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House committee hears objections to HUD 'faith-based' decision

By Robert Marus

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WASHINGTON (ABP) – A House committee hearing touted as a showcase for the benefits of government funding for religious housing programs instead became a forum for lively debate on the issues surrounding President Bush's "faith-based initiatives."

A subcommittee of the House Financial Services Committee held a March 25 hearing on proposed regulatory changes that would allow more government support of religious housing ministries.

The most controversial part of the HUD rule change, announced in January, would allow churches and other religious groups operating housing ministries to construct buildings that could include sanctuaries or chapels, so long as the rooms were also used for "secular purposes" at times, or other parts of the building were used for the secular purpose of the housing ministry. The regulations said that government funding would be reduced in proportion to the percentage of the building that was used for religious purposes.

"This approach creates the potential for excessive entanglement between church and state," said Brent Walker, director of the Baptist Joint Committee on Public Affairs, in testimony before the subcommittee. "It raises the specter of horrendous accounting problems, logistical difficulties, and burdensome auditing and record keeping. Moreover, it would almost certainly create the need for perpetual [government] monitoring."

The regulations – like many recent changes to executive-branch agency rules regarding government grants to religious organizations – have been altered by administrative order as part of President Bush's "faith-based initiatives." Bush has asserted such organizations should have the right to receive government funding to provide social services without changing their fundamental religious character. Critics have said Bush's plan is unconstitutional. Court rulings have not provided a settled answer.

Douglas Kmiec, dean of the Catholic University School of Law, claimed that such regulations as the one Walker decried were the grant recipient's problem to worry about, not the government's. Kmiec acknowledged tension exists between limiting the use of federal funds for religious purposes and imposing a change on the religious character of a grant recipient. "It is a difficult balance, but failure to keep it is [an] administrative failure, not a constitutional one."

Subcommittee chairman Rep. Bob Ney (R-Ohio), a supporter of Bush's faith-based initiative, scheduled the hearing at the request of subcommittee member Barney Frank (D-Mass.), a strong opponent of the faith-based initiatives. Besides Ney, only one other member of the Republican majority – generally supportive of the faith-based measure – showed up for the hearing. But several Democratic members came and questioned several aspects of the faith-based plan in general.

Many of the Democrats on the subcommittee particularly questioned the faith-based plan's exemptions for religious discrimination. The White House has assured religious organizations receiving government funding that they would be allowed to retain an exemption under federal civil-rights laws that allows churches and other heavily religious groups to discriminate in hiring on the basis of religion or ideology.

The subcommittee's African-American members particularly seemed to take exception to allowing government to fund groups that could discriminate. "My concern is trying to figure out exactly why these proposed changes are being offered," said Rep. David Scott (D-Ga.). "Of what value is it, and why would we want to remove the requirement that employment discrimination not be funded by government?"

Kmiec noted that forbidding religious organizations to hire on the basis of religion in order to receive government funding would force them to change the very nature of their organizations, thus in itself discriminating against religious groups.

But Rep. Artur Davis (D-Ala.) noted the regulations would also forbid religious organizations receiving funds from

discriminating on the basis of religion when serving clients with government funds. "If it doesn't change the nature of an organization for me to serve people of another faith, then how does it change the nature of an organization to hire people of another faith," Davis asked.

Kmiec responded that individuals hired to deliver secular service at small religious social-service agencies often have broad job descriptions that also may involve them delivering religious services in a non-government-funded part of their work.

But subcommittee ranking minority member Maxine Waters (D-Calif.) said she wasn't satisfied with that approach. Quoting a congressional proverb, she said, "If you dip your hand in the public till, don't be surprised if a little democracy rubs off."

HUD representatives were not present for the hearing, leading the subcommittee's Democrats to request another hearing where they could question an administrator from that agency.



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Educators, counselors offer help in talking to children about war**By Ken Camp****Associated Baptist Press - www.abpnews.com****March 27, 2003****Volume: 03-29-3505**

DALLAS (ABP) – "Daddy, what is war?"

David Bush's four-year-old child asked the question after hearing an eight-year-old sibling use a word he didn't understand.

