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## Faith-based Addiction Treatment Programs and the Drug Courts

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## Introduction

Addiction treatment programs are a major part of the Drug Courts system. This system utilizes addiction treatment and rehabilitation attempting to address the root causes of crime with the intent of reducing recidivism rates. According to Substance Abuse and Mental Health Services Administration's [SAMHSA] Center for Substance Abuse Treatment [CSAT], there is "strong empirical evidence" that such programs reduce crime and that often, the "first opportunity for [substance abuse] treatment" comes following "contact with the criminal justice system."<sup>1</sup> They work with a carrot/stick<sup>2</sup> approach with rewards for compliance and sanctions for non-compliance. The carrot of this approach is that defendants will avoid incarceration, have their criminal charges dismissed, or, in some cases, reduced. The stick of this approach is that failure to comply with the program's requirements incurs sanctions. Such programs represent the wider desire for faith-based and neighborhood partnerships to solve crime issues in society.<sup>3</sup> Trends in research are beginning to show that faith-based addiction treatment programs are more effective than comparable secular programs.<sup>4</sup> However, constitutional issues prevent the implementation of these programs by the drug courts without a comparable, secular alternative. Notwithstanding this, the drug courts should require such programs whenever constitutionally possible because recidivism is lower with faith-based programs. These programs are more cost-effective, and drug use is usually symptomatic of greater emotional and spiritual problems rather than solely an addiction.

## Background

In her report on drug courts, Celinda Franco, a specialist in crime policy at the Congressional Research Service, stated that drug courts are specialized court dockets for nonviolent offenders with substance abuse problems.<sup>5</sup> Acting as an alternative to traditional criminal proceedings and sentencing, these courts provide offenders with voluntary programs comprised of intensive supervision<sup>6</sup>, mandatory drug testing, substance abuse treatment, and other social services. The goal of the Drug Courts is to break the cycle of substance abuse, addiction, and crime. To be eligible, defendants must agree to the program's requirements and

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<sup>1</sup> Center for Substance Abuse Treatment, *Substance Abuse Treatment for Adults in the Criminal Justice System*, Treatment Improvement Protocol (TIP) Series 44, HHS Publication No. (SMA) 13-4056, xvii. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2005.

<sup>2</sup> The phrase "carrot and stick" is a metaphor for the use of a combination of reward and punishment to induce a desired behavior. Therefore, individuals placed within an addiction treatment program by the Drug Courts who successfully complete the program can reduce their prison sentence or avoid prison all together, while those who fail to complete the program can have additional penalties added on to their sentence.

<sup>3</sup> Barack H. Obama, Executive Order no. 13498, "Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships," *Code of Federal Regulations*, title 3 (2009 comp.): 219. <https://www.federalregister.gov/d/E9-2893>.

<sup>4</sup> Stephen V. Monsma, "Are Faith-Based Programs More Effective?," *Public Justice Report* 24, no. 2 (2001) [https://www.cpjustice.org/public/page/content/faith\\_based\\_programs](https://www.cpjustice.org/public/page/content/faith_based_programs).

<sup>5</sup> U.S. Library of Congress, CRS, *Drug Courts: Background, Effectiveness, and Policy Issues for Congress*, by Celinda Franco, CRS Report R41448 (Washington, DC: Office of Congressional Information and Publishing, October 12, 2010).

<sup>6</sup> Frank Schmalleger and John Ortiz Smykla, *Corrections in the 21<sup>st</sup> Century*, 9th ed. (New York, NY: McGraw Hill Education, 2021), 45,101 Intensive Supervision Programs (ISP) involves the "control of offenders in the community under strict conditions, by means of frequent reporting to a probation officer." These will normally include electronic monitoring, curfews, and daily and random check-ins with the probation officer.

successfully complete the program. The consensus on this approach is that drug courts represent an important strategy for reducing incarceration, providing drug treatment, and reducing drug use and recidivism among nonviolent offenders.<sup>7</sup>

