

# *Communiter Bona profounder Deum est\**

## **WITH BEN FRANKLIN'S BLESSINGS**

### **A Civic Primer on "Faith-Based" Social Service Programs**

John J. DiIulio, Jr., University of Pennsylvania (www.prrucs.org)

#### **PRRUCS: Program for Research on Religion and Urban Civil Society**

##### I. Public Opinion

###### **We the Religious Pluralists and Pragmatists**

- Two Electoral Extremes Equals a Third
- Moral Values Mattered Less... While Regular Church-Goers Mattered More...
- And Other Differences Trumped Shared Religious Views

##### II. Court Doctrine

###### **A Warm Civic Welcome, Not A Thick Wall**

- Neutral Ground for Church-State Collaboration
- Neutrality Twins: Pragmatic Zelman and Pluralistic Locke
- Why the Constitution Singles Out Religion

##### III. Public Administration

###### **Neutrality in Government By Proxy**

- Proxy Government
- Proxy Government Gets Religion, 1996-2000
- Sacred Places, Civic Purposes: Five Neutrality Principles

##### IV. Bipartisan Sentiment

###### **No Bush v. Gore on "Faith-Based Initiatives"**

- Neutrality Plans and Challenges
- Voucher Visions
- Religious Hiring Rights

##### V. Empirical Research

###### **Spiritual Capital: The Three Faith Factors**

- Volunteer Mobilization versus Spiritual Transformation
- Faith-Permeated versus Faith-Segmented Programs

##### VI. Ben's Best Idea

- Bridgeland's Volunteer Brigades

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\* Motto of the Philadelphia Library Company, founded by Benjamin Franklin in 1731: "To pour forth benefits for the common good is divine."

Religion in America Today

Percentage of Adult Americans

(A)

Believe in God	96%
Say they have a personal relationship with God	80
Never doubt God's existence	79
Say they are seeking to grow in religious faith	76
Pray at least daily	75
Are a member of a church, synagogue, mosque, or other organized religious group	64
Say religion can solve all or most of today's problems	61
Attend worship services more than once a month	54



Source: Adapted from George Gallup, Jr. and Timothy Jones, *The Next American Spirituality* (Colorado Springs, Colo: Cook, 2000), ch. 1, appendices 1 and 2.

American Beliefs About Faith-Based Programs

(B)

Important Reasons for Backing Faith-Based Programs

Statement	Important Reason %	Not an Important Reason %	Don't Know %
People should have a variety of options.	77	20	3
Service providers more caring and compassionate.	72	25	3
Power of religion can change people's lives.	62	35	3
Faith-based programs more efficient.	60	36	4

Important Concerns About Funding for Faith-Based Programs

Statement	Important Concern %	Not an Important Concern %	Don't Know %
Government too involved with religious organizations.	68	30	2
People forced to take part in religious practices.	60	38	2
Would interfere with church-state separation.	52	45	3
Might increase religious divisions.	46	48	4

Source: From *American Views on Religion, Politics, and Public Policy* (Washington, D.C.: Pew Forum on Religion and Public Life, April 2001) pp. 15-16. Reprinted with permission.

(C)

Strong Rejection of Discrimination\*

Should religious groups that use gov't funds be allowed to hire ...	Yes %	No %	DK/Ref %
Only those who share their religious beliefs	18	78	4=100
People on the basis their religious beliefs	23	69	8=100
Only those who share their moral values	25	62	13=100

\* Each item was asked of an independent sample.

Sources: (A) and (B) James Q. Wilson and John J. DiIulio, Jr., *American Government: Institutions and Policies*, ninth edition (Houghton Mifflin, 2004), Tables 4.6 and 4.8, pp. 85, 87, respectively; and (C) Pew Forum on Religion and Public Life, *Faith-Based Funding Backed, But Church-State Doubts Abound*, April 10, 2001, p. 13.



## Politics and Compromise

When elected officials who are deeply religious have to vote on issues related to [INSERT ITEM], do you think that they should base their vote on their own religious views or that they should be willing to compromise with other elected officials whose views are different?