Bush, minister to children at First Baptist Church in Coppell, Texas, simply said that war means soldiers from one country are fighting soldiers from another country. And he made sure he didn't try to explain more than he was being asked.

"Some parents tend to overeducate. I think we need to keep our answers short and comforting," Bush said.

As violent images from Iraq enter American living rooms through 24-hour television news coverage and war talk dominates adult conversation, some Christian parents are struggling to know how to answer questions and determine what is appropriate for their children.

"We're seeing the war in real time, as it happens," said Julie Joiner, minister of childhood education at Columbus Avenue Baptist Church in Waco. "That means no filter and no perspective about what is appropriate viewing for children, or adults for that matter."

Parents have to become that filter and provide that perspective by monitoring and interpreting news about the war for their children, several Baptist educators and counselors agreed.

"Limit exposure to media coverage, not because the media is bad, but because a child's ability to absorb reality is limited and must be carefully monitored," said Dan McGee, director of the Baptist General Convention of Texas Counseling and Psychological Services Center.

When it comes to the question of how much war news is too much, experts said the answer depends upon the age and maturity of the child. For preschoolers, they agreed that the answer is relatively simple: Turn off the TV.

"Eliminate it entirely for the very young. You must become this child's media," McGee said, offering his recommendation to parents.

"Preschoolers live in the world we develop for them," Bush added. That means creating a home environment where the child feels safe and loved. In part, that involves protecting them from images they are not ready to see.

Likewise, parents should realize that some school-age children are not ready to see and hear some things. Children develop at different paces, and parents need to understand that.

"A child's developmental stage, not necessarily his age, determines his view of the grown-up's world," McGee said.

Parents should seek to understand where the child is developmentally in order to understand how he views events around him. "Remember how tall the world appears to a little person," McGee observed.

While school-age children inevitably will be exposed to some information about war, parents can limit the exposure in the home and provide a context for understanding issues, said educators and counselors.

"We need to help them understand that what happens is the result of bad people who want to do bad things," Joiner said. She advised parents of young children to remember the advice of Fred Rogers, recently deceased host of "Mister Roger's Neighborhood" on public television. "Point to the people who are helping others," she said, echoing

Rogers' theme. "Remember the relief workers, and identify them as visible signs of God's care."

Parents also can help provide perspective to children who may see a picture of smoke rising from a tall building in Baghdad and associate that with tall buildings they have seen in their city.

"Children don't know the difference between what is distant and what is far away," said Diane Lane, a preschool and children's consultant with the BGCT.

Likewise, children live in the present, and they may think that every rerun of an aerial assault on Baghdad is a new event. "They think it is happening again every time they see it on TV," she said.

Older children need parents to help them understand the difference between violent images on TV news and violent images some may have seen in movies and video games, Joiner observed.

"It's important for them to know that there are consequences. People are dying. People are suffering. It's not just a PlayStation kind of world we're living in. Violence is real," she said.

Joiner recommended that parents help older children "humanize" the conflict by reminding them that individual lives are at stake.

"Parents might have them pray for the school children of Iraq who have to go to class with their gasmasks," she said. "They need to know it's not a matter of pushing a button like on a video game. These are real people being affected."

Broadview Baptist Church in Abilene is seeking to help personalize the conflict by inviting a church member who serves at Dyess Air Force Base to speak to children at a Wednesday night meeting.

"We want him to let the children know the men and women who are serving are trained well for what they are doing, just to set their minds at ease," said children's ministry coordinator Lisa Dabney. She noted some of the children have parents in the military or are friends with children whose parents are serving in the armed forces.

"We want to encourage them, to help them understand – as much as we can – the reason behind it all, that the desire is to help people, not hurt them," Dabney said.

Crescent Park Baptist Church in Odessa created a prayer wall at the church, filled with yellow ribbons and the names of specific individuals serving in the armed forces. "We encouraged our children to place their hands on names of particular people and pray for them," said Kim Wells, director of children's ministry.

It is important for parents and Sunday school teachers to look at older children's questions about the war as teaching opportunities, Wells added.

