

Faith on the Farm: An Analysis of Angola Prison's Moral Rehabilitation Program Under the Establishment Clause

Roy L. Bergeron Jr.

Repository Citation

Roy L. Bergeron Jr., *Faith on the Farm: An Analysis of Angola Prison's Moral Rehabilitation Program Under the Establishment Clause*, 71 La. L. Rev. (2011)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol71/iss4/5>

This Comment is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

Faith on the Farm: An Analysis of Angola Prison's Moral Rehabilitation Program Under the Establishment Clause

*"Moral people are not criminals. That's why moral rehabilitation is the only true rehabilitation."*¹

INTRODUCTION

The numbers are alarming: The United States leads the world with the highest incarceration rate, with 756 out of every 100,000 people in jail.² Louisiana leads the country in the same category with 858 of every 100,000 citizens behind bars.³ Even when the incarcerated are finally released, the chances are likely that they will return to prison at some point within the next three years.⁴ With a systemic problem of these proportions, what should the states do to combat this epidemic?

One proposed answer is to turn to religion.⁵ Some evidence exists that faith-based programming can rehabilitate offenders and

Copyright 2011, by ROY L. BERGERON, JR.

1. DENNIS SHERE, CAIN'S REDEMPTION 52 (2005) (quoting Burl Cain, warden of Louisiana State Penitentiary).

2. ROY WALMSLEY, KING'S COLL. LONDON, WORLD PRISON POPULATION LIST 1 (8th ed. 2009), available at http://www.kcl.ac.uk/depsta/law/research/icps/downloads/wpp1-8th_41.pdf.

3. HEATHER C. WEST & WILLIAM J. SABOL, U.S. DEP'T OF JUSTICE, PRISON INMATES AT MIDYEAR 2008—STATISTICAL TABLES 11 (2009). The four states with the highest incarceration rates are all in the South. *Id.*

4. See, e.g., LA. DEP'T OF PUB. SAFETY & CORR., RECIDIVISM IN ADULT CORRECTIONS (TOTAL POPULATION) (2010), available at <http://doc.la.gov/wp-content/uploads/stats/2k.pdf> (finding that nearly 50% of inmates released from Louisiana prisons are rearrested within 60 months); *Reentry Trends in the U.S.: Recidivism*, BUREAU JUST. STAT., <http://bjs.ojp.usdoj.gov/content/reentry/recidivism.cfm> (last visited Mar. 7, 2011) (finding in a 1994 study that more than 65% of prisoners in 15 states were rearrested within three years of release).

5. This is precisely what a number of prisons have done. See, e.g., AWANA LIFELINE, <http://www.awana.org/lifeline> (last visited Nov. 10, 2009) (Christian inmate and children ministry); INNERCHANGE FREEDOM INITIATIVE, <http://www.ifiprison.org> (last visited Nov. 10, 2009) (non-profit organization providing religious programming for prisoners); KAIROS PRISON MINISTRY, <http://www.kairosprisonministry.org> (last visited Nov. 10, 2009) (non-profit volunteer prison ministry); see also Email from Robert Toney, Chaplain Supervisor, La. State Penitentiary, to Gary Young, Project Coordinator, La. State Penitentiary (Oct. 7, 2009, 03:52 CST) (on file with author) (Bible Colleges are currently operating at prisons in Louisiana, Mississippi, and Georgia).

reduce the likelihood of recidivism for participants.⁶ Armed with this data, the Louisiana State Penitentiary (“Angola”) has adopted a moral rehabilitation program that aims to reduce recidivism rates and violence within prisons.⁷ However, by integrating faith-based programs into state-funded prisons, the penitentiary risks violating the First Amendment’s prohibition on a government establishment of religion.⁸

This Comment analyzes the moral rehabilitation program currently operating at Angola. The goal of this Comment is to discover a way to effectively promote religious programming in prisons and address legitimate penological concerns without violating the Establishment Clause. Part I of this Comment discusses the existing Establishment Clause jurisprudence and its application to challenges in prisons. Part II then discusses the major aspects of the moral rehabilitation program at Angola. Part III analyzes the constitutionality of the Angola moral rehabilitation program, and finally, Part IV suggests changes that could save the program from constitutional challenges.

I. THE COURT’S APPROACH TO THE ESTABLISHMENT CLAUSE

The First Amendment to the U.S. Constitution states in pertinent part that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”⁹

6. See, e.g., *Study: Prison Faith-Based Education Reduces Rates of Recidivism; Basic Vocational Education Also Helps Recidivism*, CORRECTIONAL EDUC. BULL., Oct. 29, 2003, at 2. A five-year study released by the Louisiana Department of Corrections “found that only 30 percent of released inmates who receive faith-based education return to prison.” *Id.* The U.S. Department of Justice states that 65% of inmates were rearrested within three years of release, see *Reentry Trends in the U.S.: Recidivism*, *supra* note 4, while studies show the number is closer to 46.6% in Louisiana. See LA. DEP’T OF PUB. SAFETY & CORR., *supra* note 4 (keeping records for recidivism for 60 months after inmate is released); see also LA. DEP’T OF PUB. SAFETY & CORR., *RECIDIVISM IN ADULT CORRECTIONS (EDUCATION) (2010)*, available at <http://doc.la.gov/wp-content/uploads/stats/2t.pdf> (finding 42.3% recidivism rate after 60 months for prisoners involved in educational programming); LA. DEP’T OF PUB. SAFETY & CORR., *RECIDIVISM IN ADULT CORRECTIONS (FAITH BASED) (2010)*, available at <http://doc.la.gov/wp-content/uploads/stats/2u.pdf> (finding 42.2% recidivism rate after 60 months for prisoners involved in faith-based programming).

7. See *infra* Part II.

8. See U.S. CONST. amend. I.

9. *Id.* Louisiana has a parallel provision in its constitution. LA. CONST. art. I, § 8 (“No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.”). Even if Louisiana did not have this provision, the Establishment Clause has been held applicable to the states through the Fourteenth Amendment. See, e.g., *Lee v. Weisman*, 505 U.S. 577,

The framers of the Bill of Rights envisioned a role for religion in public life, but they were also aware of the corrupting power that government and religion could have on one another.¹⁰ The Religion Clauses of the First Amendment—the Free Exercise Clause and the Establishment Clause—together provide the appropriate balance between allowing government accommodation of religious practices and preventing excessive government involvement with religion.¹¹ This balance reflects the policy of the famous “wall of separation,” a phrase made famous by Thomas Jefferson¹² and often quoted by the U.S. Supreme Court in First Amendment religion cases.¹³ In an attempt to draw the line between these two clauses, the U. S. Supreme Court has developed three tests to analyze violations of the first clause, the Establishment Clause.

580 (1992); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 205 (1963); *Everson v. Bd. of Educ.*, 330 U.S. 1, 8 (1947). *But see* *Van Orden v. Perry*, 545 U.S. 677, 692–93 (2005) (Thomas, J., concurring) (arguing that the Establishment Clause does not restrain states; states can choose which religions to favor or disfavor); *Wallace v. Jaffree*, 472 U.S. 38, 113–14 (1985) (Rehnquist, J., dissenting) (arguing that, as long as the government treats all religions the same, the Establishment Clause does not prevent states from endorsing religion).

10. *See, e.g.*, James Madison, Memorial and Remonstrance Against Religious Assessments (1785), reprinted in *Everson*, 330 U.S. at 67 (“[E]cclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation.”); *see also Lee*, 505 U.S. at 606 (Blackmun, J., concurring) (“The mixing of government and religion can be a threat to free government, even if no one is forced to participate.”); *Engel v. Vitale*, 370 U.S. 421, 431 (1962) (The “first and most immediate purpose [of the Establishment Clause] rested on the belief that a union of government and religion tends to destroy government and to degrade religion.”).

11. *See, e.g.*, *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005); *Lee*, 505 U.S. at 589 (“The First Amendment’s Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or proscribed by the State.”).

12. Thomas Jefferson, Reply to the Danbury Baptist Association (1802), reprinted in MARY C. SEGERS & TED G. JELEN, *A WALL OF SEPARATION? DEBATING THE PUBLIC ROLE OF RELIGION* 125 (1998) (“I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between church and State.”).

13. *See, e.g.*, *Larkin v. Grendel’s Den*, 459 U.S. 116, 122–23 (1982); *Lemon v. Kurtzman*, 403 U.S. 602, 614 (1971); *Everson*, 330 U.S. at 16; *Reynolds v. United States*, 98 U.S. 145, 164 (1879).

A. A Tale of Three Tests: Supreme Court Establishment Clause Case Law

The Supreme Court first articulated an Establishment Clause test in *Lemon v. Kurtzman*,¹⁴ a case involving a challenge to a statute that allowed government funding for secular classroom expenses at private religious schools.¹⁵ The Court in *Lemon* noted that the Establishment Clause was intended not only to prevent laws establishing religion but also to prohibit laws *respecting* an establishment of religion.¹⁶ The distinction between laws establishing and laws respecting an establishment of religion means that Congress can pass neither a law creating a national religion nor a law that would be a step in that direction.¹⁷ This necessarily prevents more government action regarding religion than laws only *establishing* religion.¹⁸

In its analysis,¹⁹ the Court in *Lemon* articulated a three-pronged test that a statute¹⁹ must pass in order to survive an Establishment Clause challenge.²⁰ The first prong asks whether the legislation or government action in question has as its end a secular—as opposed to a religious—purpose.²¹ Secular purpose tends to be a deferential

14. 403 U.S. 602.

15. *Id.* at 606. *Lemon* was a combination of challenges to two state statutes, one in Rhode Island and the other in Pennsylvania. *Id.*

16. *Id.* at 612 (“The language of the Religion Clauses of the First Amendment is at best opaque, particularly when compared with other portions of the Amendment. Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead they commanded that there should be ‘no law *respecting* an establishment of religion.’”).

17. *Id.* (“A law may be one ‘respecting’ the forbidden objective while falling short of its total realization. A law ‘respecting’ the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not *establish* a state religion but nevertheless be one ‘respecting’ that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment.”).

18. *Id.*

19. Although the decision in *Lemon* referred to *statutes* that violate the Establishment Clause, the Court in later opinions stated that the test also applies to any government action. *See, e.g., Lee v. Weisman*, 505 U.S. 577 (1992) (applying Establishment Clause to public middle school’s decision to allow prayer at graduation); *Lynch v. Donnelly*, 465 U.S. 668 (1984) (applying Establishment Clause to challenged government Christmas display); *see also SEGERS & JELEN, supra* note 12, at 6 (stating that the *Lemon* Test applies to government “policy”).

20. *Lemon*, 403 U.S. at 612–13.