## Comparison of Programs

### Secular Programs

Secular programs take a scientific, evidence-based approach to addiction treatment. Often these programs involve medical or therapeutic intervention, such as detoxification treatment or pharmacological interventions.<sup>8</sup> Detoxification looks to reducing or eliminating symptoms associated with withdrawal and often involves the use of tranquilizers in combination with a healthy diet and vitamins. Pharmacological interventions involve medications that perform one of three functions: (1) reduce cravings, (2) reduce the effects drugs or alcohol has on the body, and/or (3) make the patient sick if they use a narcotic substance or alcohol. Sometimes, secular programs follow a secular version of the traditional Twelve Step program,<sup>9,10</sup> or they use other methods, such as Self-Management And Recovery Training (SMART).<sup>11</sup> SMART utilizes a 4-point process, focusing on personal management skills.<sup>12</sup> These four points are: (1) building and maintaining the motivation to change, (2) coping with urges to use, (3) managing thoughts, feelings, and behaviors in an effective way without addictive behaviors, and (4) living a balanced, positive, healthy life.<sup>13</sup> Cognitive Behavioral Therapy (CBT) often plays a key role in these programs. Three core principles form the basis of CBT:

1. Psychological problems are based, in part, on faulty or unhelpful ways of thinking.
2. Psychological problems are based, in part, on learned patterns of unhelpful behavior.
3. People suffering from psychological problems can learn better ways of coping with them, thereby relieving their symptoms and becoming more effective in their lives.

The premise of CBT treatment revolves around the changing of thought and behavioral patterns to repair psychological problems, such as addiction.<sup>14</sup>

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<sup>7</sup> Schmallegar and Smykla, *Corrections in the 21<sup>st</sup> Century*, 45, 101.

<sup>8</sup> Buddy T, [pseud.], "Non-Spiritual Alcohol and Drug Treatment Programs: You Don't have to Believe in a Higher Power to Achieve Sobriety," *Verywell Mind*, <https://www.verywellmind.com/secular-alcohol-and-drug-rehab-programs-67702>.

<sup>9</sup> *Ibid.* Some facilities incorporate the 12 steps into their programs and many agnostics and atheists have found lasting recovery through the fellowship and accountability aspects of Alcoholics Anonymous (AA) [and similar programs]. without embracing a spiritual higher power.

<sup>10</sup> Bill W., *Alcoholics Anonymous*, 3rd ed. (New York City, NY: Alcoholic Service World Service, Inc, 1976). In "Chapter 5: How It Works," the Twelve Steps are covered. They break down more simply as: (1) honesty, (2) faith, (3) surrender, (4) soul searching, (5) integrity, (6) acceptance, (7) humility, (8) willingness, (9) forgiveness, (10) maintenance, (11) making contact, and (12) service. This suggested program of recovery worked for the early members of AA and continued to work through the years for many others, regardless of the type of substance they used. "Chapter 4: We Agnostics," details how AA's program can be used by those without faith.

<sup>11</sup> Krystina Murray, "Secular Drug and Alcohol Rehab," *Addiction Center*, last modified May 9, 2022. <https://www.addictioncenter.com/treatment/faith-based-drug-and-alcohol-rehab/secular/>.

<sup>12</sup> Elizabeth Hartney, "A Review of the SMART Addiction Recovery Program," *Verywell Mind* accessed Jun 18, 2022. <https://www.verywellmind.com/a-review-of-the-smart-recovery-program-22406>.

<sup>13</sup> *Ibid.*

<sup>14</sup> Society of Clinical Psychology, "What is Cognitive Behavioral Therapy?" *American Psychological Association*. Last modified July 2017. <https://www.apa.org/ptsd-guideline/patients-and-families/cognitive->

## Faith-Based Programs

Faith-based programs can vary drastically in the services they deliver for a variety of reason including religious outlook and the resources the providers can offer. However, all faith-based programs help religious people (or those open to faith) connect with their higher power to overcome drug abuse.<sup>15</sup> Programs will provide similar services as a secular program with the addition of a religious component, which may or may not be voluntary (such as with Alcoholics Anonymous and Narcotics Anonymous). Christian programs have a strong focus on the Bible.<sup>16</sup> In addition to healing through evidence-based clinical methods such as detoxification and therapy, patients are rehabilitated spiritually.<sup>17</sup> This type of treatment program allows offenders to “establish or restore their faith and relationship with God while also addressing their addiction.”<sup>18</sup> Such programs feature bible study, addiction-focused sermons, attendance of church services, and ministerial counseling.

