommendation Process

The Reform Taskforce began its work by gathering existing federal rules, policies, and guidance on social service partnerships and drafting a list of issues we might address.[2] After drafting this list, the taskforce found we had to narrow it in light of time constraints. We used two main criteria to do so. First, we selected cross-cutting issues – ones that have an important impact on a wide range of federally funded social service programs. Second, we chose to address issues where we might be able to find significant consensus.

After dividing up the issues among us, we wrote initial drafts of recommendations and then circulated them to one another. A long and painstaking process of discussion and redrafting ensued. Ultimately, we were able to reach agreement on a number of important recommendations for reform.

Once the Reform Taskforce finalized these draft recommendations, it forwarded them to the full Advisory Council for its consideration. Council members then reviewed the drafts, asking questions and offering suggestions. Based on these comments, the taskforce revised its drafts again, and then the Council offered additional feedback. Ultimately, the Advisory Council unanimously adopted these recommendations and folded them into one Council report.

The Council's recommendations on Reform of the Office of Faith-Based and Neighborhood Partnerships call for several different kinds of actions. Some of them urge the Obama administration to amend a 2002 Executive Order (Executive Order 13279) that sets forth fundamental principles and policymaking criteria for federally funded

[2] The White House has said that it is conducting its own evaluation of the issue of whether religious organizations may make religion-based decisions regarding government-funded jobs. This evaluation is taking place outside the Council process. Members of the Reform Taskforce and the Advisory Council have advanced and will continue to advance our respective views on this matter outside the scope of the Council process. See *infra* 10-21.

partnerships with religious and secular social service providers.[3] Other recommendations call for federal agencies to revise some of the regulations and guidance associated with the distribution of social service funds. Still other recommendations advocate changes in the federal government's communications strategies or in intergovernmental relations.

The following sections describe some of these recommendations. The first section describes issues about which there was consensus on the Advisory Council, which was true of the overwhelming majority of issues we considered. The second section describes two issues where Council members differed.[4]

Consensus Recommendations

In recent years, there's been a great deal of confusion about whether providers could use government grant money to pay for counseling involving religious instruction, for example, or mix religious content into programs funded by government grants. Current rules are fuzzy on these matters, and this has resulted in substantial litigation.[5]

For this reason, the Council called on the Obama administration to amend Executive Order 13279 to make it clear that direct aid cannot be used to pay for explicitly religious activities, meaning any activities that have overt religious content. This helps to ensure that the government does not promote *or* regulate religion.

The Council said the government also should give providers a variety of examples and case studies to illustrate the practical import of these limits. It needs to be clear to providers, for example, that direct government aid cannot be used to pay for activities such as religious instruction, proselytizing, or the production or dissemination of sacred texts or other religious materials.

Likewise, providers often lack specific guidance about how to create a meaningful and practical separation between any privately funded religious activities they offer and nonreligious activities funded by direct government aid. If both of these kinds of activities are offered at the same site, for example, it must be clear to beneficiaries that the programs are separate and distinct. Participants in the government program must be dismissed when that program ends, and there must be an interval between the programs to vacate the room before the privately funded religious program begins. Providers also must emphasize that participation in any religious activities is purely voluntary. In particular, the Council highlighted a settlement agreement that provides some practical guidance along these lines and urged the administration to make guidance like this available to all providers of social services subsidized by direct federal aid. Following

[3] Executive Order 13279, *Equal Protection of the Laws for Faith-Based and Community Organizations* (December 12, 2002) ("Executive Order 13279").

[4] The Council unanimously endorsed the final report that was released in March 2010, affirming recommendations that reflected both consensus and non-consensus issues.

[5] See Melissa Rogers and E.J. Dionne, Jr., *Serving People in Need, Safeguarding Religious Freedom: Recommendations for the New Administration on Partnerships with Faith-Based Organizations*, (Brookings Institution)(2008). The views expressed in this testimony should not be attributed to my co-author.

guidelines like these will help to safeguard beneficiaries' rights, while also keeping the government from meddling in religious activities.

At the same time, we recommended that the Obama administration equally emphasize the fact that providers may receive government funds and maintain a religious identity through things like a religious name and mission statement. To cite an obvious example, no government official should insist that the St. Vincent de Paul Center change its name to the "Mr. Vincent de Paul Center." A provider can have a religious name and mission while using grants funds appropriately and carefully separating government-funded activities from privately funded religious ones.

Some religious providers are comfortable segmenting their funds and activities in these ways – they simply need to know what is required and have clear instructions about how to do it. Other providers will react to this information differently – they will find in it a clear signal that government grants are not for them. Both are positive outcomes. Government grants are not a good fit for every program, even every effective program; it is far better for all concerned to arrive at this kind of determination at the outset.

Current rules also often lack an explicit and comprehensive guarantee of an alternative provider if beneficiaries object to the religious character of their provider. Further, there frequently has been no requirement that beneficiaries receive written notice of this and other rights. In a nation that prizes religious freedom, that is simply unacceptable.

Thus, the Council recommended that the government change its rules to require that beneficiaries of all federal social service programs receive written notice of these rights from the time they enter a government-funded program. If a beneficiary objects to his or her provider, the beneficiary must have access to an alternative secular provider or one that is religiously acceptable to them. Referrals to alternative providers must be made soon after objections are raised, and the alternative provider must be "reasonably accessible and have the capacity to provide comparable service to the individual."