21. *Id.* (examining legislative intent to determine whether the end was secular as opposed to religious). The secular purpose prong was adopted for use

inquiry—a court will typically defer to the legislation’s or government action’s stated intent as long as it is not a “sham.”²² The second prong asks whether the primary effect of the government act advances or inhibits religion.²³ Government acts that equally benefit religious and non-religious individuals or organizations may not raise constitutional concerns,²⁴ but acts that grant unusual authority to religious organizations do violate the primary effect prong.²⁵ The third prong in *Lemon* asks whether the government practice fosters excessive government entanglement with religion.²⁶ Entanglement can occur when the government delegates traditional government functions to religious organizations²⁷ or when a government program requires continuing government surveillance to ensure religious neutrality.²⁸ A violation of any of *Lemon*’s three prongs results in a violation of the Establishment Clause.²⁹

in the *Lemon* decision from the Supreme Court’s previous decision in *Board of Education v. Allen*, 392 U.S. 236 (1968).

22. See, e.g., *Edwards v. Aguillard*, 482 U.S. 578, 586–87 (1987) (“While the Court is normally deferential to a State’s articulation of a secular purpose, it is required that the statement of such purpose be sincere and not a sham.”).

23. *Lemon*, 403 U.S. at 612 (quoting *Allen*, 392 U.S. at 243).

24. See, e.g., *Allen*, 392 U.S. at 243–44 (finding no violation of primary effect prong when free textbooks are distributed to both public and private schools).

25. See, e.g., *Larkin v. Grendel’s Den*, 459 U.S. 116, 125 (1982) (finding that a statute that granted churches the authority to veto liquor license applications for local businesses had the effect of advancing religion).

26. *Lemon*, 403 U.S. at 613. The excessive entanglement prong originated in *Walz v. Tax Commission*, 397 U.S. 664 (1970), where the Court addressed the constitutionality of a state property tax exemption for religious organizations that used their properties for religious worship.

27. See, e.g., *Larkin*, 459 U.S. at 126–27 (finding excessive entanglement where statute delegated to churches the government authority to veto liquor license applications of local businesses).

28. See, e.g., *Lemon*, 403 U.S. at 619. *But see* *Bowen v. Kendrick*, 487 U.S. 589, 616–17 (1988) (finding no entanglement problems with government monitoring of sectarian grant recipients).

29. See *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987) (“State action violates the Establishment Clause if it fails to satisfy any of these prongs.”). In *Agostini v. Felton*, 521 U.S. 203 (1997), the Supreme Court dropped *Lemon*’s entanglement prong, instead treating entanglement as evidence of primary effect. *Id.* at 233. Some courts have adopted *Agostini*’s modification of *Lemon*. See, e.g., *Young v. Beard*, 284 F. App’x 958, 963–64 (3d Cir. 2008) (analyzing case under first two prongs of *Lemon* but not the third); *Lindell v. Casperson*, 360 F. Supp. 2d 932, 956 (W.D. Wis. 2005) (“Although the Court of Appeals for the Seventh Circuit continues to view the *Lemon* Test as controlling, it has all but ignored the ‘excessive entanglement’ portion of the test.”), *aff’d sub nom.* *Lindell v. Govier*, 169 F. App’x 999 (7th Cir. 2006). However, the U.S.

The second Establishment Clause test, the Endorsement Test, was first articulated by Justice O'Connor in her concurrence in *Lynch v. Donnelly*,³⁰ a case regarding the constitutionality of a public Christmas display consisting of secular decorations and a nativity scene depicting the birth of Jesus.³¹ Although the majority decided the case under the *Lemon* analysis,³² Justice O'Connor suggested that the proper inquiry under the First Amendment is whether the government intended to endorse religion³³ and whether an objective observer³⁴ would perceive a message of government endorsement of religion.³⁵ Although the Endorsement Test originated in Justice O'Connor's concurrence in *Lynch*, a majority of the Court adopted the Endorsement Test five years later in *County of Allegheny v. ACLU*.³⁶

The Supreme Court developed a third test to analyze Establishment Clause challenges in *Lee v. Weisman*,³⁷ a case involving the constitutionality of an invocation given by a rabbi at a public middle school graduation.³⁸ Although students were not forced to stand and participate in the prayer, the Court found impermissible coercion in the fact that students who did attend the ceremony would feel compelled to participate because of the effects of peer pressure.³⁹ Because the only choices the students

Supreme Court has recently endorsed the use of *Lemon* in *McCreary County v. ACLU of Kentucky*, 545 U.S. 844 (2005). In any event, entanglement is still relevant in the inquiry as to the constitutionality of a government act, whether as part of the primary effect prong or as a separate element. *Agostini*, 521 U.S. at 232 (“[T]he factors we use to assess whether an entanglement is ‘excessive’ are similar to the factors we use to examine ‘effect.’”).

30. 465 U.S. 668 (1984).

31. *Id.* at 671.

32. *Id.* at 685.

33. *Id.* at 691 (O'Connor, J., concurring) (“The proper inquiry . . . is whether the government intends to convey a message of endorsement or disapproval of religion.”).

34. *Id.* at 690 (“The meaning of a statement to its audience depends both on the intention of the speaker and on the ‘objective’ meaning of the statement in the community.”).

35. *Id.* at 692 (“What is crucial is that a government practice not have the effect of communicating a message of government endorsement or disapproval of religion. It is only practices having that effect, whether intentionally or unintentionally, that make religion relevant, in reality or public perception, to status in the political community.”).

36. 492 U.S. 573 (1989) (adopting the Endorsement Test in analyzing an Establishment Clause challenge to a public holiday display).

37. 505 U.S. 577 (1992).

38. *Id.* at 580.

39. *Id.* at 593 (“[T]he school district’s supervision and control of a high school graduation ceremony places public pressure, as well as peer pressure, on

had were either to skip an important event like graduation or to attend the graduation and participate in a religious exercise against their will, the Court found that there was impermissible coercion.⁴⁰

The Supreme Court is not always consistent in choosing which of these three tests it will use to analyze an Establishment Clause challenge.⁴¹ Because the application of the *Lemon*, Endorsement, and Coercion Tests is a fact-specific determination, it is necessary to examine the Establishment Clause jurisprudence both within and outside the prison context in order to understand the reasons for applying each test.

B. Understanding the Court's Application of the Three Establishment Clause Tests

Early courts stated that a prisoner was no more than a slave of the state and had no constitutional rights.⁴² The U.S. Supreme Court has since held that prisoners retain their constitutional rights while incarcerated,⁴³ albeit with some restrictions.⁴⁴ Courts have therefore applied the various Establishment Clause tests to challenges in the prison context in a number of cases.

1. Accommodation of Religion in Prisons

The only U.S. Supreme Court case regarding the application of the Establishment Clause to the prison context is *Cutter v.*

attending students to stand as a group or, at least, maintain respectful silence during the invocation and benediction. This pressure, though subtle and indirect, can be as real as any overt compulsion.”).

40. *Id.* at 599.

41. Compare *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844 (2005) (defending use of *Lemon* Test in analyzing Ten Commandments display), with *Van Orden v. Perry*, 545 U.S. 677 (2005) (dismissing use of *Lemon* in analyzing Ten Commandments display). These two cases, with similar facts, were decided by the same Court on the same day, but by applying different tests.

42. See, e.g., *Ruffin v. Commonwealth*, 62 Va. (21 Gratt.) 790, 796 (1871) (“The bill of rights is a declaration of general principles to govern a society of freemen, and not of convicted felons and men civilly dead. . . . They are the slaves of the State undergoing punishment for heinous crimes committed against the laws of the land.”).

43. See, e.g., *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974) (“There is no iron curtain drawn between the Constitution and the prisons of this country.”).

44. See, e.g., *Pell v. Procunier*, 417 U.S. 817, 822 (1974) (“[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.”).

Wilkinson, decided in 2005.⁴⁵ The Court in *Cutter* refused to use the *Lemon* Test to analyze a challenge to the Religious Land Use and Institutionalized Persons Act (RLUIPA),⁴⁶ a federal statute that ensures freedom of religious exercise for prisoners.⁴⁷ In *Cutter*, Ohio prison officials raised an Establishment Clause challenge to RLUIPA in response to allegations by inmates that the prison did not accommodate their religious views.⁴⁸ The inmates were “adherents of ‘nonmainstream’ religions: the Satanist, Wicca, and Asatru religions, and the Church of Jesus Christ Christian.”⁴⁹ They alleged that the prison had failed to provide religious literature, opportunities for group worship, and a chaplain for their faiths in violation of RLUIPA.⁵⁰ The prison officials, in response, argued that RLUIPA was unconstitutional under the Establishment Clause because it improperly advanced religion.⁵¹ The Court found for the inmates, holding that RLUIPA did not violate the Establishment Clause and noting that, in some instances, “government may . . . accommodate religious practices . . . without violating the Establishment Clause.”⁵² The protections enshrined in RLUIPA are an example of this acceptable level of accommodation.⁵³ The decision in *Cutter* shows that there are instances where prisons are permitted, and perhaps required, to affirmatively accommodate inmate religious practices without violating the Establishment Clause.

45. 544 U.S. 709 (2005).

46. *Id.* at 721 n.1 (Thomas, J., concurring) (agreeing with the majority’s decision not to apply the *Lemon* Test). RLUIPA is codified at 42 U.S.C. §§ 2000cc to 2000cc-5 (2006).

47. RLUIPA provides the following protections to religious prisoners:
No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—
(1) is in furtherance of a compelling governmental interest; and
(2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc-1(a) (2006).

48. *Cutter*, 544 U.S. at 712–13.

49. *Id.*

50. *Id.*

51. *Id.* at 713.

52. *Id.* (quoting *Hobbie v. Unemployment Appeals Comm’n*, 480 U.S. 136, 144–45 (1987)) (internal quotation marks omitted). This idea comes from the understanding that “there is room for play in the joints between’ the Free Exercise and Establishment Clauses,” where the government can act with regard to religion without violating either Clause. *Id.* (quoting *Walz v. Tax Comm’n*, 397 U.S. 664, 669 (1970)).

53. *Id.*

One instance in which the government is both permitted and required to accommodate religious practices arises when the government opens public facilities for use by private organizations. In *Widmar v. Vincent*,⁵⁴ the public University of Missouri allowed secular student organizations to use its facilities while restricting access for religious organizations.⁵⁵ The Supreme Court held that granting religious organizations equal use of the facilities would not violate the Establishment Clause.⁵⁶ Using the *Lemon Test*, the Court quickly dismissed the secular purpose and entanglement prongs and instead addressed the primary effect prong.⁵⁷ Because over 100 student organizations representing a broad spectrum of ideas and beliefs had the opportunity to use the university's facilities, any benefit to religion would be incidental and not have the primary effect of advancing religion.⁵⁸ Thus, equal access to religious organizations is permitted and required when the government grants access to secular organizations.