### Biblical Christian Worldview

A major tenet of the biblical Christian worldview is that humankind lives in a fallen world. The apostle Paul writes that "sin entered into the world, and death through sin" following the Fall, making us all sinners.<sup>19</sup> Addiction is a sin. When a person becomes addicted to a vice, that vice becomes their god. This act is contrary to God’s command that we should “have no other gods before” Him.<sup>20</sup> However, justice, mercy, and forgiveness are also important tenets of this worldview. We are commanded to “dispense true justice and practice kindness and compassion each to his brother”<sup>21</sup> and taught that if we “do not forgive *other* people” then God will not forgive us for our transgressions.<sup>22</sup> Drug courts allow offenders to balance the presence of addiction and sin against these tenets, with the intention to help the offender free themselves of this sin and reform their lives.

## Research and Legal Review

### Religiosity as a Deterrent

Jang and Johnson conducted a study in 2001 to evaluate three hypotheses. Firstly, that perceived neighborhood disorder has positive effects on adolescent use of illicit drugs, and that the neighborhood effects are partly mediated by social bonding (the adolescent's relations with family and school) and social learning (the adolescent's association with drug-using peers and

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behavioral. The Society of Clinical Psychology is also known as Division 12 of the American Psychological Association.

<sup>15</sup> Jeffrey Jurgens, “Faith-Based Drug and Alcohol Rehab,” *Addiction Center*, last modified November 2, 2021. <https://www.addictioncenter.com/treatment/faith-based-drug-and-alcohol-rehab/>.

<sup>16</sup> Jena Hilliard, “The Christian Faith and Drug and Alcohol Rehab,” *Addiction Center*, last modified May 9, 2022. <https://www.addictioncenter.com/treatment/faith-based-drug-and-alcohol-rehab/christian/>.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Romans 5:12, NASB.

<sup>20</sup> Exodus 20:3, NASB.

<sup>21</sup> Zechariah 7:9, NASB.

<sup>22</sup> Matthew 6:15, NASB.

pro-drug attitudes) variables. Secondly, that individual religiosity partly mediates the effects of perceived neighborhood disorder on adolescent use of illicit drugs; religiosity has negative effects on adolescent use of illicit drugs independent of the social bonding and social learning variables; and religiosity negatively interacts with the neighborhood effects. The final hypothesis was that the total and direct effects of individual religiosity on adolescent use of illicit drugs become stronger throughout the period of adolescence.<sup>23</sup> Jang and Johnson tested these hypotheses against data come from the National Youth Survey (NYS), “a longitudinal study of a national probability sample of 1,725 persons aged 11 to 17 in early 1977.”<sup>24</sup> In order to address the multidimensional aspect of religiosity, they used a 5-point Likert scale to ascertain religiosity “by multiplying the frequency of attending religious services by respondents' perceived importance of religion in their lives.”<sup>25</sup> This gave the respondents a score ranging from 1 (not religious) to 25 (very religious). The study found, in line with a significant body of research that supports their findings, that there is an inverse relationship between higher levels of religiosity and lower levels of drug use.<sup>26</sup>

Jang et al. conducted a study which hypothesized that, based on the concept of cumulative advantage, religious upbringing indirectly decreases the probability of juveniles and young adults due to childhood religiosity, protective environment, and the risk factors associated with drug use.<sup>27</sup> Their study utilized ordinary least squares (OLS) regression analyses<sup>28</sup> of three-wave panel data from the National Survey of Children, which was conducted in 1976 (Wave 1), 1981 (Wave 2), and 1987 (Wave 3), based on a nationally representative sample of children living in households in the 48 contiguous states.<sup>29</sup> Their research supported their hypothesis and found that child religiosity promotes protective factors that inhibit illicit drug use which follows into adulthood.<sup>30</sup>

Following a systemic review of nearly 300 published studies on religion and crime, Johnson and Jang's research has found in 2010 that religion has constraining effects on drug use while promoting prosocial behaviors.<sup>31</sup> More recently, in 2019, Grim and Grim identified the inverse relationship between national religiosity and substance abuse rates.<sup>32</sup> While that on its own may be coincidental, they also identified the “provocative correlation” that the sections of

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<sup>23</sup> Sung Joon Jang and Byron R. Johnson, "Neighborhood Disorder, Individual Religiosity, and Adolescent use of Illicit Drugs: A Test of Multilevel Hypotheses," *Criminology* 39, no. 1 (February 2001): 119. <http://dx.doi.org/10.1111/j.1745-9125.2001.tb00918.x>.

<sup>24</sup> Ibid, 120.

