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REPORT from the CAPITAL

A new view of the wall

The church-state views of President-elect Bill Clinton and Vice President-elect Al Gore suggest that backers of government funding for religious schools and government-sponsored prayer for public schools will face a decidedly more uphill struggle to further their agenda in Congress and the courts.
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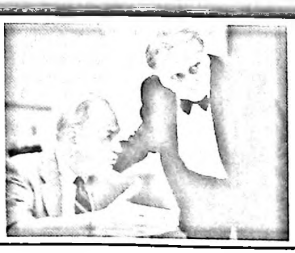

REPORT from the CAPITAL

" . . . a civil state 'with full liberty in religious concernments' "

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Articles

Features

Cover: Photo of President-elect Bill Clinton and Vice President-elect Al Gore courtesy of the Clinton-Gore Campaign '92.

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BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS
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Unsafe for hypocrisy

(D. Glenn Saul is director of Howard Payne University in El Paso, Texas, and the International Baptist Bible Institute.)

The recent election has caused me to do some more thinking about the role that Christians have in politics. For some, politics seems to be everything. A careful listening to the rhetoric from some circles would make one believe that the Kingdom will come through the political order. Nothing could be further from the truth. The governments of this world ultimately are irrelevant to the power of the real Kingdom of God.

What is our role as Christians? One aspect of the Christian's witness to the state is to keep our nation unsafe for hypocrisy. What we owe the world and its kingdoms is an explicit proclamation of the lordship of Jesus Christ over all the principalities and powers. In other words, whenever the state begins to demand that which belongs to God, it should be reminded of its limits. There is only one who has been given rule and authority and power and dominion over all. It seems to be the very nature of the state to assume that it is in control and that it has the last word in human affairs. To allow the state to believe this opens the door for hypocrisy.

We can keep the nation safe from hypocrisy by denying its claim that it and it alone can usher in peace and justice. We must protest the claim that any one political party or nation can be labeled as God's. Even the claims that our nation is somehow the hope of the world must be rejected as ludicrous if not blatantly idolatrous. Christians cannot give ultimate loyalty to party, creed or ideology. There is only one King and Kingdom that can claim ultimate loyalty.

I'm not suggesting that we can be indifferent to the politics of this world, but we must recognize the limits of human government. Actions of human beings in government and elsewhere do make a difference in how human beings are treated and viewed. We cannot ignore what God abhors in any area of life. Nevertheless, tension always will exist between the Kingdom of God and the kingdoms of humanity. If tension does not exist between the church and the state, then the church has lost its way.

The nation is not safe for hypocrisy if churches help to expose the immorality and corruption of government, as well as their own. The nation is not safe for hypocrisy when the church stands against the idolatry of nationalism. It is not safe for hypocrisy when the church becomes the advocate and voice for the people on the bottom of the political, social and economic scale.

I am not indifferent to which party is in power, nor am I indifferent to the political process. What is more important is that in the midst of the political and social disorder of the world we give witness to the one whose Kingdom does make a difference. By so doing, we will help keep the nation unsafe for hypocrisy. □

—D. Glenn Saul

WASHINGTON OBSERVATIONS

news/views/trends

IT'S THAT TIME OF YEAR, and the "December dilemma" confronts us once again. For example, in Vienna, Va., Christmas songs that refer to Jesus were eliminated from the city-sponsored Christmas pageant. Almost 200 people showed up in protest to sing "Away in a Manger" and "Joy to the World." And the superintendent of public schools in nearby Winchester, Va., issued a memorandum prohibiting the use of "Christmas" to describe the winter holidays. He eventually relented when the community protested.

How should we properly recognize Christmas and Hanukkah in the public schools and other public places? Clearly, it would be unconstitutional for government to sponsor a worship service. It would be equally wrong for schools to sing nothing but sacred music. Re-enacting the Nativity scene or the Hanukkah miracle is fraught with constitutional infirmities. But there's a lot that can be done short of censoring all references to religion. Religion is an important part of culture and society. Here are some guidelines for helping schools and communities plan holiday activities that are constitutionally permissible and sensitive to our religious pluralism:

1. Schools may teach about religious holidays, but they may not celebrate them.
2. Religious symbols may be displayed temporarily as a teaching aid or resource and as an example of a religious heritage and tradition. They should not become permanent fixtures.
3. Sacred music, including Christmas carols, are permitted at school concerts if accompanied by a variety of other music or if performed as a part of the study of music.
4. Holiday programs should serve some educational purpose for all students. No students should be made to feel excluded or ignored. Respect our much-loved traditions, but be sensitive to the rights of non-believers.
5. Students who object to studying about or recognizing certain holidays in school should be excused from classroom discussions and related activities without penalty.