The existing executive order that sets forth governing rules in this area also makes no mention of the government's overarching duty to monitor and enforce legal requirements relating to the use of federal social service funds, including the constitutional obligation to monitor and enforce Establishment Clause standards in ways that avoid excessive entanglement between religion and government. So the Reform Taskforce, and subsequently, the Advisory Council, recommended that this executive order and associated regulations be amended to describe these obligations. The Council also urged the administration to add church-state rules to audit checklists, and to ensure that grant documents reference all rules that follow federal funds.

Additionally, understanding of and confidence in federally funded social service programs administered by nonprofits suffers because it has often been difficult, if not impossible, to access lists of entities receiving these funds. This may have fed the false impression that there's a pot of federal social service money set aside for religious groups (or groups affiliated with particular faiths).

Thus, the Council recommended that all governmental bodies disbursing federal social service funds post online a list of entities receiving such aid and do so in a timely manner. If implemented, this reform would create unprecedented transparency in the federally funded social service system.

For some of the same reasons, we agreed that the government should instruct its own employees and all peer reviewers that they should make decisions about grants based on the merits of proposals, not on religious or political considerations. "[A]n organization should not receive favorable or unfavorable marks [in the peer review process] because it is affiliated or unaffiliated with a religious body, or related or unrelated to a specific religion," the Council said. Similarly, we recommended that Executive Order 13279 be amended to state that the White House Office and agency centers must comply with all applicable constitutional and statutory restrictions, including the Hatch Act's limit on the use of governmental resources for partisan political activities.

Another overarching aim of the Advisory Council was to encourage the government to create greater uniformity in its rules, policies, and guidance materials. Thus, we recommended that there be greater communication and coordination across federal agencies to make these materials as consistent as possible. This would provide clearer messages for the hard-working organizations seeking to partner with government to serve people in need.

The following bullet points summarize some of the other consensus recommendations:

- Require governmental bodies that disburse federal social service funds to post online all guidance documents for nongovernmental organizations that provide those services as well as other documents needed to receive and maintain federal funding (including requests for proposals, grants, and contracts).

- Ensure that each governmental body that disburses federal funds has a mechanism in place to allow that body to take necessary enforcement actions for noncompliance with church-state standards as well as other relevant legal standards.

- Develop specific guidance for nongovernmental intermediaries to instruct them in their obligations regarding monitoring of subgrantees and subcontractors. Subgrantees and subcontractors are subject to the same church-state standards that apply to the nongovernment organizations receiving the primary government grants or contracts (e.g., requirement to separate privately funded explicitly religious activities from government-funded non-religious ones).

- Ensure that organizations that are awarded federal social service funds undergo training about the conditions following these funds.

- Clarify the fact that beneficiaries' right to refuse to "actively participate" in a religious practice includes the right to refuse even to attend such a practice.

- Clearly label programs as involving direct aid (e.g., government grants or contracts) and indirect aid (e.g., social service vouchers or certificates) because current constitutional interpretation establishes different church-state rules for these two types of aid. Council members could not agree on what the law *should be* in this area, but we did agree that it would be beneficial if the administration stated its understanding of what current law *is* on these issues.

- Reduce some of the administrative burdens and other costs associated with obtaining formal recognition of 501(c)(3) tax-exempt status because this would facilitate the voluntary pursuit of that formal recognition and the creation of separate 501(c)(3) entities. This might be done by waiving existing filing fees, expediting processing, and taking other steps to help smaller organizations form separate 501(c)(3) organizations.

- Develop a list of best practices for keeping direct aid separate from explicitly religious activities and accounting procedures and tracking mechanisms that help facilitate and demonstrate the constitutional use of government funds. Promote those means to religious social service providers that may receive such aid.

- Specifically and prominently state, in an executive order and elsewhere, that compliance with constitutional principles is as important as ensuring that social service partnerships are effective and efficient. Make this message an essential part of all communications of the White House Office of Faith-Based and Neighborhood Partnerships and the Centers for Faith-Based and Neighborhood Partnerships scattered across a number of federal agencies.

- Emphasize nonfinancial partnerships with nonprofits (those in which no money passes from the government to the nonprofit) as much as financial partnerships. Nonfinancial partnerships present far fewer constitutional issues, are often preferred by civil society organizations, and are as valuable to government as financial partnerships.

- Promote a more accurate understanding of what the White House Office and agency centers do and do not do. It should be regularly emphasized, for example, that while these offices often notify community groups, both religious and secular, about opportunities to partner with government, they do not and should not play any role in decision-making about which organizations receive federal social service funds.

Again, Council members include those associated with religious and secular service providers; the Union of Orthodox Jewish Congregations and the Religious Action Center of Reform Judaism; World Vision and Hindu American Seva Charities; the United States

Catholic Conference and the Human Rights Campaign; as well as others. When diverse leaders like these can agree on important church-state issues, it is a sign of real progress.

Non-Consensus Issues

Council members disagree about two significant issues. The first issue is whether the government should require houses of worship that would receive direct federal social service funds to form separate corporations to receive those funds. The Council was almost evenly divided on this issue. A narrow majority (13 Council members) believe the government should require houses of worship that wish to receive direct federal social service funds to establish separate corporations "as a necessary means for achieving church-state separation and protecting religious autonomy, while also urging states to reduce any unnecessary administrative costs and burdens associated with attaining this status."