<sup>25</sup> Ibid, 122.

<sup>26</sup> Ibid, 116.

<sup>27</sup> Sung Joon Jang, Christopher D. Bader, and Byron R. Johnson, "The Cumulative Advantage of Religiosity in Preventing Drug Use," abstract, *Journal of Drug Issues* 38, no. 3 (2008): 771. <http://dx.doi.org.ezproxy.liberty.edu/10.1177/002204260803800306>.

<sup>28</sup> Ibid, 782.

<sup>29</sup> Ibid, 777.

<sup>30</sup> Jang et. al, "The Cumulative Advantage of Religiosity in Preventing Drug Use," 787.

<sup>31</sup> Byron Johnson and Sung Joon Jang, "Crime and Religion: Assessing the Role of the Faith Factor," In *Contemporary Issues in Criminological Theory and Research: The Role of Social Institutions*, eds. Richard Rosenfeld, Kenna Quinet, and Crystal Garcia, 129. (Belmont: Wadsworth, 2010). [https://www.researchgate.net/publication/281591457\\_Crime\\_and\\_Religion\\_Assessing\\_the\\_Role\\_of\\_the\\_Faith\\_Factor](https://www.researchgate.net/publication/281591457_Crime_and_Religion_Assessing_the_Role_of_the_Faith_Factor).

<sup>32</sup> Brian J. Grim and Melissa E. Grim, "Belief, Behavior, and Belonging: How Faith is Indispensable in Preventing and Recovering from Substance Abuse," *Journal of Religion and Health* 58, no. 5 (2019): 1735. doi:10.1007/s10943-019-00876-w

society with greater propensity for substance abuse also had the lowest levels of religiosity.<sup>33</sup> The data and evidence of their study indicate that the decline of religiosity is not merely a concern of religious groups, but a matter of national health concern.<sup>34</sup>

### Religion and Substance Abuse Programs

Religious interventions, such as faith-based addiction treatments, are getting more attention in recent years than the time of Johnson's publication in 2004. Johnson lamented about such programs not receiving enough attention, despite the preliminary research at that time being positive.<sup>35</sup> In fact, while there appears to be no difference between the Prison Fellowship (PF) program (faith-based) and secular programs, those with higher levels of participation in PF had better recidivism outcomes than any other group studied.<sup>36</sup>

The Federal Bureau of Prisons conducted quantitative research into the effectiveness of the Life Connections Program (LCP), a different faith-based program. Data was collected between July 2004 and February 2007 from survey questionnaires of LCP participants at five prisons (one female institution, four male institutions). 72% of the LCP participants at these prisons returned completed surveys. Their main finding was that success of the program was dependent on feelings of self-worth.<sup>37</sup> However, Roberts and Stacer found in their attitude survey, published in 2016, that offenders had a positive view of a program called Churches Embracing Offenders and felt it gave them "positive, transforming experiences that allowed them to desist from crime and live a law-abiding lifestyle."<sup>38</sup> The study of Dodson et al. in 2011, using the Maryland Scientific Methods Scale (SMS), which is "one of the most widely accepted tools for assessing scholarly works in criminology,"<sup>39</sup> reviewed descriptive and multivariate studies of others.<sup>40</sup> Their research showed that the programs appear to have lower recidivism rates, but more studies are needed as current research is of weak methodology and limited in scope.<sup>41</sup>

Lyons et al. cite multisite clinical trials exploring the outcomes of Twelve Step programs (religious), CBT (secular), or Motivational Enhancement (secular) residential programs. Results of these trials show clients to make "significant improvements in their substance use behaviors and psychosocial functioning after discharge, irrespective of program structure."<sup>42</sup> This may be

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<sup>33</sup> Grim and Grim, Belief, "Behavior, and Belonging," 1734.

<sup>34</sup> Ibid, 1737.

<sup>35</sup> Byron R. Johnson, "Religious Programs and Recidivism among Former Inmates in Prison Fellowship Programs: A Long-Term Follow-Up Study." *Justice Quarterly* 21, no. 2 (2004): 352. doi:10.1080/07418820400095831.

<sup>36</sup> Ibid, 351-52.

<sup>37</sup> Dawn M. Daggett, Scott D. Camp, Okyun (Karl) Kwon, Sean P. Rosenmerkel, and Jody Klein-Saffran, "Faith-Based Correctional Programming in Federal Prisons: Factors Affecting Program Completion," *Criminal Justice and Behavior* 35, no. 7 (2008): 858. <https://doi.org/10.1177/0093854808317787>.