Maybe the December dilemma will never be resolved to everyone's satisfaction, but with a little respect, flexibility and common sense, we can do a lot better. • (JBW)

BJC approves bid to resolve funds dispute

Representatives from the Baptist Joint Committee and the Southern Baptist Convention will try one more time to resolve their dispute over a $300,000 capital-needs fund and keep the matter out of court.

The Baptist Joint Committee authorized its chairman and attorney to discuss the matter again with the SBC's attorney and chief executive. Although both sides emphasize there is no proposal on the table, both say they are willing to "open dialogue" again.

The $300,000 fund has been a point of contention for more than a year. Both sides have suggested the BJC may take the issue to court, but the BJC has not said if it plans to file a lawsuit.

Some observers expected the BJC to decide to sue during its board meeting Oct. 5-6. Instead, BJC directors voted unanimously Oct. 5 to "empower our lawyer and chairman to enter into dialogue to resolve the dispute," reported James M. Dunn, BJC executive director.

That decision was reached by directors during a 45-minute closed-door session during which they were briefed by BJC attorney Oliver S. Thomas. Thomas said later that the meeting was closed because of the lawyer-client privilege and the sensitivity of the discussions.

"We are postponing any action on this lawsuit until this dialogue is completed," Thomas said.

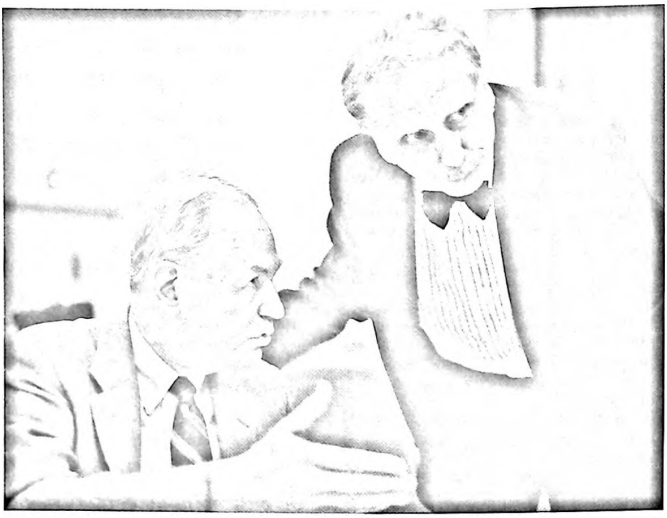
"We want to go the second mile in trying to resolve this dispute in a Christian fashion," he added.

No date was announced for the talks with the SBC.

Morris Chapman, president and chief executive officer of the SBC Executive Committee, said he and SBC attorney James Guenther have agreed to meet with the BJC representatives. But Chapman said he has not been authorized to propose any settlement or compromise or to accept any offer from the BJC.

"Oliver Thomas has indicated the Baptist Joint Committee would likely proceed with a lawsuit but that they would prefer to talk with the representatives of the Executive Committee prior to filing a lawsuit," Chapman explained. "On that basis, we feel it would be not only appropriate but our Christian responsibility to listen to any proposal they might have.

"If such talks occur, they should in no way be characterized as negotiation," Chapman said. "They would be simply preliminary discussions."



Edwin Newman (left), longtime newscaster for NBC television, touches base with BJC Executive Director James M. Dunn prior to a joint session of the BJC board and Baptist editors. The BJC sponsored an editors briefing in conjunction with its annual board meeting, and Newman was among the featured speakers.

The disputed money has been held for 25 years by the Southern Baptist Foundation in the name of the Baptist Joint Committee. It was allocated by the SBC in 1967 and 1968 to buy an office building for the Washington-based BJC, a religious-liberty agency representing 10 Baptist groups.

The funds were never spent, however, and the SBC has since cut off all new funding of the Baptist Joint Committee. Last September, the BJC requested all funds in the account to purchase a Capitol Hill building, but the foundation refused to release the money without an okay from the SBC Executive Committee. The committee refused.