After the Sept. 11 attacks on the World Trade Center and the Pentagon, McGee developed a series of suggestions for parents to help them respond to "terroromatic stress" in children – the stress experienced by those who consider themselves under the continuous threat of terrorism. He sees war-related stress as an extension of this same condition, and maintains that the same principles apply.

Communication is essential, McGee noted. "Encourage your child to talk about what she is feeling in her own language. Resist the temptation to 'correct' her perspective. The process is more important than the facts," he said.

Communication also means listening. McGee said adults should recognize that a child might not be ready to talk when it is convenient for the parent. "When the timing is truly impossible, schedule the talking time right then, and stick to it."

Children need to hear words of reassurance. They also need their parents to communicate comfort and reassurance to them non-verbally through hugs and holds, McGee added. "A hug is important and can be accomplished in seconds, but it takes a long time to hold. Your valuable time and invaluable physical presence is a powerful stabilizer."

To ease children's fears, counselors and children's ministers suggested that families maintain their regular routine, as much as possible.

"Stability in the form of predictability is important in a world being threatened by unknown forces," McGee said.

A child takes emotional cues from parents, he added. "If you fall apart or totally lose control, it may shake her foundation. ... If you refuse to talk about it or trivialize it, you are teaching avoidance. It's OK to let your child see your tears, if she can also see your joy."

Demonstrate faith, McGee urged. "Research shows that families of faith do better in crisis. Teach your child that prayer is not only for food and church but a way of life."

Children learn lessons about fear and faith by example and exposure, Joiner agreed. "Children are usually OK as long as the adults in their lives are OK. Children mirror the emotions and fears that we have. And they mirror the strength and faith and trust in the Lord that we have," she said.



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Calvinism making a comeback on some college campuses

By Marv Knox

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GRAPEVINE, Texas (ABP) – The best antidote for "aggressive Calvinism" is a good dose of Calvin and a bigger dose of the Bible, a trio of Baptist religion professors told their colleagues.

The trio examined how Calvinism is impacting college and seminary students. The National Association of Baptist Professors of Religion's Southwest chapter sponsored their discussion during its annual meeting in Grapevine March 14.

John Calvin was a 16th-century Christian reformer and theologian. Although his famous "Institutes of the Christian Religion" covers a range of theological issues, his teaching often is summed up in the acrostic TULIP: Total depravity of humanity, Unconditional election by God, Limited atonement or salvation, Irresistible grace of God, and Perseverance of the saints, or what many often call "once-saved, always-saved."

Although Calvinism has been represented in Baptist theology for almost four centuries, it has enjoyed a recent resurgence. The Founders' Conference actively promotes Calvinism – or "doctrines of grace," as they prefer – with a journal and an annual meeting. And the faculty at Southern Baptist Theological Seminary in Louisville, Ky., has collected a cohort of Calvinists.

Thousands of students have been influenced by the Calvinistic teachings of John Piper, a pastor and former professor from Minneapolis. His books hit the religion bestseller lists, and he speaks at numerous student gatherings, such as Southern Baptist seminaries, Glorieta Conference Center and the hugely popular Passion and One Day youth conferences, led by Louie Giglio.

Panel moderator Randy Hatchett, professor of Christianity and philosophy at Houston Baptist University, noted Calvinism has emerged in church youth settings in his area.

"It has a militant nature, especially around the issue of worship," Hatchett observed. "Calvinists imply non-Calvinists can't worship as well as Calvinists."

He asked the panelists if they had seen a resurgence of Calvinism among students.

"There's an aggressive movement of Calvinism at many colleges, and it's even reached into our youth groups and into parachurch youth groups," said Roger Olson, professor of theology at Baylor University's Truett Theological Seminary in Waco.

"They've decided to take back popular folk religion. They're reaching into youth groups, pressuring them to adopt Calvinism," he added. "I have nothing against garden-variety Calvinism, but aggressive Calvinism is another matter."

Preban Vang, professor of theology at Ouachita Baptist University, said Calvinism has been "no problem" on the campus in Arkadelphia, Ark.