<sup>38</sup> Melinda R. Roberts and Melissa J. Stacer, "In their Own Words: Offenders' Perspectives on their Participation in a Faith-Based Diversion and Reentry Program," *Journal of Offender Rehabilitation* 55, no. 7 (2016): 480. <https://doi-org.ezproxy.liberty.edu/10.1080/10509674.2016.1216914>.

<sup>39</sup> Kimberly D. Dodson, Leann N. Cabage, and Paul M. Klenowski, "An Evidence-Based Assessment of Faith-Based Programs: Do Faith-Based Programs "Work" to Reduce Recidivism?" *Journal of Offender Rehabilitation* 50, no. 6 (2011): 373. <https://doi.org/10.1080/10509674.2011.582932>.

<sup>40</sup> Dodson et. al, "An Evidence-Based Assessment of Faith-Based Programs," 374-77.

<sup>41</sup> Ibid, 381.

<sup>42</sup> Lyons, Geoffrey C. B., Frank P. Deane, and Peter J. Kelly, "Faith-Based Substance Abuse Programs," In *Interventions for Addiction: Comprehensive Addictive Behaviors and Disorders, Volume 3*, edited by Miller,

because the support provided from participation in Twelve Step self-help fellowships after discharge substitutes the support that is otherwise obtained from professional health services. As the post-discharge support provided from participation in Twelve Step self-help fellowships substitutes for the professional health services support, the total cost of care for Twelve Step programs is often significantly less than CBT programs.<sup>43</sup> As Lyons explains, "spirituality and recovery are multidimensional constructs; there are likely to be many ways in which the two are associated."<sup>44</sup> Grim and Grim reviewed hundreds of scientific studies looking at empirical and evidence based data on the role of faith in addiction recovery. 84% of these studies found faith had a positive factor in recovery and less than 2% found faith to be a risk to recovery.<sup>45</sup>

### Constitutional Issues

According to the First Amendment, the government is prevented from neither establishing nor prohibiting the free exercise of religion. As such, the Supreme Court of the United States (SCOTUS) has developed, through case precedent, an understanding of what this means. The First Amendment, ratified effective on December 15, 1791, states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."<sup>46</sup>

#### Establishment Clause

The Establishment Clause restricts the amount of support that the government can give to religious endeavors and prohibits it from advancing one religion over another.<sup>47</sup> SCOTUS has devised, by judicial precedent, various criteria to ascertain whether the government has violated this clause, and aided religion. These include the Lemon Test, Endorsement Test, Agostini Test, Coercion Tests, and, in religious school state aid cases, the Child-Benefit Test. It is important to note that the first three tests interconnect, so the first two only are applied separately if the Agostini Test does not fully answer the question. The Agostini Test is based on the ruling in *Agostini v. Felton* (1997). In her ruling in this case, Justice Sandra Day O'Connor wrote that "not all entanglements, of course, have the effect of advancing or inhibiting religion. Interaction between church and state is inevitable...and we have always tolerated some level of involvement between the two. Entanglement must be "excessive" before it runs afoul of the Establishment Clause."<sup>48</sup> Therefore, this test would require that addiction programs in the drug courts must have a secular purpose, not create excessive entanglements between church and state, and neither positively nor negatively impact religion.

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Peter M., 149-50. San Diego: Elsevier Science & Technology, 2013.

<http://dx.doi.org/10.1016/B978-0-12-398338-1.00016-6>

<sup>43</sup> Ibid, 150

<sup>44</sup> Ibid. 152.

<http://dx.doi.org/10.1016/B978-0-12-398338-1.00016-6>

<sup>45</sup> Grim and Grim, "Belief, Behavior, and Belonging," abstract

<sup>46</sup> US Constitution, amend. 1, sec 1.

<sup>47</sup> Alpheus T. Mason and Donald G. Stephenson, *American Constitutional Law*, 17th ed. (New York: Routledge, 2017), 527.

<sup>48</sup> *Agostini v. Felton*, 521 US 203, 233 (1997).