Over the years, the BJC has been paid the interest on the account. Earlier this year, the foundation, acting on instructions of the Executive Committee, sent the BJC a check for $81,036, the amount the account had appreciated over time.

In June the Southern Baptist Convention voted to redistribute the fund's $300,000 corpus, but so far the money has not been put to another use.

"It is my interpretation," Chapman said, "that any decision which might alter the previous action of the Southern Baptist Convention (to reallocate the money) would require approval of the Executive Committee and the Southern Baptist Convention. However, it's much too early for that to be a consideration."

"Our motivation would be to try to avoid a lawsuit," said Guenther, the SBC attorney.

"There are no discussions taking place at this point regarding anything that would be characterized as a settlement," Guenther added. "All either of us are saying is discussions may take place."

Dunn said the BJC authorized its executive committee to act on any proposal that results from the talks. However, the full board of directors "reserved for themselves the right to make a final decision about a lawsuit," Dunn added.

BJC chairman Tyrone Pitts, a representative of the Progressive National Baptist Convention, said the BJC directors are "open to dialogue."

"We are hoping it will produce a resolution," he said.

Asked if he thought the BJC would take less than the full $300,000 in order to keep the dispute out of court, Pitts said:

"I am not going to speak to that. Our position is clear about that. We feel the money is ours."

Pitts said no deadline has been set to complete the dialogue.

No resolution is likely before March, when the BJC executive committee meets. The Executive Committee meets in February.

In other BJC business, the directors adopted a 1993 budget that is 3 percent smaller than in 1992. The anticipated drop reflects both the loss of SBC funding and tough economic times.

The directors also passed a resolution denouncing "the abuse of religion" in political campaigns. The statement is virtually identical to one issued Aug. 28 by Dunn and other U.S. religious leaders after President George Bush told an evangelical audience that the Democrats had left God out of their party platform.

"Identifying the kingdom of God with any political party or candidate is presumptuous," the resolution said. "None has a monopoly on the truth. All are subject to the faults and frailties of the human condition."

The resolution urges political candidates to refrain from further attacks based on religion.

The BJC formed an ad hoc committee to study membership of its board and re-elected officers for a second term: Pitts as chairperson; Sarah Frances Anders, a representative of the Religious Liberty Council, first vice chairperson; Robert Ricker of the Baptist General Conference, second vice chairperson; Robert Tiller of the American Baptist Churches, secretary.

Dunn announced the BJC's Religious Liberty Conference will be held March 1-2 in Washington as a joint venture with the American Jewish Committee. The event, sponsored by the BJC every two years, will focus on the groups' shared values of religious liberty and church-state separation.

Plans were made to honor Rosemary Brevard, BJC research assistant, for 25 years of service to the agency. She plans to retire next May. □

—Greg Warner
Executive Editor
Associated Baptist Press

Dramatic year seen for court, Congress

Decisions made by the U.S. Congress and Supreme Court in the next year could dramatically impact religious liberty, experts told a gathering of Baptist journalists Oct. 4-5.

Three cases pending before the Supreme Court and one bill certain to be reintroduced in the next Congress were the focus of several speakers' comments during a briefing held for journalists by the Baptist Joint Committee.

The briefing featured dialogues with Doug Marlette, Pulitzer prize-winning editorial cartoonist for *New York Newsday*; Richard Carelli, veteran Supreme Court reporter for Associated Press; Forest Montgomery, attorney for the National Association of Evangelicals; Jody Powell, press secretary to former President Jimmy Carter; Edwin Newman, longtime newscaster for NBC television; and the Baptist Joint Committee's own staff.

The bill to be reintroduced in Congress is the Religious Freedom Restoration Act, a measure drafted to restore the "compelling interest" test virtually abandoned by the Supreme Court in a 1990 decision.

That test permitted government to restrict religious practice only to further a compelling governmental interest, such as health or safety, and only if the least restrictive means of safeguarding that interest had been used.

However, the court departed from that standard in its 1990 decision *Oregon v. Smith*. The *Smith* decision said government needs only a rational basis to justify restricting religious practice unless the restriction singles out religion.

RFRA would restore the compelling interest standard by legislative action, a step the NAE's Montgomery described as necessary but regrettable: "It is regrettable that we have to look to Congress for protection of our God-given rights."