2. Mandatory Participation in Religious Programs

Constitutional concerns may also arise when the government mandates participation in religious activities. Federal courts of appeals often use the Coercion Test to analyze situations where convicted individuals are required to participate in religious rehabilitative programs.⁵⁹ In *Kerr v. Farrey*,⁶⁰ the Seventh Circuit held that required attendance at Narcotics Anonymous meetings, where a failure to attend could result in a higher security classification or parole implications, constituted an establishment of religion.⁶¹ The plaintiff in *Kerr* was an inmate in a Wisconsin minimum security facility, who was required to attend Narcotics Anonymous meetings even after he had objected to the religious messages of the program.⁶² Because the inmate was required to

54. 454 U.S. 263 (1981).

55. *Id.* at 264–65.

56. *Id.* at 277.

57. *Id.* at 271–72.

58. *Id.* at 273–75.

59. *See supra* notes 37–40 and accompanying text (discussing the Coercion Test).

60. 95 F.3d 472 (7th Cir. 1996).

61. *Id.* at 480. Alcoholics Anonymous, Narcotics Anonymous, and similar programs are analyzed under the Establishment Clause because the programs make references to a higher power. *See infra* note 62. For purposes of the Establishment Clause, government cannot favor religion over non-religion. *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 860 (2005).

62. *Kerr*, 95 F.3d at 473–74. The plaintiff found the following invocation of God in Narcotics Anonymous's 12 steps offensive:

attend meetings with religious messages and because his failure to do so could lead to negative consequences for his security classification or parole opportunities, the court found improper government coercion.⁶³ Other circuits also adopted the Seventh Circuit's use of the Coercion Test for mandatory participation in religious rehabilitative programs.⁶⁴

3. *State Aid to Religion*

Although state-mandated participation in religious programs is typically a signal that the court will analyze the case using the

-
1. We admitted that we were powerless over our addiction, that our lives had become unmanageable.
 2. We came to believe that a power greater than ourselves could restore us to sanity.
 3. We made a decision to turn our will and our lives over to the care of God as we understood Him.
 4. We made a searching and fearless moral inventory of ourselves.
 5. We admitted to God, to ourselves, and to another human being the exact nature of our wrongs.
 6. We were entirely ready to have God remove all these defects of character.
 7. We humbly asked Him to remove our shortcomings.
 8. We made a list of all persons we had harmed, and became willing to make amends to them all.
 9. We made direct amends to such people wherever possible, except when to do so would injure them or others.
 10. We continued to take personal inventory, and when we were wrong promptly admitted it.
 11. We sought through prayer and meditation to improve our conscious contact with God, as we understood Him, praying only for knowledge of His will for us, and the power to carry that out.
 12. Having had a spiritual awakening as a result of those steps, we tried to carry this message to addicts and to practice these principles in all our affairs.

Id. at 474.

63. *Id.* at 479–80.

64. *See, e.g., Inouye v. Kemna*, 504 F.3d 705 (9th Cir. 2007) (finding impermissible coercion when a Buddhist was arrested for parole violation because of non-attendance at a Narcotics Anonymous meeting); *Warner v. Orange Cnty. Dep't of Prob.*, 115 F.3d 1068 (2d Cir. 1996) (finding coercion for mandatory participation in Alcoholics Anonymous). The Ninth Circuit in *Inouye* referred to the plaintiff's choice as either "to be imprisoned or to renounce his own religious beliefs." *Inouye*, 504 F.3d at 714. This lack of real choice reflects the theory behind the concept of coercion in most cases. Thus, the Coercion Test seems to be preferred in cases such as this where the government mandates participation in a religious activity or program.

Coercion Test,⁶⁵ state aid to voluntary religious organizations will trigger an analysis under *Lemon*.⁶⁶ In *Witters v. Washington Department of Services for the Blind*,⁶⁷ a blind man brought suit when the Washington Commission for the Blind denied him public funds to pursue a degree at a private religious college, although he would have received those funds had he attended a public university.⁶⁸ The Supreme Court used the three-part *Lemon* Test to analyze the challenge.⁶⁹ Under the first prong of *Lemon*, the Court found that the program had a secular purpose of promoting opportunities for blind individuals.⁷⁰ Under the primary effect prong, the Court held that, because the Commission first distributed funds to an individual, and then that individual made an independent decision to use those funds at an educational institution of his choice, the funding did not have the primary effect of advancing religion.⁷¹ Individuals who received funding could use the aid equally at either secular or religious institutions, so the Court found that there was no incentive for individuals to pursue strictly religious education.⁷²

Inmates and taxpayers also challenged state funding for voluntary religious programming in *Americans United for Separation of Church & State v. Prison Fellowship Ministries*.⁷³ The Iowa Department of Corrections, in an attempt to save money and reduce overcrowding in the prison, contracted with Prison Fellowship⁷⁴ to provide the Christian InnerChange program⁷⁵ to

65. See *supra* Part I.B.2.

66. See, e.g., *Witters v. Wash. Dep't of Servs. for the Blind*, 474 U.S. 481 (1986); *Ams. United for Separation of Church & State v. Prison Fellowship Ministries*, 509 F.3d 406 (8th Cir. 2007).

67. 474 U.S. 481 (1986).

68. *Id.* at 482–83.

69. *Id.* at 484–85.

70. *Id.* at 485.

71. *Id.* at 488. The Court did not address the excessive entanglement prong because that question was not decided by the lower court. *Id.* at 489 n.5.

72. *Id.* at 488.

73. 509 F.3d 406 (8th Cir. 2007).

74. Prison Fellowship is a non-profit, faith-based organization that aims to transform inmates “through the power and truth of Jesus Christ.” See *Mission, Vision, and Values Statements*, PRISON FELLOWSHIP, <http://www.prisonfellowship.org/why-pf/mision-vision-values> (last visited Mar. 6, 2011).

75. InnerChange Freedom Initiative (IFI), offered by Prison Fellowship, is a voluntary, faith-based prison program that “provides educational, values-based program services to prisoners” through Christian teachings. See *The Mission and Vision of IFI*, INNERCHANGE FREEDOM INITIATIVE, <http://www.ifiprison.org/ifi-vision> (last visited Nov. 10, 2009); see also Douglas Roy, Note, *Doin' Time in God's House: Why Faith-Based Rehabilitation Programs Violate the Establishment*

prisoners who voluntarily chose to participate in the program.⁷⁶ There were no punishments for non-participation and no promises of benefits for participation.⁷⁷ After completing a four-week orientation program, inmates participated in Bible studies, prayer sessions, and religious revivals.⁷⁸ Prisoners who volunteered to participate in the program stayed in a separate wing of the prison and were under the watch of Prison Fellowship the entire time they were in the program.⁷⁹ In analyzing the program, the court relied on the *Lemon* Test (as modified by *Agostini*)⁸⁰ to determine “whether the government acted with the purpose of advancing or inhibiting religion, and . . . whether the aid has the effect of advancing or inhibiting religion.”⁸¹ The court found a secular purpose for the prison’s decision to provide the InnerChange program because it offered a budget-friendly opportunity to reduce recidivism.⁸² The court determined that government funding for the overtly Christian InnerChange program had the effect of advancing religion because an inmate’s religious beliefs determined whether he could participate.⁸³ Therefore, the InnerChange program was unconstitutional because it violated the primary effect prong of *Lemon*.

The use of public funds for religious purposes is allowed in limited circumstances, however. In *Rudd v. Ray*,⁸⁴ the Iowa Supreme Court held that chaplains at state penitentiaries could be paid with state funds.⁸⁵ The prison employed one part-time and two full-time chaplains—one Protestant and one Catholic—who were responsible for serving inmates of all religious backgrounds.⁸⁶ Dismissing the three-pronged test set forth in *Lemon*⁸⁷ and noting several “exceptions” to the Establishment

Clause, 78 S. CAL. L. REV. 795, 801–05 (2005) (discussing the InnerChange Freedom Initiative).

76. *Prison Fellowship*, 509 F.3d at 413–14.

77. *Id.* at 414.

78. *Id.* at 415.

79. *Id.* at 423 (“In this case, the state effectively gave InnerChange its 24-hour power to incarcerate, treat, and discipline inmates.”).

80. *See supra* note 29.

81. *Prison Fellowship*, 509 F.3d at 423 (quoting *Agostini v. Felton*, 521 U.S. 203, 222–23 (1997)) (internal quotation marks omitted).

82. *Id.* at 423–24.

83. *Id.* at 425.

84. 248 N.W.2d 125 (Iowa 1976).

85. *Id.* at 126.

86. *Id.*

87. *Id.* at 127–28.

Clause that had been upheld by the U.S. Supreme Court,⁸⁸ the Iowa Supreme Court held that the use of state funds to employ prison chaplains was justified under the Free Exercise Clause of the First Amendment.⁸⁹ Although the Iowa Constitution stated that no person may be compelled to pay taxes in support of places of worship or ministers,⁹⁰ the court applied the same balancing of policies as set forth in the Establishment and Free Exercise Clauses of the First Amendment.⁹¹ Because prisoners have a right to exercise religion in prison, the state can provide ministers without violating the Establishment Clause.⁹² Thus, state funding for religion in prison may be allowed in some circumstances where it is permitted by the Free Exercise Clause and not prohibited by the Establishment Clause.

4. Programs Offered Solely for Particular Religions

Another constitutional problem can arise when prison officials offer programs for particular religious groups without offering similar programs for inmates of other religions. In *Kaufman v. McCaughtry*,⁹³ an inmate challenged a prison's decision not to allow him to organize an atheist group as a religious organization.⁹⁴ The plaintiff in *Kaufman* filed a request with the prison to form a group dedicated to studying "humanism, atheism, and free speaking."⁹⁵ The prison, however, determined that his request was not motivated by religious beliefs and denied it.⁹⁶ The Seventh Circuit found that atheism is a religious organization because it takes a position on ethics, other religions, and the existence of a god, so the inmate's request received First Amendment protection.⁹⁷ The court noted that a prison could

88. *Id.* at 129 (recognizing the use of civil courts, property tax exemptions, and Sunday closing laws as government acts that benefit religion but do not violate the Establishment Clause).

89. *Id.* at 133; *see also* *Marsh v. Chambers*, 463 U.S. 783 (1983) (upholding legislative prayer by state-funded chaplain).

90. *Rudd*, 248 N.W.2d at 132; *see also* IOWA CONST. art. I, § 3 ("The general assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.").

91. *Rudd*, 248 N.W.2d at 132.