Twelve Council members disagree. In their view, separate incorporation is sometimes the best way to achieve these goals, but it should not be a blanket requirement. The government should not require separate incorporation, these members said, "because it may be prohibitively costly and burdensome, particularly for smaller organizations, resulting in the disruption and deterrence of effective and constitutionally permissible relationships."

The second non-consensus issue was whether the government should allow social services subsidized by direct aid to be provided in rooms that contain religious art, scripture, messages, or symbols. A majority of the Council (16 members) believe the administration should neither require nor encourage the removal of religious symbols where services subsidized by direct government aid are provided, but instead should urge providers to be sensitive and accommodating regarding beneficiaries who object to the presence of religious symbols. If these voluntary measures are insufficient to overcome objections, these Council members also affirm that beneficiaries must have access to an alternative provider to which they do not object.

On the other hand, seven Council members believe federally funded social services should be offered in areas with religious items only when there is no available space in providers' offices without these items and when removing or covering them would be infeasible. Two Council members believe the Administration should permit nongovernmental organizations to offer federally funded social services only in areas containing no religious art, scripture, messages, or symbols.

Administration Consideration of Council Recommendations

On Tuesday, March 9, 2010, the Council presented these and other recommendations to President Obama and members of his administration.[6] Since that time, the Obama

[6] Again, the Advisory Council report may be found at http://www.whitehouse.gov/blog/2010/03/11/a-new-era-partnerships-advisory-council-faith-based-and-neighborhood-partnerships-pr.

administration has conducted a process to consider these recommendations. This process has involved President Obama, leaders from various sectors of the Executive Office of the President, and representatives of federal agencies. It is my understanding that the Obama administration plans to make an announcement in the near future regarding these recommendations.

II. Religion-Based Decisions Regarding Government-Funded Jobs

The most prominent issue the Advisory Council did not consider is whether religious organizations may make religion-based decisions regarding government-funded jobs.[7] Council members have differing views on this issue, and I want to emphasize again that I not speaking for the Council in this testimony.

The debate over this issue does not divide those who are friendly toward religion from those who are hostile toward it; those who believe in religious liberty from those who oppose it; those who care about the poor from those who do not. There are people of good will on all sides of this debate. There are people who cherish their faith and religious liberty on all sides of this debate. And there are people who believe we must do more to serve those in need on all sides of this debate. I hope the issue can be discussed in that spirit.

The following sections briefly discuss some of the relevant constitutional, statutory, and policy issues.

Constitutional Issues

The U.S. Supreme Court has addressed the constitutionality of religion-based employment decisions in the context of a religious organization that did not receive government funds. In the 1987 case of *Corporation of Presiding Bishop v. Amos*, the Court considered a case involving a building engineer who worked at a gymnasium owned by the Church of Jesus Christ of Latter-day Saints (LDS).[8] The LDS church fired the engineer after more than a decade of service because he did not qualify for a "temple recommend," a certificate demonstrating that he was a bona fide member of the church and thus eligible to attend LDS temples.[9] Temple recommends "are issued only to individuals who observe the Church's standards in such matters as regular church attendance, tithing, and abstinence from coffee, tea, alcohol, and tobacco."[10] The engineer argued that, to the extent that the Title VII of the 1964 Civil Rights Act allowed the LDS church to fire him for this reason, it violated the Establishment Clause of the First Amendment.

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[7] See *supra* n.2.
[8] 483 U.S. 327 (1987).
[9] *Id*. at 330.
[10] *Id*. at n.4.

Title VII is the equal employment opportunity title of the 1964 Civil Rights Act.[11] Title VII applies to employers with fifteen or more employees in an industry affecting interstate commerce[12] and bars them from discriminating in employment on the basis of "race, color, religion, sex, or national origin."[13] However, Title VII exempts religious organizations from its ban on religious discrimination in employment.[14]

As signed into law in 1964, the Act contained an exemption from its religious nondiscrimination requirements for positions engaged in the religious activities of the organization.[15] In 1972, Congress expanded this exemption to allow religious organizations to hire on the basis of religion in all employee positions.[16] This exemption from Title VII is sometimes referred to as the "702 exemption."[17]

In the *Amos* case, the Court rejected the engineer's argument that the 702 exemption violated the First Amendment's Establishment Clause. The Court found the exemption had a genuine secular purpose, saying it was a "significant burden" for religious organizations to have to predict which of their jobs a court would find to be engaged in religious activities and which were not.[18] The 702 exemption spared a religious organization this concern, thus freeing it to define and advance its mission as it saw fit, rather than as the government saw fit. Congress had the power to lift governmental burdens on religious practices, the Court said.[19] Further, the exemption did not have the forbidden primary effect of advancing faith. The Court observed: "A law is not unconstitutional simply because it *allows* churches to advance religion, which is their very purpose. For a law to have forbidden 'effects' under *Lemon* [*v. Kurtzman*], it must be fair to say that the *government itself* has advanced religion through its own activities and influence."[20]

The Court declined, however, to consider whether the Constitution mandated the Title VII exemption. "We have no occasion to pass on the argument . . . . that the exemption to which [the religious organization was] entitled under § 702 is required by the Free Exercise Clause," it said.[21] The Court also did not in any way consider or find that the Constitution required or permitted the government to allow religious organizations to discriminate in employment based on religion with respect to government-funded jobs. The case did not raise the issue, as there was no suggestion that the LDS organization involved in the case received any financial assistance from the state.