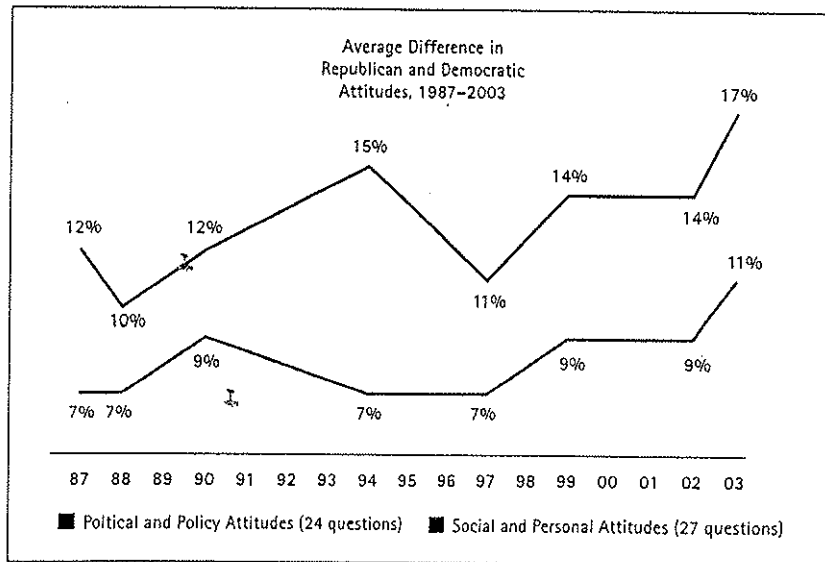
% RESPONDING	General Public	Catholic	Evangelical	Jewish	Non-religious
<b>Poverty and Welfare</b>					
Should base their vote on their own religious views	24	16	38	13	10
Should compromise with other elected officials whose views are different	68	78	52	81	84
<b>Gay rights</b>					
Should base their vote on their own religious views	31	19	50	16	13
Should compromise with other elected officials whose views are different	60	75	36	79	79
<b>The death penalty</b>					
Should base their vote on their own religious views	31	24	46	17	13
Should compromise with other elected officials whose views are different	60	69	42	78	79
<b>Abortion</b>					
Should base their vote on their own religious views	35	26	55	14	14
Should compromise with other elected officials whose views are different	57	68	34	81	81

General Public: n = 1507  
Catholic: n = 359  
Evangelical: n = 368  
Jewish: n = 200  
Nonreligious: n = 208

Source: Public Agenda Foundation, *For Goodness Sake: Why So Many Americans Want Religion to Play a Greater Role in American Life*, 2001, Table 7, p. 13

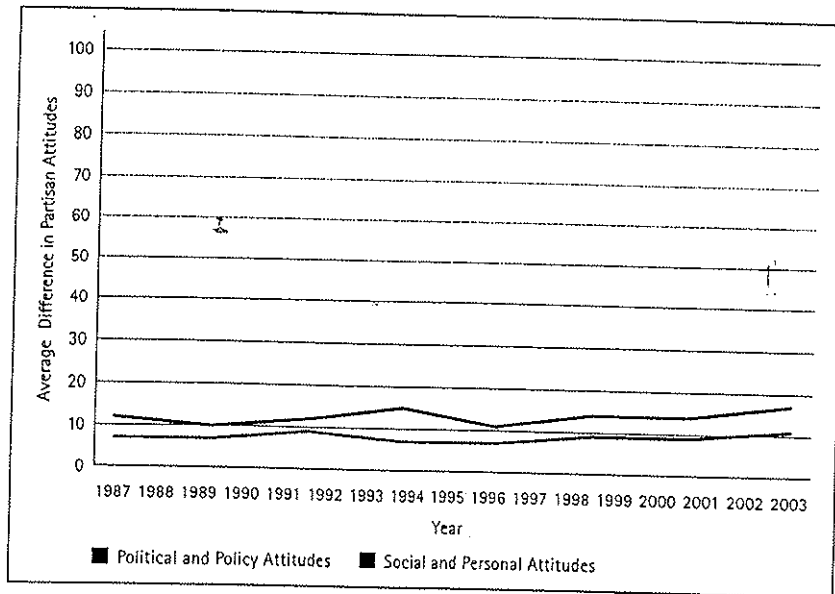
Republicans and Democrats Are Further Apart than Ever

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Source: The Pew Research Center for the People & the Press.

