

FAITH-BASED PRISONS AND THE ESTABLISHMENT CLAUSE: THE CONSTITUTIONALITY OF EMPLOYING RELIGION AS AN ENGINE OF CORRECTIONAL POLICY

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This Comment discusses emerging partnerships between state correctional systems and faith-based prison programs that rehabilitate inmate behavior through religious indoctrination. The existence of such partnerships raises several issues concerning the role private faith-based organizations (FBOs) should play in the provision of correctional services. Church-state separationists argue that government funding of faith-based prison programs boils down to impermissible government funding of spiritual transformation and conversion.¹ Assimilationists, meanwhile, see the neutral funding of such programs as supporting classic liberal correctional goals of rehabilitation and social reintegration,² while providing a level playing field for religious groups to participate in the provision of social services.

This Comment analyzes the constitutional issues at the center of this debate with a focus on Prison Fellowship Ministries and its program, the InnerChange Freedom Initiative (InnerChange). This program serves as a template for constitutional analysis of faith-based prisons as a whole, but is not the only example of public-religious partnerships in the correctional system. Citizens of Bradford County, Pennsylvania recently filed a lawsuit challenging a Christian-based vocational training program at the local correctional facility.³ The lawsuit claims that local, state, and federal governments have provided over \$320,000 to a program that allegedly combines construc-

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1. David W. Hendon & Aaron Tyler, *Notes on Church State Affairs*, 46(2) J. CHURCH & STATE 423 (2004), available at 2004 WLNR 11714808.

2. See David Cole, *Faith and Funding: Toward an Expressivist Model of the Establishment Clause*, 75 S. CAL. L. REV. 559, 566-67 (2002) (discussing the arguments in favor of supporting government funding of faith-based social services).

3. Peter Jackson, *Pennsylvania Jail Contractor Pushes Religion, Lawsuit Charges*, ASSOCIATED PRESS, Feb. 18, 2005, at The Roundtable on Religion & Social Welfare Policy: <http://religionandsocialpolicy.org/news/article.cfm?id=2403> (last visited Feb. 27, 2005).

tion training with proselytization and prayer.⁴ Prison Fellowship Ministries operates a similar model of Christian-based rehabilitation, but on a larger scale.

Part I of this Comment describes the history and philosophy of Prison Fellowship Ministries. This part analyzes the InnerChange program at Iowa's Newton Correctional Facility, one of several state institutions where InnerChange operates. Americans United for Separation of Church and State (Americans United) filed a lawsuit on behalf of several inmates against the Iowa Department of Corrections and Prison Fellowship Ministries in February 2003, challenging the legality of the program.⁵ Part II surveys the current national landscape of FBOs and "Charitable Choice" programs.⁶ This part analyzes the competing legal and policy rationales for and against increased reliance on private organizations for provision of social services.

Part III discusses the constitutionality of faith-based prison programs, specifically the Iowa InnerChange program, as well as whether the correctional setting should alter the analysis. To avoid an Establishment Clause violation,⁷ government aid may not: define the recipient class by reference to religion;⁸ favor religion or religious approaches over those that are nonreligious;⁹ create the impression of government endorsement of or preference for religion;¹⁰ excessively entangle government in religious matters;¹¹ or delegate public func-

4. *Id.*

5. Alan Cooperman, *Suits Contest Iowa Prison Ministry Program*, WASH. POST, Feb. 13, 2003, at A3.

6. As the White House Guidelines explain, "Charitable Choice" is the general name for several laws President Clinton signed into law beginning in 1996. The Guidelines make clear that these laws "specify that faith-based organizations cannot be excluded from the competition of Federal funds simply because they are religious. These laws also provide that faith-based organizations that receive Federal funds may continue to carry out their missions consistent with their beliefs." *Charitable Choice: The Facts*, at <http://www.whitehouse.gov/government/fbc/guidance/charitable.html> (last visited Oct. 24, 2004).

7. See Steven K. Green, *The Illusionary Aspect of "Private Choice" for Constitutional Analysis*, 38 WILLAMETTE L. REV. 549, 564-65 (2002) (listing ways government aid to religious institutions may violate the Establishment Clause, in addition to critiquing the "private choice" principle).

8. See discussion *supra* Part III.B, III.C.3.

9. See, e.g., *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 696 (1994).

10. See, e.g., *Mitchell v. Helms*, 530 U.S. 793, 842-43 (2000) (O'Connor, J., concurring).

11. See, e.g., *Agostini v. Felton*, 521 U.S. 203, 232-34 (1997).

2005]

FAITH-BASED PRISONS

779

tions to religious institutions.¹² This Comment describes variations on the InnerChange model,¹³ but concludes that impermissible endorsement, delegation, and entanglement are generally implicit in such an integrated immersion program.

12. *See, e.g.*, *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 125-26 (1982).

13. The Lawtey Correctional Institution in Bradford County, Florida presents an example of a total immersion faith-based prison that might survive constitutional scrutiny, but still presents problems of entanglement, delegation, and coercion. *See NPR: Morning Edition, Profile: Religion in Prisons* (radio broadcast, Dec. 24, 2003), transcript available at 2003 WL 67032330. Part III compares and contrasts the Florida program with the InnerChange program in Iowa.