92. *Id.* at 132-33.

93. 419 F.3d 678 (7th Cir. 2005).

94. *Id.* at 680.

95. *Id.* at 681.

96. *Id.*

97. *Id.* at 681-82.

accommodate certain religious groups and not others, but only if the prison had a secular purpose for doing so.⁹⁸ Because the court could find no secular purpose for the prison's denial of the inmate's request for a new religious organization, the prison's decision failed the first prong of *Lemon*.⁹⁹

Also using the *Lemon* Test, the Eighth Circuit in *Murphy v. Missouri Department of Corrections*¹⁰⁰ determined whether the prison's decision to provide religious television programming—but not programming for the plaintiff's religion—violated the Establishment Clause.¹⁰¹ The plaintiff was a member of the Christian Separatist Church Society, a religious organization that believes in the superiority of, and restricts its membership to, Caucasians.¹⁰² He sued the prison under the Establishment Clause for its refusal to grant his religion equal television airtime.¹⁰³ Analyzing the prison's decision under *Lemon*, the court determined that the secular purpose for providing television airtime to religious organizations was to promote access to and accommodation of religion by offering a diverse range of religious programming.¹⁰⁴ The primary effect of the programming was “to promote religious exercise within the limits of institutional security needs.”¹⁰⁵ Thus, prisons may provide religious programming for only certain religions, without violating the Establishment Clause, if justified by legitimate security concerns.¹⁰⁶

In *Williams v. Lara*,¹⁰⁷ the Texas Supreme Court analyzed the constitutionality of a voluntary, 120-day Christian rehabilitative program in the Tarrant County Corrections Center.¹⁰⁸ The sheriff

98. *Id.* at 684.

99. *Id.*

100. 372 F.3d 979 (8th Cir. 2004).

101. *Id.* at 985.

102. *Id.* at 981.

103. *Id.* at 982.

104. *Id.* at 985.

105. *Id.* Although the court stated that it would use the three-part *Lemon* Test, it did not address the entanglement prong. *Id.*

106. In this case, although the prisoner had a right to equal access to the prison television station to preach his religious views, the prison could censor him because his views of racial separatism could lead to violence. *Id.* at 984–85. *But see* *Young v. Beard*, 284 F. App'x 958 (3d Cir. 2008) (prison's decision to disband all musical groups except religious bands represents accommodation of religion and does not violate the Endorsement Test); *Henderson v. Frank*, 190 F. App'x 507 (7th Cir. 2006) (prisons need only provide “reasonable opportunities” for religious exercise to prisoners, and prison's decision to air only Christian programming did not violate Establishment Clause because inmates were not coerced into watching).

107. 52 S.W.3d 171 (Tex. 2001).

108. *Id.* at 176.

and the chaplain acknowledged that the program was shaped around their personal Christian beliefs, including the divinity of Jesus and the infallibility of the Bible, and that program instructors were not allowed to discuss any other religious views.¹⁰⁹ Analyzing the case under both the secular purpose prong of *Lemon*¹¹⁰ and the Endorsement Test,¹¹¹ the court found the program unconstitutional.¹¹² Although the program had a legitimate secular goal in promoting rehabilitation and reducing violence,¹¹³ the fact that the sheriff's personal Christian viewpoints were promoted at the exclusion of all other religions violated the Endorsement Test, making the program unconstitutional.¹¹⁴

In summary, the Supreme Court has articulated three separate Establishment Clause tests—the *Lemon*, Coercion, and Endorsement Tests.¹¹⁵ Each of these tests is still good law, but the Court has never specified exactly when and under what circumstances it will apply each test. A survey of the case law, however, provides some guidance as to what factors will trigger the application of each test. Using this analysis, it is possible to predict with some confidence what tests the Court would apply to Establishment Clause challenges in the prison context.

II. THE ANGOLA MORAL REHABILITATION PROGRAM

The Louisiana Legislature has determined that Louisiana correctional institutions should actively implement and participate in faith-based programs in prisons to reduce recidivism rates and help prepare prisoners for life outside of prison.¹¹⁶ To achieve this

109. *Id.*

110. *Id.* at 190.

111. *Id.* at 191.

112. *Id.* at 191–92.

113. *Id.* at 190–91.

114. *Id.* at 192 (“[T]he fact that inmates were willing to submit to the instruction offered does not mean that Williams and Atwell did not promote their own personal religious beliefs over other religious teachings, and their official endorsement of the substance of the religious instruction offered . . . goes beyond what the Establishment Clause can tolerate.”).

115. *See supra* Part I.A.

116. LA. REV. STAT. ANN. § 15:828 (Supp. 2011). The statute provides:

A. (1) . . . [T]he department shall direct efforts toward the rehabilitation of [inmates] in order to effect their return to the community as promptly as practicable. In order to accomplish this purpose, the secretary of the Department of Public Safety and Corrections shall establish programs of classification and diagnosis, education, . . . and religious services

....

end, the Louisiana Department of Public Safety and Corrections has set forth regulations for establishing faith-based programs in Louisiana prisons.¹¹⁷ Although parts of the departmental regulations are simply passive attempts to accommodate religious beliefs and practices by granting certain rights to prisoners,¹¹⁸ other provisions require affirmative efforts by prison staff to meet the penological objectives of reduced recidivism and preparation for life outside of prison through faith-based initiatives.¹¹⁹

B. The secretary shall adopt rules and regulations for local jail facilities and state correctional institutions to encourage voluntary participation by inmates in certified treatment and rehabilitation programs, including . . . values development and faith-based initiatives When funds are provided, such educational programs shall be available at each penal or correctional institution under the jurisdiction of the department.

Id.; see also *id.* § 828.2 (2005) (finding that faith-based programs “have the potential to facilitate inmate institutional adjustment, to help inmates assume personal responsibility, and to reduce recidivism”). At Angola, however, nearly 95% of inmates will never leave, so the goal of reduced recidivism may not apply to that prison. See *A Decade Behind Bars: Return to the Farm*, NAT’L GEOGRAPHIC CHANNEL, <http://channel.nationalgeographic.com/episode/a-decade-behind-bars-return-to-the-farm-4329/Overview11#tab-angola-prison-profile> (last visited Nov. 10, 2009).

117. La. Dep’t of Pub. Safety & Corr., Dep’t Regulation No. B-08-005 (Oct. 10, 2008) [hereinafter Faith-Based Programs Regulation]. The policy statement in the regulation states that “[i]t is the Secretary’s policy that all offenders be given the opportunity to practice their faith on a voluntary basis, limited only when necessary to accommodate other legitimate institutional interests consistent with the safety, security and orderly operation of the institution.” *Id.* § 5.

118. *Id.* The “procedures” section of the regulation states that [ea]ch Warden shall develop written procedures for this programming to meet the needs of their population. Such procedures shall include the following topics:

- 2) Opportunities to practice one’s faith individually and in a group along with information about access to those opportunities;
- 3) Possession of authorized symbols and/or items essential for faith practice purchased through authorized vendors;
- 4) Access to approved publications related to faith-based beliefs;
- 7) Access by staff chaplains to all areas of the facility;
- 8) Established visiting procedures for clergymen/spiritual advisors;
- 9) Utilization of Chaplain’s Assistants who are graduates of the New Orleans Baptist Theological Seminary at the Louisiana State Penitentiary

Id. § 7(B).

119. *Id.* These affirmative efforts include the following: “Each unit shall recruit an adequate number of volunteers from the faith-based community to minister to its offenders. Community linkages shall be developed with churches,

In an attempt to meet the goals set by the legislature, the Louisiana State Penitentiary has instituted several rehabilitative programs for inmates. For example, Angola inmates have access to educational programming, including literacy classes, GED programs, and vocational education courses offered by the Louisiana Technical College.¹²⁰ Inmates are also required to stay constantly busy; every inmate at Angola has a job—from farming and cooking to carpentry and welding—that he must perform each day.¹²¹ These jobs keep inmates busy, teach useful skills, and therefore, keep violence levels down.¹²²

To further meet the goals set forth by the legislature and by the departmental regulations, Angola has also developed a “moral rehabilitation” program, which seeks to reform the character of inmates through faith-based programming.¹²³ Moral rehabilitation was developed by Burl Cain,¹²⁴ who has been the warden at Angola since 1995.¹²⁵ Many credit Cain, a Southern Baptist,¹²⁶ and his faith-based approach to rehabilitation with changing the culture of the prison.¹²⁷ Angola was historically known as one of the most

synagogues, mosques and other faith-based institutions Chaplains and other designated staff members shall develop and maintain close relationships with community faith-based resources.” *Id.* § 7(C).

120. *LSP Educational Programs*, LA. DEP’T CORRECTIONS, http://www.corrections.state.la.us/lsp/educational_progs.php (last visited Mar. 6, 2011). Available vocational programs, taught by Louisiana Technical College, include automotive technology, carpentry, culinary arts, graphic communications, horticulture, and welding. *Id.*

121. Interview with Robert Toney, Chaplain Supervisor, La. State Penitentiary, in Angola, La. (Oct. 9, 2009) (on file with author); see also *LSP Prison Enterprises*, LA. DEP’T CORRECTIONS, http://www.corrections.state.la.us/lsp/prison_enterprises.php (last visited Nov. 10, 2009).

122. See, e.g., Interview with Robert Toney, *supra* note 121.

123. See SHERE, *supra* note 1, at 34, which quotes Angola Warden Burl Cain as saying, “I could teach [inmates] to read and write, could help them learn skills and a trade—but without moral rehabilitation, I would only be creating a smarter criminal.”

124. *Id.* at 41.

125. *Id.*

126. Dennis Shere, *Warden Saw Only One Answer for Troubled La. Prison: Christ*, BAPTIST PRESS (Jan. 3, 2008), <http://www.bpnews.net/bpnews.asp?ID=27125>.

127. See generally SHERE, *supra* note 1. See also Martin Fletcher, *Death Row Rodeo: The Louisiana Prison Miracle*, TIMES (London), May 1, 2008, available at http://women.timesonline.co.uk/tol/life_and_style/women/the_way_we_live/article3848081.ece; Paul Von Zielbauer, *Spinning Hope on Incarceration Station*, N.Y. TIMES, April 12, 2006, available at <http://www.nytimes.com/2006/04/12/arts/12radi.html?pagewanted=all>; Dan Harris, *Religious Programs Calm Prison*

dangerous prisons in the country; in fact, in the 1960s, Angola was commonly referred to as “The Bloodiest Prison in the South” due to the level of violence within the prison.¹²⁸ Since Cain’s arrival, the number of inmate-on-inmate assaults in the prison has dropped,¹²⁹ a statistic some attribute to moral rehabilitation.¹³⁰

Angola’s “Strategy to Accomplish Philosophy and Goals”¹³¹ states that the successful achievement of inmate moral rehabilitation is tied to the provision of faith-based programming.¹³² The major elements of Angola’s moral rehabilitation programs and services that may trigger Establishment Clause scrutiny are inmate religious organizations, on-site chapels, a degree program offered through the New Orleans Baptist Theological Seminary, an inmate minister program, and an inmate missionary transfer program.