Republicans and Democrats Are Further Apart than Ever?  
An Alternative Perspective



Source: The Pew Research Center for the People & the Press.

Presidential election data source: James Q. Wilson and John J. DiIulio, Jr., *American Government: Institutions and Policies*, tenth edition (Houghton Mifflin, 2006), Table 10.4, p. 254.

Partisan polarization figure source: Morris P. Fiorina, *Culture War? The Myth of a Polarized America* (Pearson Longman, 2005), Figures 3.1 and 3.2, pp. 40-41.

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

Syllabus

LOCKE, GOVERNOR OF WASHINGTON, ET AL. *v.*  
DAVEY

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

No. 02–1315. Argued December 2, 2003—Decided February 25, 2004

Washington State established its Promise Scholarship Program to assist academically gifted students with postsecondary education expenses. In accordance with the State Constitution, students may not use such a scholarship to pursue a devotional theology degree. Respondent Davey was awarded a Promise Scholarship and chose to attend Northwest College, a private, church-affiliated institution that is eligible under the program. When he enrolled, Davey chose a double major in pastoral ministries and business management/administration. It is undisputed that the pastoral ministries degree is devotional. After learning that he could not use his scholarship to pursue that degree, Davey brought this action under 42 U. S. C. §1983 for an injunction and damages, arguing that the denial of his scholarship violated, *inter alia*, the First Amendment's Free Exercise and Establishment Clauses. The District Court rejected Davey's constitutional claims and granted the State summary judgment. The Ninth Circuit reversed, concluding that, because the State had singled out religion for unfavorable treatment, its exclusion of theology majors had to be narrowly tailored to achieve a compelling state interest under *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. 520. Finding that the State's antiestablishment concerns were not compelling, the court declared the program unconstitutional.

*Held:* Washington's exclusion of the pursuit of a devotional theology degree from its otherwise-inclusive scholarship aid program does not violate the Free Exercise Clause. This case involves the "play in the joints" between the Establishment and Free Exercise Clauses. *Waltz v. Tax Comm'n of City of New York*, 397 U. S. 664, 669. That is, it concerns state action that is permitted by the former but not required by

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Syllabus

the latter. The Court rejects Davey's contention that, under *Lukumi, supra*, the program is presumptively unconstitutional because it is not facially neutral with respect to religion. To accept this claim would extend the *Lukumi* line of cases well beyond not only their facts but their reasoning. Here, the State's disfavor of religion (if it can be called that) is of a far milder kind than in *Lukumi*, where the ordinance criminalized the ritualistic animal sacrifices of the Santeria religion. Washington's program imposes neither criminal nor civil sanctions on any type of religious service or rite. It neither denies to ministers the right to participate in community political affairs, see *McDaniel v. Paty*, 435 U. S. 618, nor requires students to choose between their religious beliefs and receiving a government benefit, see, e.g., *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U. S. 136. The State has merely chosen not to fund a distinct category of instruction. Even though the differently worded Washington Constitution draws a more stringent line than does the Federal Constitution, the interest it seeks to further is scarcely novel. In fact, there are few areas in which a State's antiestablishment interests come more into play. Since this country's founding, there have been popular uprisings against procuring taxpayer funds to support church leaders, which was one of the hallmarks of an "established" religion. Most States that sought to avoid such an establishment around the time of the founding placed in their constitutions formal prohibitions against using tax funds to support the ministry. That early state constitutions saw no problem in explicitly excluding *only* the ministry from receiving state dollars reinforces the conclusion that religious instruction is of a different ilk from other professions. Moreover, the entirety of the Promise Scholarship Program goes a long way toward including religion in its benefits, since it permits students to attend pervasively religious schools so long as they are accredited, and students are still eligible to take devotional theology courses under the program's current guidelines. Nothing in the Washington Constitution's history or text or in the program's operation suggests animus towards religion. Given the historic and substantial state interest at issue, it cannot be concluded that the denial of funding for vocational religious instruction alone is inherently constitutionally suspect. Without a presumption of unconstitutionality, Davey's claim must fail. The 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 Promise Scholars. If any room exists between the two Religion Clauses, it must be here. Pp. 4-12.

299 F. 3d 748, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which