Doug Marlette, Pulitzer prize-winning editorial cartoonist for New York Newsday, *signs autographs at a recent editors briefing sponsored by the BJC. Marlette was among several speakers who held a dialogue with Baptist editors and BJC board members.*

Congress failed to approve RFRA this session, but both Montgomery and Oliver S. Thomas, general counsel for the Baptist Joint Committee, agreed chances are favorable for passage in the next session.

That might not be necessary, however, if the Supreme Court reverses its position using a case accepted for review in this term, they added.

The Church of Lukumi Babalu Aye v. Hialeah is one of three significant church-state cases already accepted by the court for consideration this term.

The case involves a church affiliated with the group known as Santeria, which uses animal sacrifice as a central part of its religious practice. The city of Hialeah, Fla., passed ordinances prohibiting animal sacrifice, apparently in an attempt to keep the church out of town.

The church sued, claiming the city ordinances violated adherents' First Amendment rights to freely express their religious faith.

The case is particularly significant, Thomas and Montgomery said, because it is the first case the court has accepted since the *Smith* decision that concerns the First Amendment's clause on free exercise of religion.

The public outcry that has arisen since the *Smith* decision could prompt the court to restate its position through this case, Thomas, Montgomery and Carrelli said.

In addition to prompting the drive for RFRA, the *Smith* decision has been criticized widely by religious-liberty and legal scholars.

However, the *Lukumi* case could prove a difficult one for restoring the compelling-interest standard because it has "some very noxious facts," Thomas said. "People don't see beyond the dead chickens and goats to see what's happening in this case."

What's happening is religious discrimi-

Continued on Next Page

nation, he and the others explained. The city did not enact ordinances that prohibit all killing of animals but that prohibited only the actions of this one religious group, Thomas said.

"Our position is that the city of Hialeah cannot single out religion for this type of discrimination," Thomas said. "This case, if it goes the other way, will be much worse than *Smith*.

"We have to go to bat for these people whose practices we may find offensive ... but who have the right to practice their religion."

The court will have another opportunity to speak to the First Amendment's free-exercise clause and establishment clause in deciding *Zobrest v. Catalina Foothills School District*.

The case involves a family's claim that government should provide a sign-language interpreter for a deaf child who attends a parochial school.

The third case, *Lamb's Chapel v. Center Moriches Union Free School District*, involves a dispute over whether a public school can prohibit religious groups from using its buildings during non-school hours if other groups are allowed to use the facilities.

Both the *Zobrest* and *Lamb's Chapel* cases open the door for the court to redefine both religion clauses of the First Amendment.

In addition to impacting the free exercise clause, the *Zobrest* and *Lamb's Chapel* cases offer the court an opportunity to restate its position on establishment. The court was asked to do that but declined to do so in ruling on *Lee v. Weisman*, a graduation-prayer case, during the last term.

Both the Bush administration and several conservative religious groups have been pushing for a looser standard that would allow majority religions more benefits from government so long as they do not coerce participation. The Baptist Joint Committee, on the other hand, has said the court should retain its current standard, known as the *Lemon* test.

That test, formulated in 1971, requires government practices to have a secular purpose, neither advance nor inhibit religion, and avoid excessive entanglement between government and religion.

The editors briefing also included dialogues about school choice proposals, another issue likely to surface in the next Congress. □

— **Mark Wingfield**
News Director
Western Recorder
Kentucky Baptist Newsjournal

Powell: Partisan role hurts Christians, not politicians

Christians, not politicians, are the ones who have been hurt by the alliance of the Religious Right with the Republican Party, a former White House press secretary said.

Jody Powell, press secretary to President Jimmy Carter and a member of First Baptist Church of Washington, D.C., addressed a group of Baptist editors Oct. 5 in Washington. The event was a briefing sponsored by the Baptist Joint Committee, a religious-liberty coalition.

"Almost inevitably ... when organized religion gets itself too close to the political process and to partisan politics, it is religion which suffers," Powell said. "There is a level of cynicism in politics that will tarnish and pull down something as important as our religious faith.

"It is almost always the politicians who use the preachers, not the other way around."

Powell said the Republican Party is "going to be all right" after its alliance with conservative Christians has eroded. "The people who put that together from the political side and benefitted from it do not feel ticked off and discouraged. But many from the religious side do."