Once Described as ‘Evil,’ ABC NEWS (June 9, 2006), <http://abcnews.go.com/WNT/story?id=2059284&page=1>.

128. OFFICE OF THE ASSISTANT WARDEN FOR ADMIN. SERVS., *THE ANGOLA STORY* 7 (1997).

129. *See* Inmate on Inmate Assaults with a Weapon (unpublished chart obtained from Louisiana State Penitentiary) (on file with author). Before Warden Cain and moral rehabilitation arrived at the prison, violence was at a high level, with the number of inmate-on-inmate assaults approaching nearly 500 in 1991; in the years following Warden Cain’s arrival, levels of violence dropped to the point where only 60 of these assaults occurred in 2006. *Id.*

130. *See supra* note 127 and accompanying text.

131. *LSP Mission Statement: Philosophy*, LA. DEP’T CORRECTIONS, <http://doc.louisiana.gov/LSP/> (last visited Nov. 10, 2009). The entire text of Angola’s “Strategy to Accomplish Philosophy and Goals” reads as follows:

- Perform a total and systematic review of all programs, policies and procedures—updating and revising as needed.
- Continue to enhance medical and mental health programming.
- Continue to enhance educational programming with special emphasis on literacy.
- Further develop security components of the program.
- Further refine the Performance Planning and Review System for the evaluation of employee job performance to promote productive dialogue between employees and supervisors which will assist employees in providing optimum service to the inmate population.
- Provide a wide array of faith-based services and programs to promote moral rehabilitation.
- Effectively and responsibly utilize technology resources in order to provide selected decision-oriented information needed by LSP Administration to plan, control, and evaluate activities and programs.
- Research and develop new training opportunities for supervisory personnel to better equip them with the essentials of maintaining a high level of professionalism.

Id.

132. *Id.*

A. Inmate Religious Organizations

One aspect of Angola's moral rehabilitation program is the opportunity for inmates to join and participate in inmate religious organizations. Inmates have an opportunity to voluntarily become involved in religious organizations based on their personal religious interests.¹³³ The available religious organizations span mainly the spectrum of Christian denominations and include Church of God in Christ, Full Gospel Businessmen Fellowship, Jehovah's Witnesses, Students of Islam, and United Methodist Men Fellowship.¹³⁴ Inmate churches from the Catholic, Baptist, Mormon, Pentecostal, Episcopal, and Jewish traditions also meet regularly for worship services.¹³⁵ Participation in these organizations is voluntary,¹³⁶ and inmates may change their religious affiliation at any time.¹³⁷

B. Prison Chapels

Religious inmates have the opportunity to worship in one of several chapels across the penitentiary grounds. These chapels were constructed with the help of the Louisiana Prison Chapel Foundation, a non-profit organization committed to building chapels at Louisiana prisons.¹³⁸ The funding for construction of the chapels was provided by private donations, and Angola prisoners working as carpenters¹³⁹ provided the labor.¹⁴⁰ Although the Louisiana Prison Chapel Foundation is a Christian organization,¹⁴¹ the chapels are regularly used by many inmate religious groups and are open to all inmate religious organizations that wish to use them.¹⁴²

133. See Interview with Robert Toney, *supra* note 121.

134. *LSP Inmate Organizations*, LA. DEP'T CORRECTIONS, http://www.corrections.state.la.us/lsp/inmate_orgs.php (last visited Nov. 10, 2009).

135. Memorandum from Chaplain's Office, La. State Penitentiary, to Richard Peabody, Deputy Warden (Aug. 20, 2009) (on file with author).

136. Faith-Based Programs Regulation, *supra* note 117, § 5 ("It is the Secretary's policy that all offenders be given the opportunity to practice their faith on a voluntary basis.")

137. *Id.* § 7(A)(1); Interview with Robert Toney, *supra* note 121.

138. *Louisiana Prison Chapel Foundation*, LA. PRISON CHAPEL FOUND., <http://lpcf.brickmanngroup.com/index.php?fuseaction=home.home> (last visited Mar. 6, 2011).

139. Interview with Robert Toney, *supra* note 121.

140. *Chapel Facts*, LA. PRISON CHAPEL FOUND., http://lpcf.brickmanngroup.com/index.php?fuseaction=services.category&Category_ID=23 (last visited Mar. 6, 2011).

141. *Id.*

142. For example, in the month of September 2009, there was not one day in which at least one organization was not scheduled to use the Interfaith Chapel. The activities included worship and prayer services for Jewish, Islamic, and

C. New Orleans Baptist Theological Seminary Bible College

One of the most prominent aspects of moral rehabilitation at Angola is the degree program provided by the New Orleans Baptist Theological Seminary (NOBTS).¹⁴³ Although the prison offers literacy, GED, and vocational educational programs intended to rehabilitate inmates and train them for work within the prison,¹⁴⁴ the NOBTS program represents the only post-secondary educational opportunity at Angola.¹⁴⁵

The NOBTS Angola Extension Campus first began offering courses to Angola inmates in 1995 as a way for the prison to provide budget-friendly educational programs.¹⁴⁶ Today, any interested inmate may apply for admission to the NOBTS degree program, but he must meet certain qualifications before being accepted. The first requirement for acceptance to the program, commonly known as the Bible College,¹⁴⁷ is a high school diploma.¹⁴⁸ Additionally, each inmate must complete a course entitled “Experiencing God—Knowing and Doing the Will of God,” a 12-week, prison-wide Bible study course available from the Southern Baptist church.¹⁴⁹ Even after completing the “Experiencing God” Bible course, inmates must be “called to ministry”¹⁵⁰ and finally approved by a committee of prison wardens before being admitted.¹⁵¹ Approximately 30 applicants are

Christian faiths, as well as numerous choir rehearsals scheduled throughout the month. Memorandum from Chaplain’s Office, *supra* note 135.

143. SHERE, *supra* note 1, at 78. See generally Raymond Bender, *Changing Lives*, ANGOLITE, May/June 2007, at 8 (discussing NOBTS program).

144. See *supra* note 120 and accompanying text.

145. Interview with Robert Toney, *supra* note 121.

146. See, e.g., Bender, *supra* note 143, at 8; Interview with Robert Toney, *supra* note 121.

147. *LSP Rehabilitative Services/Work Programs*, LA. DEP’T CORRECTIONS, <http://www.corrections.state.la.us/lsp/programs.php> (last visited Nov. 10, 2009).

148. Bender, *supra* note 143, at 10.

149. See Kyle Hebert, *Reproduction: “Experiencing God” Author Visits with Bible School Students*, ANGOLITE, May/June 2009, at 48. The “Experiencing God” course was co-authored by a former president of the Canadian Southern Baptist Conference, Henry T. Blackaby. *Id.* at 48; see also *Experiencing God*, BLACKABY MINISTRIES INT’L, <http://www.blackaby.net/expgod> (last visited Nov. 10, 2009).

150. See Bender, *supra* note 143, at 10–11, which quotes the director of the Bible College as stating that “the issue is spiritual status with the Lord, that’s the number one issue. We can’t give a man faith, he has to bring that with him. We can’t give him the will to work, he has to bring that with him. We can’t give him anything but the word of God and how to minister, how to put it all together.”

151. SHERE, *supra* note 1, at 79.

backlogged for admission to the program each semester.¹⁵² Those inmates who are admitted to the Bible College take classes on the Bible and Christian theology, as well as non-religious courses such as algebra and psychology.¹⁵³ The purpose of the program is “to give students a foundation in the history of Christianity and the practical application of effective ministry.”¹⁵⁴

Upon completion of the program, inmates receive either an associate degree (70 hours of credit) or a bachelor of arts degree (126 hours of credit) in Christian ministry from NOBTS,¹⁵⁵ an accredited university.¹⁵⁶ There are currently 111 inmates involved in the Bible College,¹⁵⁷ and 145 inmates have graduated from the program since its inception in 1995.¹⁵⁸ Although the Bible College is affiliated with the Southern Baptist Convention,¹⁵⁹ inmates of any religion—Christian or otherwise—may participate.¹⁶⁰

D. Inmate Minister Program

Inmates who graduate from the Bible College have the opportunity to work within Angola as inmate ministers,¹⁶¹ rather than working at one of the other prison jobs they would otherwise be required to perform.¹⁶² These inmate ministers “serve[] as assistants to the Chaplain”¹⁶³ and “becom[e] facilitators in [B]ible studies, worship services, prayer groups and a Certificate Program recognized and accredited by NOBTS.”¹⁶⁴ Inmate ministers are

152. Bender, *supra* note 143, at 11.

153. SHERE, *supra* note 1, at 78–81; *see also* Bender, *supra* note 143, at 11 (“The curriculum is designed to give students a foundation in the history of Christianity and the practical application of effective ministry. Students also achieve a level of competence in biblical exposition, Christian theological heritage, personal relationship skills, spiritual and character formation and disciple making.”).

154. Bender, *supra* note 143, at 11.

155. *See id.*; Interview with Robert Toney, *supra* note 121; *LSP Rehabilitative Services/Work Programs*, *supra* note 147.

156. *See About NOBTS*, NEW ORLEANS BAPTIST THEOLOGICAL SEMINARY, <http://www.nobts.edu/About.html> (last visited Nov. 10, 2009).

157. Email from Robert Toney, *supra* note 5.

158. *Id.*

159. *About NOBTS*, *supra* note 156.

160. SHERE, *supra* note 1, at 81. Although the seminary “teach[es] the exclusivity of Christ,” at one point 11 Muslim students were attending the Bible College. *Id.*

161. *LSP Educational Programs*, *supra* note 120.

162. *See supra* note 121 and accompanying text.