## Coercion Test

Connected to the Establishment Clause is Coercion Test, which came out of *Kerr v. Farrey* (1996). In order to analyze cases where the state compels an individual to participate in faith-based programs, the Coercion Test provides a three-prong assessment:

1. Has the State acted?
2. Does said action amount to coercion?
3. Is the object of the coercion religious?

If all three prongs are met, then the state is coercing religion and, therefore, breaching the Establishment Clause.<sup>49</sup>

## Free Exercise Clause

In contrast to the Establishment Clause, the Free Exercise Clause challenges laws which burden a religion or its believers. For a law to withstand a challenge under this clause, it must pass strict scrutiny. In the case of *Employment Division v. Smith* (1990), two drug counselors took part in a Native American religious ritual and ingested peyote, a controlled substance. They were subsequently fired and denied unemployment compensation as their jobs were lost due to misconduct. They argued the prohibition of the sacramental use of illegal drugs under Oregon's drug laws was unconstitutional. SCOTUS found the law to pass strict scrutiny. Justice Antonin Scalia, writing the majority opinion, stated that the "right of free exercise does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)."<sup>50</sup> Justice Scalia added that the First Amendment only "bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections."<sup>51</sup>

## A New Standard for First Amendment Jurisprudence?

In June 2022, SCOTUS issued several rulings in cases involving the First Amendment. The rulings of these cases, *Carson v. Makin* (2022)<sup>52</sup> and *Kennedy v. Bremerton School District* (2022)<sup>53</sup>, were not in line with prior precedents, such as *Lemon* and *Kerr*. Dr. Leslie Griffin, a professor of law at the Las Vegas Boyd School of Law, wrote in her commentary that "six

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<sup>49</sup> *Kerr v. Farrey*, 95 F.3d 472, 479 (7th Cir. 1996).

<sup>50</sup> *Employment Division v. Smith*, 494 US 872, 879 (1990).

<sup>51</sup> *Ibid.*

<sup>52</sup> Maine had a nonsectarian requirement for its tuition assistance for parents who lived in school districts that did not operate a secondary school of their own. This violated the Free Exercise Clause of the First Amendment as no matter how the benefit and restriction were described, the program operated to identify and exclude otherwise eligible schools based on their religious exercise. *Carson v. Makin*, 142 S. Ct. 1987, 2022 U.S. LEXIS 3013, \*1, (SCOTUS, June 21, 2022). LexisNexis Academic.

<sup>53</sup> This case involved a high school football coach who lost his job because he knelt at midfield after games to pray. The court found that the school district infringed his rights under the Free Exercise Clause of the First Amendment because the district failed to act pursuant to a neutral and generally applicable rule and also found that his rights under the Free Speech Clause were violated because his speech was private, not government, speech, as the prayers were not ordinarily within the scope of his duties as a coach. The district failed to show that its actions were essential to avoid a violation of the Establishment Clause. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2022 U.S. LEXIS 3218, \*1 (SCOTUS, June 27, 2022). LexisNexis Academic.

justices of the Supreme Court have effectively deleted the Establishment Clause from the Constitution,<sup>54</sup> however her commentary seems to be written in an exaggerated manner that exudes liberal biases. She cited Justice Gorsuch's opinion that "in place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by 'reference to historical practices and understandings,'"<sup>55</sup> however she did not include the Justice's reasoning for the change. Justice Gorsuch reasoned that:

A natural reading of the First Amendment suggests that the Clauses have "complementary" purposes, not warring ones where one Clause is always sure to prevail over the others...An analysis focused on original meaning and history, this Court has stressed, has long represented the rule rather than some "exception" within the "Court's Establishment Clause jurisprudence."<sup>56</sup>

These cases did, however, follow the *Glucksberg* analysis regarding fundamental rights. More so, in my opinion, than cases such as *Agostini*, *Lemon*, and *Kerr*. In *Glucksberg v. Washington* (1997), Justice Souter, whilst evaluating the levels of scrutiny, stated that "the most fundamental aspect of 'liberty' . . . [is] subject to 'strict scrutiny.'"<sup>57</sup> Therefore, *Glucksberg* analysis holds that when "an examination of the nation's history, legal traditions, and practices reveal[s]... a fundamental liberty interest protected by the due process clause [of the Fourteenth Amendment]," it must be subjected to strict scrutiny.<sup>58</sup> The Free Exercise Clause has, following these cases, been elevated to the same level as the Establishment Clause.