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[11] 42 U.S.C. Section 2000e *et seq.* (2010).
[12] 42 U.S.C. Section 2000e(b) **(**2010)(defining an "employer" as "a person engaged in an industry affecting commerce who has fifteen or more employees . . .").
[13] *Id.* at Section 2000e-2(a)(2).
[14] *Id*. at Section 2000e-1(a).
[15] Section 702 of the Civil Rights Act of 1964, P.L. 88-352 (1964) (reprinted in U.S.C.C.A.N. at 287)(the exemption did not apply to job positions "connected with the carrying on by such [religious] corporation[s], association[s] or societ[ies] of [their] religious activities. . . .").
[16] P.L. 92-261 (1972).
[17] In the bill passed by Congress in 1964, this exemption was labeled "Section 702." *See* P.L. 88-352.
[18] 482 U.S. at 336.
[19] *Id*. at 335.
[20] *Id.* at 337.
[21] *Id*. at n.13.

The U.S. Supreme Court has never addressed the specific issue of whether it is constitutional to allow religious organizations to engage in employment discrimination on the basis of religion for government-funded jobs, and legal scholars have divided over this issue.[22] The Court has ruled, however, that it is constitutionally permissible for Congress to attach nondiscrimination conditions to government funding in some cases involving religious entities and government funds. In the 1984 case of *Grove City v. Bell*, for example, the Supreme Court rejected a religious college's arguments that conditioning federal financial assistance on compliance with nondiscrimination on the basis of gender infringed the First Amendment rights of the college and its students.[23] "Congress is free to attach reasonable and unambiguous conditions to federal financial assistance that [recipient institutions] are not obligated to accept," the Court said.[24]

Statutory Issues: Title VII of the 1964 Civil Rights Act

As noted above, the 702 exemption to Title VII of the Civil Rights Act allows religious organizations to make religion-based employment decisions. Some have suggested that the 1972 legislative history of the Title VII 702 exemption demonstrates Congressional intent to allow religious groups to discriminate on the basis of religion with regard to federally funded jobs.[25] In fact, a review of that legislative history reveals that the lead sponsors of the 702 amendment rallied support for their amendments by offering examples of religious institutions they said did not receive government financial aid but were supported by private funds. For example, in his argument for allowing religious organizations to make religion-based employment decisions institution-wide, Senator Sam Ervin repeatedly used an example of a religious institution from his home state that, as he stressed, "[was] not supported in any respect by the Federal Government," but by religious adherents.[26]

If the government prohibits religious organizations from discriminating on the basis of religion in government-funded positions, these organizations would not "lose" their Title VII 702 exemption and thus it would not affect the religious organizations' ability to discriminate on the basis of religion with regard to positions outside the context of government funding.[27] For example, a Jewish group would be able to hire a Jewish executive director whose salary was paid with private funds even though the group also runs a program supported by a government grant. For a variety of reasons, it is important

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[22] Compare Alan Brownstein and Vikram Amar, *The "Charitable Choice" Bill that was Recently Passed by the House and the Issues it Raises* (Findlaw, April 29, 2005) and Steven K. Green, *Religious Discrimination, Public Funding, and Constitutional Values*, 30 Hastings Const. L.Q. 1 (2002) with Thomas C. Berg, *Religious Organizational Freedom and Conditions on Government Benefits*, 7 Geo. J. L. & Pub. Pol'y 165 (2009) and Ira C. Lupu and Robert W. Tuttle, *The Faith-Based Initiative and the Constitution*, 55 DePaul L. Rev. 1 (2005).

[23] Grove City College v. Bell, 465 U.S. 555 (1984).

[24] *Id*. at 575.

[25] See Melissa Rogers, "Federal Funding and Religion-based Employment Decisions," chapter in *Sanctioning Religion? Politics, Law, and Faith-based Public Services*, ed. David K. Ryden and Jeffrey Polet (Lynn Rienner Publishers) (2005).

[26] *Id*. at 109.

[27] *Id*. at 110-111.

for the government to respect the freedom of religious nonprofits to make religion-based employment decisions outside the government-funded context. This protects the religious organization's ability to maintain its religious identity even as it receives government funding.

Statutory Issues: The Religious Freedom Restoration Act

As you know, RFRA requires the federal government to justify substantial burdens on religion with a narrowly tailored compelling governmental interest.[28] Thus, when a claimant demonstrates that the government has substantially burdened his or her religious practice, the government must then prove that such a burden is the unavoidable result of its pursuit of a compelling government interest, such as health or safety. In other words, the RFRA analysis focuses first on whether governmental action places a substantial burden on religious exercise. If the religious claimant cannot demonstrate a substantial burden on religious exercise, then the claim fails.

In a memorandum opinion dated June 29, 2007, then-Deputy Assistant Attorney General of the Justice Department John Elwood argued that "RFRA is reasonably construed" to require the federal government to exempt World Vision, a religious organization, from a requirement of the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA) mandating nondiscrimination on the basis of religion in "employment in connection with any programs or activity' funded by a JJDPA grant.[29] On behalf of the Justice Department, Elwood claimed doing otherwise would substantially burden World Vision's religious exercise and that the federal government had no compelling interest to justify such a burden.