Powell said he sees the influence of the Religious Right declining and is saddened that many Christians are leaving the cause disenchanted with government.

The tragedy, Powell said, is that politicians took advantage of Christians in the same way they use other groups for their own gain. "On the political side, the people who were benefitting from that did not believe what they were saying."

That's not nearly so distressing when it happens to secular groups, Powell said, "but the church of Jesus Christ has got to be something different."

Powell said he has struggled for years to know where to draw the line between religious belief and the promotion of public policy.

As an example, he cited the Sunday school class Carter taught at First Baptist Church in Washington while president. Inevitably, visitors to that class included reporters who churned out stories about what Carter taught, as though he were the "national Sunday school teacher," Powell said.

That made Powell uncomfortable, he said, but it was a situation he had to learn to live with.

The intrusion of religious conviction into political decisions usually makes the process more difficult, he added.

Powell said he believes authentic religion should offer the political process an example of openness, dialogue and conflict resolution. Unfortunately, he added, "it has brought just the opposite and made politics meaner than it was." □

— **Mark Wingfield**

"It is almost always the politicians who use the preachers, not the other way around."

—Jody Powell
Former Press Secretary
to President Jimmy Carter

The First Amendment built "a wall of separation between Church and State."—Thomas Jefferson

VIEWS OF THE WALL

Frances Prince
Scholar-In-Residence

Heavy criticism has fallen upon our primary and secondary public schools during the past few years. There has been no lack of voices with suggested remedies. President George Bush and Secretary of Education Lamar Alexander have presented their "answer to the school problem." It is popularly called the voucher or choice plan.

Because of the pressing need to improve schools and public demand that change be implemented immediately, the choice plan has been widely accepted as *the* answer. However, care must be exercised. Answers are not always solutions. A quip by Johnny Carson during a space exploration discussion on "The Tonight Show" is apropos. He said that he would not want to be an astronaut going to the moon on a tree limb built by the lowest bidder.

This quip ceases to be funny when President Bush speaks of putting American schools in competition, which he calls a market-driven approach to education. The plan would not produce better education for *all* children *but* a shifting of public funds to private and parochial schools.

The rhetoric concerning choice implies that Americans do not already have choice. On the contrary, we always have had choice whether to send children to public, private or parochial schools. The issue is not choice but whether the taxpayer should help pay for private or religious instruction.

Historically, the idea that tax dollars could support private or parochial schools would have been unthinkable.

The school choice plan is unacceptable to those who believe that a public school system of free and equal education is essential in a democracy. Democracy teaches us how to live peaceably in an increasingly multi-cultural society. It teaches us how to resolve conflicts and how to respect differing opinions and beliefs. When narrow religious ideology, partisan politics or other self-interest are allowed to dominate, our very democracy is at risk. Even a casual study of history reveals the disastrous results of teaching an exclusive approach to living in a multi-cultural world.

Choice proponents claim that competition between public, private and parochial schools would be healthy. Competition is healthy if all participants play under the same ground rules.

Public schools must abide by policies set by a democratically elected school board. These boards must follow the Sunshine Law that makes it unlawful for them to meet in secret. Their decisions ideally represent the public good. Not so with private and parochial schools. Typically, their rules and policies are not debated in an open public forum. They are accountable only to themselves.

One should be very cautious when hearing business entrepreneurs blatantly admit that they plan to make a profit by improving education through the spirit of competition. An educator has said that one doesn't improve the public water supply by selling bottled water.

Operation of for-profit schools with an eye on the bottom line raises several questions. At what point would services be cut to ensure a profit? When does the profit become more important than the child? And who decides? The investors, the parents or a school board representing the public good?

After business takes over the public schools, what will happen when a recession hits? Will the businessman throw up his hands and say, "I can't do this anymore. This business endeavor is too expensive." Does this mean that an almost bankrupt struggling public school must take back these students?

It can't happen? Choice already has one such example in a Milwaukee school district that experimented with the voucher plan. This program offered $2,500 out of the public school budget to be used in any public, private or parochial school. Seven private schools volunteered to participate in the program. One school, the Juanita Virgil School, took in a large number of voucher students. The non-voucher parents became unhappy. Many of the claims made by the school were bogus. The school was ineffective—parents feuded, facilities were unsafe and materials were inadequate. Religion classes were suspended, then reintroduced. The school went out of business. The parents panicked in a search for a school that would take their students. The students lost a year of school.