### **Constitutionality of Faith-Based Programs**

The first faith-based program, Narcotics Anonymous, faced issues of constitutionality as it was implemented in the drug courts without a secular alternative. This has led this program to make religious aspects of the program multi-faith and optional, in an attempt to not violate the First Amendment. However, prior to religious elements becoming optional, the twelve-step program contained exhortations such as "God, as we understood Him" which, while being multi-faith, infer the existence of a monotheistic, higher power.<sup>59</sup> This means the free exercise of polytheists, pantheists, henotheists, and atheists is interfered with and this program, as a correctional institution, violates the establishment clause. Furthermore, as successful completion of these programs incurs benefits, and non-participation incurs punishment, this violates the Coercion Test. However, more recently, the courts have implemented an either/or strategy, where the offender is given the choice of a faith-based or a secular program. By doing this, the courts are ensuring that they cannot run afoul of the coercion test, which makes it more difficult for them to be found in breach of the establishment clause. Additionally, when a law is considered neutral, the Free Exercise Clause required a separate constitutional violation to partner with it for it to be infringed,<sup>60</sup> prior to *Carson* and *Kennedy*. Thus, the courts are unlikely

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<sup>54</sup> Leslie Griffin, "Goodbye to the Establishment Clause," *Verdict: Legal Analysis and Commentary from Justia (blog)*. *Justia*, June 28, 2022, <https://verdict.justia.com/2022/06/28/goodbye-to-the-establishment-clause>.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Kennedy v. Bremerton Sch. Dist.*, \*8

<sup>57</sup> *Washington v. Glucksberg*, 521 U.S. 702, 766-767 (1997).

<sup>58</sup> *Ibid.*, 705.

<sup>59</sup> *Kerr v. Farrey*, 480.

<sup>60</sup> *Employment Division v Smith*, 881.

to be found in violation of this clause. This has allowed more faith-centric, faith-based programs to come to the forefront.

### Potential Issues of Constitutionality in the Future

While research into faith-based rehabilitation is in its infancy and plagued with biased methodology from religious and anti-religious researchers alike, the research shows greater cost-effectiveness for faith-based programs and trends towards greater overall efficacy of treatment. With this being said, there is the potential for another constitutional issue to arise under the Fourteenth Amendment. As it is written, "the Fourteenth Amendment of the U.S. Constitution guarantees everyone equal protection under the law."<sup>61</sup> So, if faith-based programs are more effective than secular programs, would it be constitutional to punish those that fail in secular programs to the same degree as those who fail in faith-based programs? Would it be constitutional to determine that someone who has failed to complete a secular program is eligible to try again yet someone who failed to complete a faith-based program is ineligible on the grounds of the effectiveness of the program? Additionally, is it constitutional to offer a secular program with lesser efficacy as an alternative to a faith-based program with a higher efficacy? Potentially, the violation of the Equal Protection Clause would be partnered with the violation of the Free Exercise Clause, which could create a new hurdle for these programs. However, with the potential of a new standard for both the Establishment and Free Exercise clauses, coming out of *Carson* and *Kennedy*, and the historical ties of religious organizations and penal institutions,<sup>62</sup> faith-based rehabilitation programs may face less judicial restrictions.

### Conclusion

The drug courts should require faith-based programs whenever constitutionally possible. Research proves that recidivism is lower within these programs, they are more cost-effective, and drug use is usually a symptom of greater emotional and spiritual problems, rather than solely an addiction. This is an area of research that is in its infancy and has suffered from biases and questionable methodologies. Therefore, further research into the effectiveness of these programs with better methodology is needed. What is known, however, is that people often turn to addiction because something is missing in their life, and they wish to fill this void. Research is beginning to reveal this truth and explains that the best way to deal with, let us say, an addiction to methamphetamines, is to get them "addicted" to Christ instead.

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<sup>61</sup> US Constitution, amend. 14, sec. 1.

<sup>62</sup> Harry R Dammer, "Religion in prison," in *Encyclopedia of crime and punishment*, ed. David Levinson (Thousand Oaks, CA: SAGE Publications, 2002) 1:1376-1381. During the 18th century, isolation and discussions with clergy were thought to lead to repentance of offenders. Quakers led the formation and reformation of America's penal institutions, with the Walnut Street Jail in Philadelphia being their model. Even after the move to the Auburn system in the 19<sup>th</sup> century, where education was seen as the means to reform, the prison chaplain were often used as the sole educator, for budgetary reasons.

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