In fact, some students have reacted against the aggressive push by some Calvinists, he added. "I have had to stand up in class and defend Calvin, or he would be trashed like some kind of televangelist."

Warren McWilliams, professor of Bible at Oklahoma Baptist University in Shawnee, said Calvinism there "never has been strong, but it hasn't gone away either."

When he arrived on campus in the late 1970s, he encountered some students who opposed artificial birth control. "We're Calvinists," they explained, meaning they trusted God's sovereign will regarding the birth of children.

Occasionally students have emphasized Calvinism, he recalled. One preached a strongly Calvinistic message during a student weekend in the churches. Another lost a church staff job because he refused to visit church prospects, leaving their outcomes to God's will.

"Resurgence' isn't a word I would use for Calvinism, but it's definitely there," McWilliams said.

Hatchett asked the panelists how to present a constructive Baptist response to Calvinism.

Olson and McWilliams advised urging students to actually read what Calvin wrote. Vang noted all theological systems should be read and compared alongside the Bible.

"I just ask Calvinist students, 'Have you actually read Calvin?'" McWilliams said. "They usually answer no. They've read someone's interpretation of Calvinism."

Reading and hearing Calvin's proponents often leads people to "aggressive five-point Calvinism" that over-simplifies Calvin's teachings and leads to stridency, Olson said.

"One of the best responses we can make" is to encourage students to read Calvin and other church-shaping theologians, he added. "The best we can do is educate our students. We can help them see there aren't just two answers – right and wrong. Theology is a spectrum."

For example, he noted, in addition to the teachings of Calvin, Baptists have been shaped by the teachings of Jacobus Arminius, a 16th-century theologian. Like Calvin, Arminius affirmed God's sovereignty, grace and ability to protect the saints, but he also taught that God honors human free will.

Many strict Calvinists accuse Arminius of heresy, confusing or distorting him with the teaching of Pelagius, a fifth-century heretic who denied Christian grace.

"Baptists always have had two strains, Arminian and Calvinist," Olson said. "Neither is heresy. We must be respectful."

"We teach that we are bound to Scripture. Scripture is our authority," Vang added. "If you read something, read it alongside the [biblical] text."

McWilliams understands "the aesthetic appeal, the lure of the system" that young, passionate Calvinists feel. He felt the same way when he first walked onto the OBU campus as a student, carrying his Scofield Reference Bible and a passion for pre-millennial dispensational eschatology.

"It's like they've found a 'system' that is neat, makes sense, gives them a package, is biblical," he said. "It gives them a handle for their theology. It's firm and secure in response to their insecurities."

But Calvinism isn't nearly so rigid as many Calvinists make it out to be, Olson said. That's particularly true among Calvinists who describe their beliefs as Reformed theology.

"There's a lot of diversity," he noted. "I know leading Reformed theologians who do not believe in TULIP. These categories are not hardened. [Theologians] can be Reformed without being rigid."

Vang insisted college and seminary students shouldn't embrace a theological system until they have studied and explored. "I want them to think. I don't want them to be a Calvinist or an Arminian. I want them to be able to systematically explore the Scriptures and theological thought," he said.

"We ask questions to help them realize that, at age 18, 19 or 20, maybe they haven't put it all together yet."

CBF's Vestal sees demise of moderate political efforts

By Tony Cartledge and Greg Warner

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GASTONIA, N.C. (ABP) -- The head of the Cooperative Baptist Fellowship doesn't see much future for Baptist political organizations.

Asked about CBF's relationship with Texas Baptists Committed and the Mainstream Baptist Network, Daniel Vestal said CBF has no formal relationship with the two moderate Baptist groups, though many of the people in those organizations are also CBF supporters.

"I don't see a future for the Mainstream organization," Vestal, CBF coordinator, said in a breakout session during the general assembly of the CBF of North Carolina. "Its primary purpose has been political. They have helped Baptists. But people are tired of fighting fundamentalists, and I don't see a future [in it]."

CBF formed in 1991 as a missions and ministry alternative to the Southern Baptist Convention, which has taken a dramatic conservative shift since the late 1970s.