163. Email from Robert Toney, *supra* note 5.

164. *LSP Rehabilitation Services/Work Programs*, *supra* note 147.

paid 20 cents an hour, the highest level on the inmate pay scale,¹⁶⁵ to work “with the goal of evangelizing their peers” within the prison.¹⁶⁶ There are currently 143 prisoners serving as inmate ministers.¹⁶⁷

E. Inmate Missionary Transfer Program

In addition to the Bible College graduates who serve as inmate ministers within Angola, 22 other graduates also currently serve under the chaplain’s supervision as “inmate missionaries.”¹⁶⁸ These inmate missionaries are transferred throughout the State of Louisiana to minister to inmates in other prisons.¹⁶⁹ Since the inception of the Bible College at Angola, “30 inmate graduates trained in Christian ministry have become missionaries and [have been] sent out to other prisons throughout Louisiana’s Department of Corrections.”¹⁷⁰ Before an inmate can become a minister at another prison, the Secretary of the Department of Corrections must approve his transfer.¹⁷¹ Although the inmate missionaries are able to leave Angola—and can return to the prison if they wish—they receive no reduced sentences and are sometimes subjected to somewhat harsher rules than those at Angola.¹⁷²

Angola has established a number of religious programs in an attempt to rehabilitate prisoners and reduce recidivism rates. This

165. Interview with Robert Toney, *supra* note 121. Inmates begin at Angola working for no pay their first three years. After that, they begin making a minimum of 2 cents an hour, and some inmates can earn up to 20 cents an hour for working as inmate ministers or inmate counselors (legal advisors). *Id.*

166. *LSP Rehabilitation Services/Work Programs*, *supra* note 147.

167. *LSP Educational Programs*, *supra* note 120.

168. *Id.*

169. *LSP Rehabilitative Services/Work Programs*, *supra* note 147 (stating that graduates of the Bible College “are serving at Elayn Hunt Correctional Center (St. Gabriel, LA), Dixon Correctional Institute (Jackson, LA), Washington Correctional Institute (Angie, LA), Wade Correctional Institute (Homer, LA), C. Paul Phelps Correctional Center (Dequincy, LA), and Corrections Corporation of America (Winnfield, LA)”); *see also* Shere, *supra* note 126 (“Each year, inmate seminary graduates who feel called to ministry are transferred ‘two by two’ to other prisons in Louisiana to serve as inmate missionaries. They receive no special favors or time reduced from their sentences; they choose to serve God by sharing the Gospel with other inmates like no one else can.”); Email from Robert Toney, *supra* note 5.

170. *See* Hebert, *supra* note 149, at 49.

171. Interview with Robert Toney, *supra* note 121.

172. *Id.* For example, inmates who are used to lax curfew rules while at Angola often have to adhere to stricter curfews at the prisons to which they are transferred. *Id.* For inmates at a place once known as the “Bloodiest Prison in the South,” however, a chance to leave likely outweighs any burdens imposed by these moderately stricter rules.

“moral rehabilitation” program allows prisoners to become actively involved in religious ministry and education throughout the prison. Without addressing the effectiveness of moral rehabilitation, the next part of this Comment will discuss the constitutional problems posed by the program.

III. CONSTITUTIONAL ANALYSIS OF THE ANGOLA MORAL REHABILITATION PROGRAM

Officials at Angola have attempted to craft the moral rehabilitation program to avoid constitutional challenges made to similar faith-based prison programs,¹⁷³ but some aspects of the moral rehabilitation program violate the First Amendment’s prohibition against the establishment of religion. Each aspect of the moral rehabilitation program must be analyzed under the existing Establishment Clause jurisprudence to determine whether it passes constitutional scrutiny.

A. Volunteer Religious Organizations

The first issue in Angola’s moral rehabilitation program that involves the intersection between government and religion, and thus the possibility of a First Amendment violation, is the opportunity provided to inmates for voluntary participation in religious organizations. Government involvement in religion usually indicates a First Amendment violation, but it is unlikely that these particular organizations present any constitutional problems. This issue is best analyzed not as a government establishment of religion, but rather as government accommodation of religious exercise in prison.¹⁷⁴ The Court’s decision in *Cutter* allows prisons to take affirmative steps to accommodate religious practices,¹⁷⁵ and accommodation is sometimes mandated as in *Widmar*.¹⁷⁶ As long as Angola offers the opportunity for inmates to participate in secular and religious organizations, it must allow inmates the opportunity—with some restrictions for security reasons—to form organizations for religions that are not represented.¹⁷⁷ Thus, Angola would have to allow atheists, Wiccans, and Satanists the same opportunities as Muslims, Christians, and Jews. Because volunteer religious organizations

173. *Id.*; see, e.g., *Ams. United for Separation of Church & State v. Prison Fellowship Ministries*, 509 F.3d 406 (8th Cir. 2007); *Williams v. Lara*, 52 S.W.3d 171 (Tex. 2001).

174. See *supra* Part I.B.1.

175. See *supra* Part I.B.1.

176. See *supra* Part I.B.1.

177. See *supra* Part I.B.4.

represent an acceptable and necessary effort to accommodate an inmate's right to the free exercise of religion, the prison does not violate the Establishment Clause by providing these religious organizations, as long as all religions are afforded equal opportunities to organize.

B. Prison Chapels

The next issue that may present constitutional problems is the use of inmate labor to construct chapels on the prison's grounds.¹⁷⁸ It is possible that a court would decide to use the Coercion Test to analyze this issue because prisoners were required to construct religious buildings regardless of their religious beliefs. Under the line of cases that developed from *Lee*, the government cannot coerce anyone to participate in religious activities.¹⁷⁹ The main question here is whether the construction of a prison chapel is a religious activity for purposes of the Coercion Test. A chapel is a religious building, and forcing prisoners to participate in the construction of a religious building forces them to support religions that they may otherwise choose not to support. Because the Establishment Clause prohibits the government from favoring religion over non-religion,¹⁸⁰ the compelled use of inmate labor to construct religious buildings could be deemed unconstitutional.

However, nearly every case that uses the Coercion Test involves compelled participation in either a religious practice or a program with religious references.¹⁸¹ The construction of a chapel is arguably a secular act, no different from the construction of any other building in the prison—the skills and tools required to build a chapel and a farmhouse are the same. Some Angola prisoners already work as carpenters,¹⁸² so requiring these prisoners to build chapels is the same as requiring them to work on any other construction project. The coercion that occurs is not in participating or believing in religion, but rather in constructing a building. Based on this argument, the use of inmate labor to construct prison chapels should present no constitutional problems under the Coercion Test.

178. See *supra* Part II.B.

179. See *supra* Part I.B.2.

180. See, e.g., *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 860 (2005).

181. See *supra* Part I.B.2.

182. See *supra* note 121 and accompanying text.

Although a court may apply the Coercion Test, it is also possible a court would apply *Lemon* as a default test.¹⁸³ An analysis under the three-pronged *Lemon* Test does not lead to the same result as the Coercion Test. First, there is a secular purpose in constructing prison chapels: accommodation of religion.¹⁸⁴ Second, the primary effect of constructing chapels in prison is to benefit religious prisoners, impermissibly advancing religion over non-religion.¹⁸⁵ Finally, the construction of chapels on prison grounds requires cooperation between prison officials, who must provide inmate laborers, and the Louisiana Prison Chapel Foundation, which provides the funding for construction. Construction of chapels is a function typically reserved to religious organizations, not the government. This adoption of a religious function by the government is analogous to the delegation in *Larkin*.¹⁸⁶ The chapel construction project would be unconstitutional under a *Lemon* analysis.

A court could also decide to apply the Endorsement Test, as courts often do under challenges to religious displays.¹⁸⁷ Just as under a *Lemon* analysis, the program would be unconstitutional under an endorsement analysis. The fact that the prison is working with the non-profit Louisiana Prison Chapel Foundation to construct chapels (something that is usually left to religious organizations to do for themselves) and is also providing inmate labor to accomplish this goal could cause an objective observer to conclude that the prison is at least endorsing religion over non-religion. Because the private organization is a Christian organization, there is a likelihood that outside observers would also believe that the prison is endorsing Christianity over all other religions in violation of the Establishment Clause.

Finally, a court could consider the construction of chapels as an accommodation of religion. This is especially likely because the chapels are open to all religions, and therefore the chapels could

183. Although the *Lemon* Test has been questioned lately, courts still tend to rely upon it. See *supra* note 41 (discussing the Supreme Court's decisions in *McCreary* and *Van Orden* as both supporting and dismissing the use of *Lemon*).

184. See *supra* note 104 and accompanying text.

185. See, e.g., *McCreary*, 545 U.S. at 860.

186. *Larkin v. Grendel's Den*, 459 U.S. 116, 126 (1982). Although the delegation in *Larkin* was from the government to a religious entity, the same policy that prohibits this delegation also prohibits delegation from a religious entity to the government. See *supra* note 10 and accompanying text (discussing the corrupting effects religion and government can have on one another).

187. See, e.g., *Cnty. of Allegheny v. ACLU*, 492 U.S. 573 (1989); *Lynch v. Donnelly*, 465 U.S. 668, 691 (1984) (O'Connor, J., concurring). But see *McCreary*, 545 U.S. 844 (applying *Lemon* to a challenge to Ten Commandments display on public property).

exist solely as a way to accommodate the multitude of religions that could exist within Angola.¹⁸⁸ Thus, the chapel construction program would likely fail under the *Lemon* or Endorsement Tests, but could pass scrutiny under the Coercion Test or as a permissible accommodation of religion.

C. New Orleans Baptist Theological Seminary Bible College

The next issue that could present problems under the Establishment Clause is the Bible College degree program. Prison officials can decide to offer programs and services to members of only certain religious organizations if the reasons for doing so pass the *Lemon* Test.¹⁸⁹ Under the first prong of the *Lemon* Test, the secular purpose for offering *any* degree program in a prison is to address problems of violence, recidivism, and rehabilitation—all legitimate secular purposes.¹⁹⁰ Additionally, the secular purpose for offering *only* the Southern Baptist-based Bible College is related to funding—the prison budget does not allow for a publicly-funded degree program, and the Bible College is funded privately by the NOBTS.¹⁹¹ The court in *Prison Fellowship* accepted budgetary constraints as a legitimate purpose for allowing InnerChange to provide Christian programming within the prison. The program was declared unconstitutional not because of a violation of the purpose prong, but rather because of the nature of the funding for the program.¹⁹² The problem with this reasoning is that it allows prisons to avoid neutrality toward religion by blaming any religious favoritism on budgetary limitations. Due to the deferential nature of the secular purpose prong, however, a stated secular purpose is credited unless it is a blatant attempt to cover up religious intentions.¹⁹³ Because there is no evidence of a strictly religious purpose in Angola's decision to offer the Bible College, the secular purpose should be credited as legitimate.

Under the second prong of *Lemon*, the primary effect of the Bible College is to graduate inmates who are trained in Christian theology and ministry.¹⁹⁴ Because the primary effect of the program is to advance a particular religion, Angola's decision to allow the Southern Baptist Bible College as the only collegiate

188. See *supra* note 142 and accompanying text.

189. See *supra* Part I.B.4.

190. See *supra* notes 21–22 and accompanying text.

191. See *supra* Part II.C.

192. See *supra* notes 82–83 and accompanying text.

193. See *supra* note 22 and accompanying text.

194. See *supra* note 155 and accompanying text.

degree program in the prison likely violates *Lemon's* primary effect prong.