My view is that the Department of Justice erred in its analysis of these issues. Under its most robust interpretation of the Free Exercise Clause, the interpretation on which RFRA is based, the U.S. Supreme Court never read that clause to require the government to refrain from placing nondiscrimination conditions on grants or contracts that flow to

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[28] As noted above, I formerly served as general counsel of the Baptist Joint Committee for Religious Liberty (BJC), an organization that led the coalition that pressed for the adoption of RFRA in the early 1990s. During my time at the BJC, I helped to defend RFRA's constitutionality in the courts and to encourage states to adopt state RFRA laws. After the Supreme Court's decision in *City of Boerne v. Flores*, 521 U.S. 507 (1997), the RFRA coalition called for the enactment first of the Religious Liberty Protection Act (RLPA) and then of the Religious Land Use and Institutionalized Persons Act (RLUIPA). I have also long urged the Supreme Court to reverse its decision in *Employment Division v. Smith,* 494 U.S. 872 (1990), a decision that gave rise to RFRA and RLUIPA. See, e.g., *Free Exercise Flip? Kagan, Stevens, and the Future of Religious Freedom* (Brookings Institution, June 23, 2010) at http://www.brookings.edu/papers/2010/0623_kagan_rogers.aspx

[29] Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act, Memorandum Opinion for the General Counsel Office of Justice Programs (June 29, 2007) at http://www.usdoj.gov/olc/2007/worldvision.pdf ("World Vision Memo"). Although this opinion was dated June 29, 2007, the Justice Department did not release it until October 2008. Ira C. Lupu and Robert W. Tuttle, *The State of the Law 2008: A Cumulative Report on Legal Developments Affecting Government Partnerships with Faith-Based Organizations* (Roundtable on Religion and Social Welfare Policy, December 2008) at 33.

religious organizations. Indeed, George Washington University Law School Professors Chip Lupu and Bob Tuttle have observed that Department of Justice's memo "take[s] a much more expansive view of what constitutes a 'substantial burden' under RFRA than the federal government ever has before, or than the lower courts have recognized."[30] Lupu and Tuttle have said that prior to related agency pronouncements, "[n]o agency of the United States had ever taken the position that a condition of participation, imposed on a religious entity in a federal funding program, might violate RFRA."[31]

To be sure, among other cases, Congress modeled RFRA on cases in which the Court struck down the denial of unemployment benefits to employees dismissed because they refused to perform certain work that conflicted with their religious beliefs or obligations.[32] But those cases do not justify the decision the Justice Department made in its World Vision memorandum.

There are large and important differences between unemployment benefits and government grants. As Cornell Law Professor Michael Dorf has explained, "unemployment benefits are a form of insurance, to which employers have contributed premiums on behalf of their employees, and so the withholding of such benefits may be more akin to a penalty than a pure failure to subsidize."[33] Likewise, Professors Lupu and Tuttle have noted that, while the Justice Department memo attempted to suggest that the grant to World Vision was some form of entitlement because it was earmarked for them, "World Vision would have had no claim of legal right to the grant if [the Justice Department] had declined to make it."[34] Lupu and Tuttle contrast this with the fact that the free exercise plaintiff in the *Sherbert* case "did have a claim of legal right to unemployment benefits if the state authorities did not have adequate legal cause to deny those benefits."[35]

Similarly, it is understood that the administration of government grant funds by a nonprofit must meet certain standards, constitutional and otherwise. In contrast, unemployment benefits are not seen in the same light, and Ms. Sherbert was free to treat that money as personal funds upon receipt. While it would be inappropriate for the government to place restrictions on the use of unemployment benefits, it is appropriate and necessary for the government to place certain restrictions on the use of government grants.

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[30] Ira C. Lupu and Robert W. Tuttle, *The State of the Law 2008: A Cumulative Report on Legal Developments Affecting Government Partnerships with Faith-Based Organizations* (Roundtable on Religion and Social Welfare Policy, December 2008) at 34 (footnote omitted).
[31] *Id*. at n.96.

[32] In *Sherbert v. Verner*, the Court held that the state must provide unemployment compensation benefits to a religious claimant who was fired from her job because of her failure to perform job-related duties that she believed her faith prohibited. 374 U.S. 398 (1963).
[33] Michael C. Dorf, *Why the Constitution Neither Protects Nor Forbids Tax Subsidies for Politicking from the Pulpit, and Why Both Liberals and Conservatives May be on the Wrong Side of this Issue* (October 6, 2008) at http://writ.news.findlaw.com/dorf/20081006.html
[34] Ira C. Lupu and Robert W. Tuttle, *The State of the Law 2008: A Cumulative Report on Legal Developments Affecting Government Partnerships with Faith-Based Organizations* (Roundtable on Religion and Social Welfare Policy, December 2008) at n.103.
[35] *Id*.