Texas Baptists Committed is largely credited with keeping hard-line conservatives from gaining control of the Baptist General Convention of Texas. Similar groups, usually carrying the Mainstream Baptist name, have formed in other states but with less success.

Bob Stephenson, national co-chair of the Mainstream Baptist Network, disagreed with Vestal's assessment of the group's purpose and future. The Mainstream movement is more about informing laypeople about the principles at stake in Baptist life than winning denominational elections, Stephenson told Associated Baptist Press.

"As long as there is one uninformed Baptist, there will be a need for Mainstream," said Stephenson, a layman from Norman, Okla. "And there still are millions of uninformed Baptists." He said Mainstream can be a transitional stop for Baptists dissatisfied with the SBC but not ready to join CBF. In places like Oklahoma and Texas, Stephenson said, many moderate Baptists don't yet trust CBF because of "fundamentalist propaganda" about the group.

Vestal said CBF's future will depend on how faithful it is in fulfilling its mission. "The more people see who we are, the more they will be attracted to us," he told the North Carolina audience. "The more we are committed to that vision, the more we can say, 'Come and join us.'"

Vestal said it is time for pastors and laity to "step up to the plate" and offer CBF financial support and personal involvement.

"Let's hold our heads up and be part of a movement, a righteous movement," Vestal said. "Let's say, 'I want to give to it and sacrifice for it.' We are surrounded by a powerful juggernaut of fundamentalism. But it's our time."

Asked about the status of CBF's application for membership in the Baptist World Alliance, Vestal said, "I will be surprised and disappointed if we don't get in." The BWA membership committee will probably not make an announcement prior to the July meeting in Seoul, Korea, he said, but the SBC's planned reduction in giving to BWA "is a sign that they think we will get in."

Vestal expressed concern about the actions of SBC representatives during the 2002 meeting of the BWA General Council in Seville, Spain. The membership committee brought a favorable report about CBF's progress toward meeting membership requirements, Vestal said, and asked the council to accept the report as a simple matter of receiving information, not as final acceptance.

When BWA president Billy Kim called for a voice vote, the response was almost wholly positive, Vestal said, except for a small group of SBC leaders who shouted "No!" Kim seemed taken aback, Vestal said, and asked for a show of hands. Again most representatives lifted their hands in affirmation, while the SBC representatives raised their hands

in opposition.

The vote was an emotional, tense moment, Vestal said. Afterward, many leaders from other countries sought out CBF representatives and offered affirmation, he said. "There is great love for CBF in many parts of the world by Baptist leaders."

Later SBC leaders said the BWA action violated the organization's protocol. Leaders of BWA apologized to the SBC for any misunderstanding. "If we are admitted we want to be a good member, and we don't want the SBC to leave," Vestal said. "I hope we can work together in BWA as fellow Baptists and fellow Christians."

But Vestal did not seem confident about a positive movement in the relationship. "A lot of money and time has been spent by SBC leaders to make us look bad," he said, "a lot of effort to malign us, belittle us, criticize us, saying we are liberal and that we don't believe the Bible."

"If you say something often enough, many people will believe it, whether it is true or not," Vestal said. "Those constant accusations have hurt us."

Vestal said a lack of funds has slowed expansion of the CBF global missions program. "We could double our missions force tomorrow with no additional administrative costs," he said. The organization is currently behind in budget income, he said, and could not allocate any additional funds for new missionaries in 2003-04, although 400 missionary applications are on file.

Vestal said 150 new churches contributed to CBF for the first time last year, but the organization's growth has reached a plateau. "I don't see any great exodus of churches from the SBC," he said.

Budget growth for the national CBF has been limited by growth in the state and regional CBF organizations, which have seen significant budget growth recently, Vestal said. "That has hurt our budget in the short term, but in the long term I think it is good," he said.

"But the missionaries are sent from Atlanta," someone responded.

"You're making my speech!" Vestal said.



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Carolyn Anderson hired as Florida CBF coordinator**By ABP Staff****Associated Baptist Press - www.abpnews.com****March 27, 2003****Volume: 03-29-3508**

LAKELAND, Fla. (ABP) – Carolyn Anderson has been named coordinator of the Cooperative Baptist Fellowship of Florida, succeeding her husband, Pat, who took a position with the national CBF.