In the last decade, politicians have legislated many so-called educational improvement programs. Many of these programs were implemented with absolutely no research to support these so called improvement claims. The school choice plan is no exception. This program has not been adequately researched. In fact, the largest choice plan in Massachusetts is an absolute disaster. One superintendent described it as "havoc and destruction."

Another choice experiment in the Richmond Unified School District in California left schools in a shambles. In short, these experiments have failed.

In medicine, a new drug must be adequately tested and approved by the Food and Drug Administration before it can be marketed to the patient. The public assumes then that the drug is safe and will do what it is supposed to do. In addition, the company must inform the public of negative side effects. One is left to wonder why choice proponents would be allowed to spend millions of dollars without the research to back their claims. If we want to prepare our nation for the 21st century so that we can compete in a world economy, what evidence do we have that a choice plan will do this?

There seems to be an assumption by choice advocates that parents will choose a school based on academic achievement. Yet, one survey showed that parents made their first choice based on convenience or proximity to the home. Other reasons listed were the child's friends attended the school, the availability of before-and-after school programs or athletic programs. High academic standards actually sent some children running to schools that had easier graduation requirements.

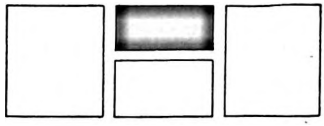
As a 32-year veteran teacher, I abhor the idea that schools should view children as consumers or as products. Education is a process, not a product. At a time when school improvements are so desperately needed, I am sickened that much-needed tax dollars are being spent by politicians trying to win votes by promoting improvement *fads*, which have shown *no* improvements.

In a market-driven economy, there are winners and losers. I am incensed that elitists would be willing for *any* of our nation's children to be losers. We must strive to give all children a high quality education, and we must train all of our children to live in a democracy.

Franklin Roosevelt once wrote democracy cannot stand unless its foundation is kept reinforced through the processes of education; that the schools make worthy citizens is the most important responsibility placed upon them. □

Frances Prince, BJC scholar-in-residence, is the former assistant commissioner of education for the state of Tennessee.

News in Brief



In court challenge—

More than animal sacrifice at stake

Members of the Santeria religion believe that the ritual sacrifice of animals is an essential part of practicing their faith.

Most Americans would consider that a strange if not repugnant practice. But, no problem. After all, the religious rights of Americans are protected by the First Amendment.

Not necessarily. When Santeria adherents, which number between 50,000 and 60,000 in south Florida, showed signs of establishing a church in Hialeah, Fla., officials took action. For stated reasons ranging from zoning objectives to health and sanitation concerns, Hialeah enacted ordinances that bar animal sacrifice but not the killing of animals for any other purpose.

Today, Santeria adherents find themselves waiting for the U.S. Supreme Court to decide whether Hialeah officials went too far in interfering with their right to practice their religion.

A somewhat surprising result has been the widespread condemnation of Hialeah's actions by U.S. religious groups who appeared to have no stake in the controversy. Lining up to ask the U.S. Supreme Court to strike down Hialeah's ban were organizations representing Baptists, Catholics, Evangelicals, Jews, Mennonites, Presbyterians and Seventh-day Adventists.

While these groups do not espouse or endorse animal sacrifice, they voiced strong concern that Hialeah's action singled out a religious practice for discriminatory treatment.

Their concern is twofold. First, they want the First Amendment's promise that Americans are free to practice their religion to mean something—for minority as well as majority religions. They really believe that if government is allowed to burden religion, it better have a convincing reason.

Second, they rightly realize their freedom is on the line, too. They worry that if a city or state can ban an unpopular religious practice like animal sacrifice, government could ban a more widely accepted practice, such as communion or baptism.

Their fears can be traced to a 1990 decision in which the Supreme Court virtually discarded its longstanding view that government could restrict religious practice only if it used the least restrictive means to achieve a compelling state interest.

Under the test announced in *Oregon v. Smith*, generally applicable laws or policies that restrict religion do not have to meet that high standard. Instead of asking whether government has a compelling reason for its policy, the high court now merely wants to know if there is a rational basis for it.