Also, in the *Sherbert* case, the Court mandated the extension of funds that were used to pay for the subsistence of an unemployed worker. Endangering an unemployed individual's ability to pay for food and housing is not the same as endangering the ability of a religious organization to receive a government grant to provide social services in the way it chooses. Even the Justice Department's World Vision memo recognizes that a refusal to provide it with an exemption from religious nondiscrimination conditions on government funds "may not be as important as the denial of unemployment compensation to an individual . . . ."[36] While it would assumedly have been difficult for Ms. Sherbert to survive without these unemployment benefits, World Vision remained free to reject government grants and thus avoid any burden.[37]

Likewise, the application of this kind of nondiscrimination obligation to government funds flowing to religious organizations would be less onerous than the application of other restrictions the Court has approved in an analogous case.[38] In the 2004 case of *Locke v. Davey*, the Court upheld a law enacted in the state of Washington that provided scholarships to students for postsecondary educational expenses but prohibited students from using the scholarship at a school where they were pursuing a degree in devotional theology.[39] The Supreme Court held that this limitation on the scholarships, a restriction Washington believed to be required by its state constitution, did not violate the federal Free Exercise Clause or any other provision of the federal constitution, even though the state was under no obligation to have such a law under the federal Establishment Clause.

The Court noted that the state law did not prohibit students from using a state scholarship "to pursue a secular degree at a different institution from where they are studying devotional theology."[40] In other words, the Court did not consider the fact that a student might have to attend two different colleges to use these funds to be tantamount to forcing the student to choose between his faith and the scholarship. It concluded that "[t]he State's interest in not funding the pursuit of devotional degrees is substantial and the exclusion of such funding places a relatively minor burden" on beneficiaries of the scholarship program.[41]

If the Court in *Locke v. Davey* considered the fact that a student might have to attend two different colleges to use state scholarship funds to place only "a relatively minor burden" on the student, the fact that a religious organization would be prohibited from discriminating on the basis of religion with regard to jobs within the government program but permitted to do so vis-à-vis jobs within the same organization but outside the government program hardly seems to create a greater burden on religious exercise.[42] Further, like the statutory structure in *Locke*, a statute that permits religious organizations

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[36] World Vision Memo at 15.
[37] World Vision has said that in recent years it has received approximately eighty-four percent of its cash contributions from churches and co-religionists. Spencer v. World Vision, 619 F.3d 1109 (9th Cir. 2010).
[38] Locke v. Davey, 540 U.S. 712 (2004).
[39] *Id*. at 715.
[40] *Id*. at n.4
[41] *Id*. at 725.
[42] While the Court did not purport to apply RFRA to the facts at issue in *Locke v. Davey*, it seems reasonable to assume that something that is "a relatively minor burden" constitutes less than a "substantial burden" under RFRA.

to compete for federal social service funds, takes steps to protect the autonomy of religious institutions, and prohibits religious discrimination only in the context of government funding would seem to "go[] a long way toward including religion in its benefits."[43]

Still, in its World Vision memorandum, the Justice Department attempted to draw a distinction between *Locke v. Davey* and the case before it. The Department said that, in contrast to the Court's decision in *Locke*, "it does not appear that World Vision's programs could be revised to conform to the Safe Streets Act's nondiscrimination provision without losing their nature as exercises of religion protected by RFRA."[44] But in addition to retaining the ability to configure their programs in the ways described above, the religious organization would remain free to refrain from accepting the grant and thus avoid any burden.

It is worth noting that there is nothing unusual about a religious organization operating solely on the basis of nongovernmental funds. Indeed, it is commonplace. And religious organizations that do so do not operate outside the scope of public life. An organization does not have to partner with government – financially or nonfinancially -- to be a recognized, influential, and respected leader in civic life.

Statutory Issues: Congressional Intent and the Religious Freedom Restoration Act

Some have argued that Congress intended with RFRA to block the application of certain nondiscrimination provisions that follow government funding to religious entities.[45] In the World Vision memo, the Justice Department correctly notes that a July 1993 Senate Committee Report on this Act said RFRA "confirms that granting Government funding, benefits or exemptions, to the extent permissible under the establishment clause, does not violate the act; but the denial of such funding, benefits or exemptions may constitute a violation of the act, as was the case under the free exercise clause in *Sherbert v. Verner*."[46]

What the Department of Justice memo does not report, however, is that another section of that same Senate report states: "[P]arties may challenge, under the Religious Freedom Restoration Act, the denial of benefits to themselves as in *Sherber*[*t*]. The act does not, however, create rights beyond those recognized in *Sherbert*."[47] As noted above, the *Sherbert* case involved a denial of unemployment compensation to an individual, a situation markedly different from a refusal to allow a government grantee to discriminate on the basis of religion with regard to government-funded jobs.

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[43] Locke v. Davey, 540 U.S. at 724.
[44] World Vision Memo at 25.
[45] See Melissa Rogers, "Federal Funding and Religion-based Employment Decisions," chapter in *Sanctioning Religion? Politics, Law, and Faith-based Public Services*, ed. David K. Ryden and Jeffrey Polet (Lynn Rienner Publishers) (2005).
[46] *Religious Freedom Restoration Act of 1993*, Report of the Senate Committee on the Judiciary, Senate Report No. 103-111 (July 27, 1993) at 14 (as partially quoted in World Vision Memo at n.13).
[47] *Religious Freedom Restoration Act of 1993*, Report of the Senate Committee on the Judiciary, Senate Report no. 103-111 (July 27, 1993) at 12 (emphasis added).