Carolyn Anderson served as assistant coordinator with her husband for 13 years and as interim coordinator since he left the organization to become a national missions advocate based in Lakeland. She was elected coordinator, or executive director, by the Florida group's representative assembly on the recommendation of a search committee March 21.

A graduate of Florida Southern College in Lakeland, Carolyn Anderson attended Southwestern Baptist Theological Seminary in Fort Worth, Texas. She serves on the board of Passport Youth Camps and on Stetson University's Religious Life Council.

In 1988 she was elected second vice president of the Florida Baptist State Convention, at the time only the second woman elected to statewide office in Florida Baptist history. She is a member in Lakeside Baptist Church in Lakeland, the mother of three grown children and the grandmother of four.

"I will continue to give my time and talents toward building upon the solid foundation of CBF-Florida, established by many dedicated Baptists who have worked extremely hard," she said. "One of my own goals is to help prepare a new generation of leaders for CBF's movement in our state, who will then be able to tell the story of God's grace through CBF."



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Justices hear lively arguments in Texas 'sodomy' case**By Robert Marus****Associated Baptist Press - www.abpnews.com****March 27, 2003****Volume: 03-29-3509**

EDITOR'S NOTE: This article contains explicit language.

WASHINGTON (ABP) – The U.S. Supreme Court convened a lively session March 26 to hear arguments in a case that may prove to be a landmark for the gay-rights movement.

Justices heard arguments from opposing attorneys in Lawrence and Garner vs. Texas, a 1998 case in which two Houston men were arrested and convicted of violating Texas' anti-sodomy law. While investigating a neighbor's intentionally false report of an armed intruder, police entered John Lawrence's unlocked home and discovered him engaged in anal sex with Tyron Garner.

As recently as 1960, all 50 states had laws banning "sodomy" – an archaic term for any sex act other than male-female vaginal intercourse. Now only 13 states have such laws on the books. Texas' anti-sodomy statute is one of only four in the nation that apply exclusively to homosexual sex acts.

The Supreme Court's last ruling on anti-sodomy laws came with the Bowers vs. Hardwick case in 1986, when it ruled in a contentious 5-4 decision that a Georgia anti-sodomy law did not violate the Constitution because homosexuals had no constitutional right to engage in consensual sexual intercourse.

Paul Smith, a Washington lawyer arguing the newer case for Lawrence and Garner, made a two-pronged attack on the Texas statute. First, he asked justices to overturn the 1986 Bowers ruling based on the "right to privacy" which the court has interpreted from the 14th Amendment.

When asked by Justice Ruth Bader Ginsburg if the court was being asked to overturn Bowers, Smith replied, "Yes, Your Honor. We're asking you to overrule it, and we think that the fundamental right of unmarried people to make these choices about private adult consensual intimacy applies to different-sex couples as well as same-sex couples."

Smith said the Bowers decision was wrong on several fronts: it incorrectly interpreted the history of anti-sodomy laws; it disregarded the ability of gay people to form families and live in stable, marriage-like relationships; and it has created an atmosphere of intimidation and discrimination.

"Bowers has proved to be harmful to thousands and thousands and thousands of people," said Justice Stephen Breyer during arguments, "if not because they're going to be prosecuted, because they fear it, they might be – which makes it a possible instrument of repression in the hands of the prosecutors." The plaintiffs, as well as several organizations who filed friend-of-the-court briefs on their behalf, said officials in many states have used the mere existence of state anti-sodomy laws to deny jobs and adoption rights to openly gay and lesbian people because they are presumed to be lawbreakers.

Smith said in the 17 years since the Bowers decision was reached, regarding the right to engage in non-vaginal sexual intercourse, "The American people have moved to the point where they would be shocked to know that right is denied to anybody."

Smith's second major argument against the Texas law was that it violates the Constitution's equal-protection clause because it applies exclusively to acts by same-sex couples and not to identical acts by opposite-sex couples.