Proponents of the program may argue that the program is not completely religious in nature because students are required to take classes like algebra and psychology to obtain a degree.¹⁹⁵ Additionally, the degrees offered by the Bible College are associate's and bachelor's degrees,¹⁹⁶ the same degrees offered by secular universities. Arguably, the primary effect of the program is not to advance a particular religion, but rather to advance higher education in general.

However, this argument ignores the fact that students have the opportunity to earn only one degree—a degree in Christian Ministry.¹⁹⁷ Although participation in the Bible College is voluntary, an inmate who is interested in higher education must accept extensive instruction in the teachings of one particular religion, regardless of his own religious beliefs.¹⁹⁸ Because there are no available secular alternatives, the primary effect of the program is impermissibly to advance one particular religion in violation of *Lemon's* primary effect prong.

Angola's Bible College may also violate *Lemon's* third prong, excessive government entanglement. The College, like any prison program, cannot exist without the involvement of the prison administration. However, the involvement of the administration in this instance goes beyond mere support because admission to the Bible College requires approval by a team of prison wardens.¹⁹⁹ Although there will necessarily be some government entanglement because of the security issues inherent with allowing inmates to participate in extracurricular activities, the fact that prison wardens are responsible for determining which prisoners are qualified for participation in a religious education program seems to go beyond the government involvement in religion that is normally expected in prison settings. Although there is no evidence that wardens have made admissions decisions based on religious qualifications, some government oversight may be required to ensure religious neutrality in the decision-making process. When a program requires continuing government surveillance to ensure neutrality, there is a risk of excessive entanglement.²⁰⁰

195. See *supra* note 153 and accompanying text.

196. See *supra* note 155 and accompanying text.

197. See *supra* note 155 and accompanying text.

198. See *supra* Part II.C.

199. See *supra* note 151 and accompanying text.

200. See *supra* note 28 and accompanying text.

However, even though the admissions process may result in some government entanglement with religion, a program fails under *Lemon*'s third prong only when it *results* in *excessive* government entanglement. Here, the entanglement is arguably in furtherance of security measures, a permissible justification for lowered constitutional rights for prisoners,²⁰¹ and represents a minimal involvement in religion. Prison officials only make the final cuts, after all other qualifications set by the NOBTS have been met.²⁰² Because this involvement takes place only after a separate entity makes religious decisions and represents a minimal intrusion based primarily on secular security concerns, the prison's involvement with the Bible College admissions decisions does not represent an excessive entanglement with religion.²⁰³

As an alternative to the *Lemon* Test, a court could use the Endorsement Test to analyze the constitutionality of the Bible College.²⁰⁴ The situation at Angola is similar to the facts of *Williams*, where the Texas Supreme Court struck down a Christian rehabilitation program that reflected the religious beliefs of the sheriff in charge of the prison.²⁰⁵ Even if only coincidental, the facts here suggest that Angola is endorsing one particular religion: Warden Cain is a practicing Southern Baptist;²⁰⁶ "Experiencing God," a prerequisite course for admission to the Bible College, is co-authored by a Southern Baptist;²⁰⁷ and the Bible College is offered by NOBTS, a Southern Baptist seminary.²⁰⁸ Additionally, although members of any religion can participate in the program, the Bible College still teaches the message of "the exclusivity of Christ."²⁰⁹ An objective observer could easily conclude that by providing only the Bible College as an opportunity for higher education, Angola is endorsing one religion—the Southern Baptist denomination of Christianity—over all other religions in violation of the Establishment Clause. The Bible College therefore presents constitutional concerns under both the *Lemon* and Endorsement Tests.

201. See *supra* note 44 and accompanying text.

202. See *supra* Part II.C. The admissions panel only makes its decisions after inmates have received a high school diploma, completed the "Experiencing God" course, and been "called to ministry."

203. It may be possible that a court would not even address the entanglement prong in this situation. See *supra* note 29 (noting that some courts have dropped the entanglement prong from analysis after *Agostini*).

204. See *supra* notes 107–14 and accompanying text.

205. See *supra* notes 107–14 and accompanying text.

206. See *supra* note 126 and accompanying text.

207. See *supra* note 149 and accompanying text.

208. See *supra* note 159 and accompanying text.

209. See *supra* note 160 and accompanying text.

D. Inmate Minister Program

The inmate minister program also presents potential constitutional problems. Angola has a Chaplains Department that provides support for inmates with religious needs, and graduates of the Bible College can work in this department and minister to inmates.²¹⁰ Bible College graduates are not required to become inmate ministers, but they are paid the highest wages available to inmates to preach religious messages.²¹¹ Because this aspect of moral rehabilitation involves the use of public funds, it is analyzed under *Lemon*.²¹²

Under the first prong, the prison could offer one of any number of legitimate secular purposes for paying inmates to minister to other prisoners—increasing access to and accommodation of religion, reducing violence, or reducing recidivism would all be acceptable secular goals. Because the secular purpose prong is a deferential test, and because there is no indication that these goals are insincere, a court would credit the stated secular purposes.²¹³

However, the program may fail under the second prong, which asks whether the government aid has the primary effect of advancing religion. Inmate ministers receive the highest hourly rates of any workers in the prison—20 cents an hour—to minister to other prisoners.²¹⁴ Additionally, by becoming inmate ministers, these prisoners can avoid the physically demanding jobs that other inmates must endure.²¹⁵ There is undeniably an incentive for inmates to pursue a position as an inmate minister. Because inmate ministers must first graduate from the Bible College, a Southern Baptist program, the primary effect of using state funding to pay inmate ministers is to create an incentive to participate in a religious program offered by one particular Christian denomination and therefore advance that religion in violation of the second prong of *Lemon*.

Proponents of the inmate minister program may argue that inmate ministers are not the only prisoners at Angola that may receive 20 cents an hour. Inmate legal advisors, who work in the prison's law library to research other inmates' cases, also receive

210. See *supra* notes 161–67 and accompanying text.

211. See *supra* notes 165–66 and accompanying text.

212. See *supra* Part I.B.3.

213. See *supra* note 22 and accompanying text.

214. See *supra* notes 165–66 and accompanying text.

215. See *supra* note 121 and accompanying text. If an inmate becomes a minister, he can avoid jobs in construction, welding, farming, or other physically demanding work.

this heightened wage.²¹⁶ The state funding creates an incentive for inmates to pursue *any* higher-level education, whether legal or religious, to move up the prison pay scale. Therefore, the primary effect of the funding is not to advance religion, but to advance higher education, a secular goal.

However, this argument misses the purpose behind prohibiting government aid to advance religion. The fact that the inmate ministry program is open only to inmates who graduated from the Southern Baptist-affiliated Bible College means that in the end, primarily Christian inmates will have the opportunity to become inmate ministers. Also, because the Bible College is provided by a Southern Baptist seminary, non-Southern Baptist inmate ministers will be able to effectively minister to other inmates based primarily on their Southern Baptist-influenced understanding of religion. As more inmates graduate from the Bible College, more inmates trained in Southern Baptist theology will become inmate ministers and spread that religious perspective to other prisoners. Thus, the inmate minister program has the effect of advancing Southern Baptist teachings in violation of the Establishment Clause.

One could argue, however, that the money paid to inmate ministers has the same effect as money paid to prison chaplains. State support of chaplains is permitted by the First Amendment,²¹⁷ so providing state funds to inmates who accomplish the same goals as chaplains should also be permissible. However, prisoners occupy a position within the prison different from that of chaplains. By placing prisoners in a position of religious authority that is similar to the chaplains' position and paying prisoners to occupy that position, the prison puts out the message that religion and religious authority should be respected on the same level as prison authority, impermissibly advancing religion with public funds.

Similarly, by paying inmates to minister to other prisoners, Angola risks becoming excessively entangled with religion in violation of the third prong of *Lemon*. Before an inmate may become an inmate minister, he must jump through numerous hoops, including graduation from the Bible College. However, the final step in becoming an inmate minister involves recognition of this status by the prison. By acknowledging that certain prisoners are qualified to become inmate ministers, and by then paying those inmates public funds to perform that task, the prison becomes impermissibly entangled with religion.

216. See *supra* note 165.

217. See *supra* notes 84–89 and accompanying text.

An analysis of the inmate minister program under the Endorsement Test also proves problematic for Angola. Providing state funding to pay inmates who serve as ministers creates the appearance of a government endorsement of religion. Acceptable government payment to religious leaders is rare, and is typically seen in the case of chaplains.²¹⁸ By paying inmates to perform religious duties normally reserved for prison chaplains, Angola has carved out another rare exception to the use of state funds for paying religious leaders. An objective observer could therefore conclude that Angola's decision to use state funds to pay inmate ministers in an exceptional situation conveys a message of government endorsement of religion.

E. Inmate Missionary Transfer Program

The inmate missionary transfer program may create some of the same problems as the inmate minister program. Under the first prong of *Lemon*, the secular purposes for allowing religiously trained inmates from Angola to transfer to other prisons include accommodation of religion, reducing violence, or reducing recidivism—the same purposes that could be offered for the inmate minister program.²¹⁹ Although these other prisons, and not Angola, actually receive the benefits of reduced violence and recidivism from accepting religiously-trained inmates, the State still has a legitimate interest in addressing rehabilitation throughout the prison system.²²⁰ The actual beneficiary of the transfer should not matter as long as the benefit is realized somewhere within the Louisiana prison system.

Even though there is a secular purpose behind the inmate missionary transfer program, the primary effect prong of the *Lemon* Test is not satisfied. Just as with the inmate minister program, Angola only considers Bible College graduates for transfer as inmate missionaries.²²¹ Additionally, inmates could be tempted by the opportunity to leave Angola for a comparatively safer prison. The inmate missionary program therefore has the effect of at least advancing religion over non-religion, if not advancing a particular Christian denomination above all other religions, by requiring inmates to participate in religious programming to receive the benefit of a transfer to a relatively safer prison. This violates the primary effect prong of *Lemon*.

218. See *supra* notes 84–89 and accompanying text.

219. See *supra* Part III.D.

220. See *supra* note 116 and accompanying text.

221. See *supra* notes 168–72 and accompanying text.

The inmate missionary program may also create an excessive government entanglement with religion under the third prong of *Lemon*. The decision to transfer an inmate is made partially based on religious qualifications—graduating from the Bible College—and partly by approval of the Secretary of the Department of Corrections.²²² Prison officials transfer prisoners partly because of their ability to adequately perform religious tasks. This ability to effectively minister to other inmates is typically assessed by religious leaders. Because the government is making transfer decisions based on religious qualifications, the government and religion may be impermissibly intertwined in violation of the excessive entanglement prong.