Indeed, this section of the Senate RFRA report also says it was not the intent of the law to try to affect issues such as "whether religious organizations may participate in publicly funded social welfare and educational programs . . . ."[48] Instead, the report notes, those kinds of cases "have been decided under the establishment clause and not the free exercise clause," and this "act does not change the law governing these cases."[49] Thus, the Senate Judiciary Committee explained, a number of provisions were added to the legislation "to clarify that this is the intent of the committee," including "a section which provides that the granting of benefits, funding, and exemptions, to the extent permissible under the establishment clause, does not violate [RFRA]; and a further clarification that the jurisprudence under the establishment clause remains unaffected by the act."[50] Congress' understanding, therefore, was that whether (and under what conditions) religious organizations could receive social service funds was an Establishment Clause rather than a Free Exercise Clause matter, and the intent of RFRA was not to affect the development of Establishment Clause cases.

Given the state of Establishment Clause jurisprudence at the time, these issues were not prominent at this time.[51] By the time Congress considered the Religious Liberty Protection Act (RLPA) (legislation intended to have virtually an identical effect as RFRA), however, these issues had taken a place at the center of the church-state stage.[52] Like the coalition that supported RFRA, the coalition that backed RLPA had differing views on the extent of the government's power to attach nondiscrimination conditions to government funding. In light of the newfound prominence of these issues, language was inserted in RLPA to make it clear that the legislation was not an attempt to move the law in this area. Relevant language from the House-passed RLPA was entitled, "Other

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[48] *Id*.
[49] *Id*.
[50] *Id*. This is the full statement on these issues from the 1993 Senate Judiciary Committee report:

> [C]oncerns have been raised that the act could have unintended consequences and unsettle other areas of the law. Specifically, the courts have long adjudicated cases determining the appropriate relationship between religious organizations and government. In particular, Federal courts have repeatedly been asked to decide whether religious organizations may participate in publicly funded social welfare and educational programs or enjoy exemptions from income taxation pursuant to 26 U.S.C. 501(c)(3) and similar laws. Such cases have been decided under the establishment clause and not the free exercise clause. In fact, a free exercise challenge to Government aid to a religiously affiliated college was rejected by the Supreme Court in Tilton v. Richardson. This act does not change the law governing these cases. Several provision[s] have been added to the act to clarify that this is the intent of the committee. These include the provision providing for the application of the article III standing requirements; a section which provides that the granting of benefits, funding, and exemptions, to the extent permissible under the establishment clause, does not violate the Religious Freedom Restoration Act; and a further clarification that the jurisprudence under the establishment clause remains unaffected by the act.

Id. (footnote omitted).
[51] See Melissa Rogers and E.J. Dionne, Jr., *Serving People in Need, Safeguarding Religious Freedom: Recommendations for the New Administration on Partnerships with Faith-Based Organizations*, (Brookings Institution)(2008).
[52] In 1997, the Supreme Court invalidated the application of RFRA to states and localities, which gave rise to RLPA. City of Boerne v. Flores, 521 U.S. 507 (1997).

Authority to Impose Conditions on Funding Unaffected."[53] It stated in part: "Nothing in this Act shall (1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or (2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act."[54]

And, of course, the congressional coalition that backed RFRA and RLPA included members of Congress who opposed religious discrimination in government-funded jobs then and oppose it today. In sum, it is simply incorrect to claim that Congress intended RFRA to trump religious nondiscrimination conditions on government funds flowing to religious organizations.

Policy Issues: Equal Opportunity in Federally Funded Employment

There are strong public policy arguments for prohibiting religion-based decision-making in government-funded jobs. One of those arguments is the longstanding tradition of equal opportunity in government-funded employment regardless of religion or creed. Through a 1941 executive order, for example, President Franklin Roosevelt required all defense contracts to contain "a provision obligating the contractor not to discriminate against any worker because of race, creed, color, or national origin. . . ."[55] A preamble to this executive order emphasizes a "firm belief that the democratic way of life within the

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[53] Section Five of the House-passed RLPA stated:

> **SEC. 5. RULES OF CONSTRUCTION.**
>
> (a) RELIGIOUS BELIEF UNAFFECTED-Nothing in this Act shall be construed to authorize any government to burden any religious belief.
>
> (b) RELIGIOUS EXERCISE NOT REGULATED-Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization, including any religiously affiliated school or university, not acting under color of law.
>
> (c) CLAIMS TO FUNDING UNAFFECTED-Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require government to incur expenses in its own operations to avoid imposing a burden or a substantial burden on religious exercise.
>
> (d) OTHER AUTHORITY TO IMPOSE CONDITIONS ON FUNDING UNAFFECTED-Nothing in this Act shall-
>
> (1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or
> (2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.

[54] *Id*.

[55] See Melissa Rogers, "Federal Funding and Religion-based Employment Decisions", chapter in *Sanctioning Religion? Politics, Law, and Faith-based Public Services*, ed. David K. Ryden and Jeffrey Polet (Lynn Rienner Publishers) (2005).