In fact, although Texas statutes banned all anal sex beginning in 1860 – and all oral sex beginning in 1943 – Texas did not have a homosexual-specific sodomy ban until 1973. That same year, however, the state legislature liberalized other sex laws, legalizing heterosexual sodomy, adultery, fornication and even bestiality.

Smith said Texas must show a rational justification for excluding the right to engage in sodomy from gays but not from heterosexuals. "When a statute is limited to one particular group of people, that limitation has to be justified under

[the] equal-protection [clause]."

In arguing the state's side of the case, Harris County Prosecutor Charles Rosenthal began by drawing a distinction between homosexual orientation and gay sex acts. "There is nothing on the record to indicate that [the plaintiffs] are homosexuals," Rosenthal said. The statute does not single out people who are homosexual in orientation but merely bans same-sex acts for both gays and people primarily heterosexual in orientation who might occasionally engage in same-sex acts, he said.

At a press conference following the hearing, Rosenthal listed as examples of such a hypothetical situation imprisoned individuals who might resort to consensual gay sex or people primarily heterosexual in orientation who may experiment with gay sex in college. "We aren't penalizing [homosexuals'] status. We're only penalizing their particular conduct," Rosenthal said.

However, one of the friend-of-the-court briefs supporting the plaintiffs likened this argument to the idea that the law bans both rich people and poor people from sleeping under bridges.

Rosenthal also argued the state had a legitimate interest in protecting the institution of marriage by limiting extramarital sexual relations. But Justice John Paul Stevens protested, "Does Texas penalize sexual intercourse between unmarried heterosexuals? Or adultery?"

The justices also asked Rosenthal what the rational basis was for banning gay sex acts but not banning the same acts when performed in a heterosexual context. As Texas had in its briefs for the case, Rosenthal dodged the question, asserting that "under equal protection, Texas has the right to set moral standards – bright-line moral standards – for its people."

That answer did not satisfy Justices Breyer and David Souter. Breyer said, "You've not given us the rational basis [for discriminating against gay sex] besides [saying] 'the state believes it immoral.'"

Pressed by Souter on what particular harm gay sex caused that could justify a state ban on it, Rosenthal pointed to public health considerations – an argument also made in several friend-of-the-court briefs.

These briefs argue that because sexually transmitted diseases such as the virus that causes AIDS can be passed on through unprotected anal sex, the gay-sex ban could reduce the risk of AIDS.

However, briefs for the other side contended the Texas law does nothing to ban transmission of diseases through heterosexual sex acts, and it bans same-sex acts between two women even though such acts have a very low rate of transmission of diseases such as the HIV virus.

In response to Smith's right-to-privacy argument, Rosenthal said it was necessary for Smith to prove the right to engage in sex outside the bonds of heterosexual marriage had a long tradition of exalted status in the nation's history. "Even if you infer that various states acting through their legislative process have repealed sodomy laws, there is no protected right to engage in extramarital sexual relations, again, that can trace their roots to history or the traditions of this nation."

Several religious organizations, including the Alliance of Baptists, signed onto a friend-of-the-court brief supporting the plaintiffs. Since the Texas appeals court that upheld the law cited that major religious traditions universally opposed homosexual conduct, the religious groups attempted to counter that argument.

"In fact, many religious bodies in the United States oppose laws that criminalize private same-sex sexual conduct between consenting adults," the brief argued. "Some of these religious bodies believe that homosexual conduct is not consistent with their religious and moral teachings, but nevertheless believe that laws subjecting such conduct to criminal sanctions are neither morally required nor morally justified.... In addition, many religious bodies oppose all forms of discrimination that stigmatize gay and lesbian members of society and deprive them of their dignity as human beings."

But other religious organizations supporting Texas' position argued that a ruling in favor of the plaintiffs could provide

a new legal foothold for challenging state laws that allow marriage to heterosexuals but not homosexuals as well as a host of other laws that do not protect gays and lesbians as a minority class. Gay-rights activists have acknowledged that one of the reasons the case is so important is because of the potential precedent it may set for other gay and lesbian civil-rights cases.

A ruling in the case is expected before the court ends its session in June.



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