However, one could argue that the religious and secular considerations are separate from one another, and thus there is no entanglement. The religious qualifications are first determined by the prisoner's own actions in applying to and graduating from the Bible College. Once these religious qualifications are met, prison officials are only involved to ensure that transferred prisoners pass security clearance. In a sense, prison officials merely "check the box" after inmates have met religious qualifications, never actually becoming involved in making decisions about these qualifications. Although this process may require a minimal government entanglement with religion to ensure that inmate missionaries will not pose a security threat when transferred, there is nevertheless no *excessive* government entanglement with religion.

Regardless of how the issue is defined, Angola officials still transfer inmates based partly on the determination that those inmates are qualified to effectively perform certain religious tasks. Prison officials must communicate with religious leaders, inquire into and acknowledge the religious qualifications of certain inmates, and make transfer decisions based on what those religious leaders have determined about the abilities of those inmates. Because the transfer program requires religious officials to delegate some of their traditional authority—the authority to make decisions about who qualifies as an acceptable religious missionary—to government officials in the Department of Corrections, the program results in an excessive government entanglement with religion.

The inmate missionary transfer program would also be struck down under the Endorsement Test. Only Bible College graduates are considered for participation in the program, and no other transfer programs are available for non-religious inmates. Inmates are transferred based on their knowledge and expertise in religious

222. See *supra* note 171 and accompanying text.

matters. Again, all of the qualifications for becoming a missionary require participation in primarily Southern Baptist programming. An objective observer would conclude that Angola is endorsing the religious messages conveyed by the Bible College and the transferred prisoners. Because the government cannot endorse one religion over another, or religion over non-religion, the inmate missionary transfer program is unconstitutional under the Endorsement Test. The missionary program would fail under both the *Lemon* and Endorsement Tests, the two tests a court would be most likely to use.

Of the most prominent aspects of Angola's moral rehabilitation program, at least three—the Bible College, inmate minister program, and inmate missionary program—pose potential constitutional concerns.²²³ Although those aspects of the moral rehabilitation program in their current formats could not survive a constitutional challenge, Angola officials could make changes that would not only save the program, but actually make it more inclusive.

IV. SUGGESTIONS FOR MODIFYING ANGOLA'S MORAL REHABILITATION PROGRAM

Angola's moral rehabilitation program is a laudable attempt to accommodate and promote religious programming for prisoner rehabilitation, but the Bible College, inmate minister program, and inmate missionary program appear to violate the Constitution's prohibition against a government establishment of religion under the tests that a court would be most likely to use. Eliminating the problematic aspects of the moral rehabilitation program would easily cure the constitutional concerns, but it is unlikely that Angola officials would choose to abandon those aspects wholesale. With only a few changes, it may be possible to not only save the moral rehabilitation program, but also extend it to even more prisoners and continue to provide religious rehabilitation to Angola inmates. The suggested changes that follow represent only a few options that Angola officials could pursue to preserve Angola's moral rehabilitation program.

223. Suggested changes to the voluntary religious organizations and prison chapels have been left out of the following Part because it is likely that those aspects of the moral rehabilitation program would be considered acceptable efforts to accommodate prisoners' religious beliefs and practices.

A. Proposed Changes to the Bible College

The first aspect of moral rehabilitation that appears to violate the First Amendment is the Bible College. One way to save this program is for Angola officials to actively pursue and implement other options for collegiate education. Just as the prison has allowed the Southern Baptist-affiliated NOBTS to offer a Christian ministry degree program at the prison, the prison could invite other religious organizations to offer programming from other religious perspectives. Providing opportunities for higher education from multiple religious organizations would lessen the effect of advancing a particular religion and give non-Southern Baptist prisoners a greater choice in pursuing a religious university degree.

Because the government cannot prefer religion over non-religion, however, Angola must also pursue opportunities for secular educational programs. Angola is near the state capital of Baton Rouge, which is home to several public universities.²²⁴ Prison officials should negotiate with these universities to provide collegiate courses to inmates. This option would likely require the cooperation of state government to implement and fund the program, but it is necessary for the prison to offer equal opportunities for both religious and secular higher education to eliminate the constitutional problems that arise because of the religious nature of the Bible College.

B. Proposed Changes to the Inmate Minister Program

Angola officials must also address the constitutional problems inherent in the inmate minister program. It is possible that the only way to save this program is to stop paying the inmate ministers. Because the problems that arise from this program are related to the use of state funding for religious purposes, removing the funding would solve these constitutional problems by removing the inmates' incentive for participation in religious activities. However, this may also have the unfortunate effect of interfering with Angola's secular reasons for providing the program—accommodation of religion and facilitation of inmate rehabilitation. If inmates know that they will not receive pay for working as ministers, it is possible that fewer inmates will choose to pursue this route. Regardless of this fact, using state funding to pay inmate ministers is impermissible under the Constitution, and a change

224. See *Louisiana State University*, LA. ST. U., <http://www.lsu.edu> (last visited Nov. 10, 2009); *Southern University and A&M College*, S.U., <http://www.subr.edu> (last visited Nov. 10, 2009).

must be made to save the program. Angola could save the program by instead allowing some inmates to act as part-time ministers. These ministers would receive no pay for their work as religious ministers, and they would be required to work at another job for which they would be paid. In this way, inmate ministers would not receive any incentives based primarily on their religious qualifications, and Angola could therefore save the inmate minister program.

C. Proposed Changes to the Inmate Missionary Transfer Program

The inmate missionary transfer program also poses constitutional problems under the Establishment Clause. Elimination of this program would not have a significant effect on the general prison population because only 22 inmates are currently involved.²²⁵ However, those who support the program may argue that the effect of the program should not be measured only by the number of inmates who are transferred. The inmate missionary transfer program also has an effect on the Angola inmates who reform their behavior in the hopes of being transferred, as well as on prisoners in other Louisiana institutions who are rehabilitated by their interactions with transferred inmate missionaries. If the impact of the program is broad enough, Angola may prefer to keep it.

One way to save the inmate missionary transfer program is to expand it from only religious programming to both religious and secular programming. The prison already offers vocational educational programs through the Louisiana Technical College.²²⁶ Angola could allow inmates trained through the technical college to transfer to other Louisiana prisons and teach vocational skills to other prisoners. In doing so, Angola could expand its reach to permit the transfer of both religious and non-religious prisoners throughout the State and impact more inmates in the Louisiana correctional system than the current transfer program at Angola. This program would accomplish the same goals as the inmate missionary transfer program. First, this new program would reduce violence in much the same way as current educational and moral rehabilitation programs—by keeping inmates busy through either religious or vocational education programs, the new program will result in inmates having less time, energy, and desire to commit violent acts. Second, this program could help reduce recidivism statewide. Both religious and secular education can reduce

225. See *supra* note 168 and accompanying text.

226. See *supra* note 120 and accompanying text.

recidivism rates,²²⁷ so expanding both types of education to other state prisons could benefit the entire Louisiana prison population.

This hybrid religious and secular inmate transfer program has all the benefits of the current transfer program without violating the Endorsement Test. Because Angola would be providing both secular and religious opportunities, there would be no problem with preferring religion over non-religion. Likewise, the program could also pass the primary effect prong of the *Lemon* Test, as all prisoners would have an equal opportunity to participate in the transfer program. This solution does not completely immunize the program from challenge, however; prison officials would still have to make decisions about transfers for inmate missionaries, potentially raising the same entanglement concerns as the original program. The proposed solution at least resolves some of the constitutional issues with the program, hopefully making it less likely that the program would be challenged. It is therefore possible to preserve the religious programming that prison officials and some Angola inmates have come to rely upon while also providing equivalent secular options for non-religious prisoners.

Angola can be a depressing place, especially considering that only about 5% of inmates who enter the prison's gates will ever leave.²²⁸ With this statistic in mind, it seems futile to challenge Angola's use of religion to build hope, even more so if the results are positive. However, the language of the First Amendment does not allow for exceptions to the prohibition against a government establishment of religion; it states simply that "Congress shall make no law respecting an establishment of religion."²²⁹ The idea that the government would actively support the evangelization of men and women who are at their weakest point is repugnant to the purposes behind this prohibition set forth in the Establishment Clause. If government involvement in religion corrupts both the government and religion,²³⁰ its potential for corruption is even greater when the religious participants are in a position of weakness relative to the government. The fact that other prisons in the U.S. are beginning to adopt the Angola model is cause for even greater concern.²³¹ Because some aspects of the moral rehabilitation program are unconstitutional as they currently exist, it is imperative that Angola modify these aspects before they

227. See *supra* note 6 and accompanying text.

228. See *supra* note 118 and accompanying text.

229. U.S. CONST. amend. I.

230. See *supra* note 10 and accompanying text.

231. Email from Robert Toney, *supra* note 5 (stating that Bible Colleges are currently operating in Mississippi and Georgia prisons).

become standard procedure in other prisons. The more ingrained the program becomes in prison policy and practice, and the more that inmates come to rely upon the program, the more difficult it will be to replace if it is declared unconstitutional. The good news is that the program can be saved—in some cases by simply including more inmates—and the benefits from these changes should be even greater than the benefits under the current program.

CONCLUSION

It is important to reiterate that the analysis contained in this Comment does not suggest that religious programs within prisons do not effectively rehabilitate inmate participants. In fact, some evidence suggests that these programs do reduce recidivism rates.²³² The analysis also does not suggest that prisons may never incorporate religious programming in a way that fits within the confines of the First Amendment. This Comment only argues that some aspects of the moral rehabilitation program, as it currently operates at Angola, could not pass constitutional scrutiny under the modern Establishment Clause analysis. Angola officials must take action and modify the program as detailed in this Comment in order to save it from potential constitutional challenges.

Finally, this Comment does not argue that Angola officials have crafted the program in an attempt to intentionally or maliciously violate the First Amendment. Prison officials have a difficult job in balancing the daily concerns of security with the legal demands and restrictions placed on them from a number of sources. Angola did not err in allowing religion into the prison; it erred in becoming *actively* involved in religion. Although this involvement may be a good idea for penological reasons, the Constitution simply does not permit it.

*Roy L. Bergeron, Jr.**

232. See *supra* note 6.

* The author would like to thank Professor John Devlin and the editors of the *Louisiana Law Review*, especially Kelly Brilleaux, for their invaluable assistance in editing early drafts and recommending changes. A special thanks goes out to Warden Burl Cain, Chaplain Robert Toney, and the staff and inmates at Angola for extending a warm welcome and providing much of the information needed to develop this Comment.