Nation can be defended successfully only with the help and support of all groups within its borders. . . ." [56]

In 1951, President Harry Truman took "[a] major step" to extend this tradition by "iss[uing] a series of executive orders directing certain government agencies to include nondiscrimination clauses in their contracts." When President Kennedy issued an executive order in 1961 establishing a presidential committee on equal employment opportunity, he observed: "[I]t is the plain and positive obligation of the United States Government to promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed or seeking employment with the Federal Government and on government contracts. . . ." And President Lyndon B. Johnson signed a 1965 executive order signed requiring all government contracting agencies to include in every government contract a requirement that the contractor not discriminate against any employee on the basis of "race, creed, color or national origin."[57] Through these actions, the federal government took the laudable step of ensuring that otherwise qualified people could not be disqualified from the competition for federally funded jobs simply because of their faith affiliation or lack thereof.

Those who favor allowing religious organizations to make religion-based decisions in government-funded employment have been quick to say that they do not wish "to exclude people from a particular religion from employment."[58] I certainly take them at their word. But, as U. C. Davis Law Professor Alan Brownstein has noted, various forms of employment discrimination traditionally have been prohibited by our government for at least two independent reasons.[59] We have objected not only to bad motive that drives discrimination, but also to the exclusionary impact created by discrimination.[60] Even assuming an employment decision is made about a government-funded job without any animus on the part of the employer, it still means an employer denied an otherwise qualified applicant simply because of his or her religious identity and beliefs.

There is also a fairness issue here. It is not fair to exclude citizens from eligibility for jobs their tax money subsidizes simply because they are not the "right" religion.

Some who argue that the government should allow religion-based decision-making in government-funded jobs say they are merely seeking to engage in the same kind of mission-based hiring as many other secular nonprofits that receive government grants. They say environmental groups that receive government funds, for example, are

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[56] *Id*.

[57] *Id.* But see Executive Order 13279 in which former President George W. Bush created an exemption from this 1965 executive order for a government contractor or subcontractor that is a religious organization so as to allow such contractors or subcontractors to discriminate on the basis of religion in employment. Executive Order 13279 (December 12, 2002)("Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.")

[58] World Vision Memo at 23.

[59] Conversation with Professor Alan Brownstein.

[60] *Id*.

permitted to make employment decisions in government-funded jobs based on the employee's or prospective employee's commitment to certain beliefs about the environment. The argument is that these groups would not hire someone who is hostile to environmentalism, and they do not have to do so, even when they make decisions about government-funded jobs. Therefore, religious groups should have the same freedom, they claim.

A paper I co-wrote in 2008 offered the following response to this argument:

> The government may and sometimes must treat religion differently than it treats other beliefs and activities.
>
> If one were to focus solely on this special limit regarding government funding, it could well appear that religion is being subjected to more restrictive treatment than secular pursuits. But doing so ignores the special protection religion enjoys. The government is often required to observe stringent limits that result in unique protection for free exercise and religious autonomy. The federal Religious Freedom Restoration Act, for example, prohibits unnecessary and substantial burdens on religious exercise and provides no similar protections for secular environmentalism or any other secular activity. Many are happy to recognize the validity of this kind of special treatment by government. It certainly is not a "level playing field," but advocates of religious freedom welcome this "unequal treatment." Some of these same people balk, however, at certain special treatment that might limit religious organizations' use of governmental funds. A strong case can be made that the more equitable and consistent position is to recognize there is a rough symmetry of exemption and limitation under First Amendment principles. [61]

Policy Issues: Mission-Based Employment Decisions in Federally Funded Jobs

Another way the government could address this issue is to adopt a policy that would have the effect of prohibiting religious nonprofits from discriminating on the basis of religion in government-funded jobs but would not single out religion for different treatment. Let me explain.

When the government and a nonprofit agree to partner, it is because they share a mission such as feeding the hungry or moving people from welfare to work. To be sure, the overlap in missions is not complete – there are elements of the government's mission that the nonprofit does not embrace and elements of the nonprofit's mission that the government does not endorse. The partnership is intended to advance the mission that is shared by the government and the nonprofit, not the other aspects of the entities' missions that do not overlap.

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[61] See Melissa Rogers and E.J. Dionne, Jr., *Serving People in Need, Safeguarding Religious Freedom: Recommendations for the New Administration on Partnerships with Faith-Based Organizations*, (Brookings Institution)(2008) at 39.

The government, therefore, could place a condition on all of its grants and contracts that would instruct grantees and contractors that they should use the shared mission as the focus for employment decisions regarding government-funded positions and eschew reliance on other distinctive factors tied to the nonprofit's identity, whether those factors are religious or nonreligious. For example, if the program is aimed at feeding hungry people, the nonprofit that receives government funding for such a program would be permitted to make employment decisions on the basis of that mission as well as other standard factors, such as experience, academic achievement, collegiality, and character. This would have the effect of preventing a religious organization from discriminating on the basis of faith for a government-funded job, but it would also prohibit a feminist social service organization from discriminating on the basis of feminist beliefs for a government-funded job. In short, it is not clear to me why the government should allow its funds to be spent to advance a mission unrelated to the mission it seeks to promote.

I recognize that this may be a novel proposal, and that it could require substantial changes in current policies and practices. Further, let me say that I appreciate the crucial need to ensure that the delivery of federally funded social services is not interrupted, both in this context and in all others discussed in this testimony. Any and all changes in policies should of course be implemented in ways that respect this important goal.

III. Conclusion

I appreciate the opportunity to testify before this subcommittee, and I look forward to discussing these and other issues at the hearing.