



The Roundtable

on Religion and Social Welfare Policy

State of the Law ● 2004

Partnerships Between Government and Faith-Based Organizations

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Core themes of the FBCI

- Equal participation of FBOs in social welfare programs
- Constitutionally distinctive character of religion
- Protections for religious liberty of program beneficiaries

Equal Participation of FBOs: Basic Rule

- FBOs may participate on an equal basis
- Religious character of FBOs is irrelevant to eligibility
- No preference *against or for* FBOs

Equal Participation of FBOs: Exception 1 Accommodation of Religion

- Religious practices of program beneficiaries
- Religious practices of FBOs
 - Co-religionist employment preferences
 - Rarely mandatory
- Constitutional limits on accommodations

Equal Participation of FBOs: Exception 2 State Law Restrictions

- *Locke v. Davey* (US 2004)
- Implications of *Davey* for government partnerships with FBOs

Distinctive Character of Religion:

Basic Rule on State Funding

- Constitutional issue: when is government *reasonably held responsible* for religious experience?
- Two concerns:
 - Drawing the correct line between permitted & prohibited uses of government funds
 - monitoring and enforcing that line

Distinctiveness of Religion: No Direct Funding of Religious Activity

- Direct funding of religious programs
 - drawing the line: “inherently religious activities”?
 - monitoring the line: assurances and audits
- Direct funding of religious structures
 - drawing the line: how much has the law changed?
 - monitoring the line: assessing proportional

Distinctive Character of Religion: Exceptions

- Indirect financing: beneficiary choice from adequate range of providers
- Religious services for individuals under significant government control
 - accommodation
 - constitutional limits
- Extraterritorial expenditures?

Religious Liberty of Program Beneficiaries

- voluntary participation in religious activities of directly financed FBOs
- adequate choice in programs of indirect funding
- procedures for informed consent