The reduced level of protection for religious practice announced in *Smith* has led to a string of court losses by religious parties, prompting many church-state leaders to argue that the free exercise clause effectively has been deleted from the Constitution.

It is not surprising that they asked the Supreme Court to use the Santeria case to reconsider its finding in *Smith*. Absent that, they argue, Hialeah's action singling out religious practice is impermissible, even under *Smith*.

University of Texas law professor Douglas Laycock, attorney for the Santerias, told the Supreme Court that Hialeah's actions amounted to "open discrimination against a minority religion." He attacked Justice Antonin Scalia's suggestion that Hialeah's ordinances could be viewed as neutral because they could be applied to a secular fraternity that occasionally practices animal sacrifice.

If that argument is persuasive, Laycock told the court, then the free exercise clause really has been repealed.

Under that logic, Laycock reasoned, government could ban communion if a fraternity or some other non-religious group decided to practice communion.

While minority religions may be the most likely to suffer under the high court's new test, all religions now have less protection.

Consider this year's decision by Berkeley, Calif., officials to include churches among non-profit organizations taxed under a 1979 city ordinance. Under protest from area church leaders, Berkeley officials recently appeared to back away from applying the tax to churches. But under the Supreme Court's current view of the First Amendment, there is little constitutional restraint keeping Berkeley or any other city from opting to tax the collection plate.

Or, consider Cornerstone Bible Church's brush with a Hastings, Minn., zoning ordinance that excluded churches from commercial and industrial zones. Applying the relaxed standard announced in *Smith*, a trial court dismissed the church's claim. While the parties eventually settled this case, it highlights the diminished protection now afforded religion.

Cases such as these and the Santeria dispute help explain why American religious bodies are working overtime both in the courts and in Congress to restore the high level of protection for religious practice.

The principal threat is clear, according to Baptist Joint Committee Executive Director James M. Dunn.

"When anyone's religious liberty is denied, everyone's religious liberty is endangered." □

Lawyers hopeful after arguments

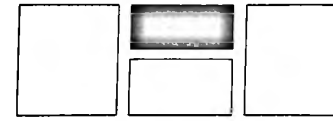
Baptist church-state attorneys expressed generally optimistic assessments Nov. 4 after the U.S. Supreme Court heard arguments in a Florida animal sacrifice case that likely will help clarify how far government may go in restricting religious practice.

The case gives the court its first opportunity to spell out the degree of religious freedom guaranteed by the First Amendment's free exercise clause since its 1990 ruling that drastically reduced protection for religious practice.

At issue in the pending case is the constitutionality of Hialeah, Fla., ordinances that ban animal sacrifice but not the killing of animals for a variety of other reasons.

The ordinances were challenged by practitioners of the Santeria religion who argue that their religious practice of sacrificing chickens, pigeons, doves and other animals was singled out for discriminatory treatment.

Two Baptist Joint Committee attorneys said University of Texas law professor Douglas Laycock appeared to do a good job in convincing justices that the



Hialeah ordinances singled out a religious practice.

"A telling moment," said BJC General Counsel Oliver S. Thomas, "occurred when Hialeah's attorney admitted that animal sacrifice would not be permitted in a properly zoned, properly regulated slaughter house, thereby eliminating the city's concerns about disease control, sanitation and cruelty to animals.

"It was apparent that the city's real concern was the religious ritual itself, and not these other legitimate considerations."

J. Brent Walker, BJC associate general counsel, said the argument "went extremely well.

"It's always hard to predict how the justices will vote, but I would not be surprised by a ruling in favor of the church—maybe by as much as a 7-2 decision."

Thomas, who joined Laycock in addressing reporters after the hearing, said he came away more confident that "the court would be able to get past the admittedly bizarre practice that's at issue in this case to the real principle that's at stake.

"Having said that, a win in this case is hardly a victory for religious liberty," he added. "It simply means that religion doesn't lose what little ground that's left after the *Smith* decision."

The brief filed by the religious groups asked the high court to reconsider its decision in *Smith* to abandon the high level of protection for religious practice. While Thomas said some justices might like to reverse that decision, he is doubtful a majority is ready to do so.

"But I think *Smith* is going to become a moot point by spring," he said. "I think with the support of the Clinton administration, the Religious Freedom Restoration Act could become law, conceivably before the Hialeah case is handed down."

The proposed bill to restore the compelling interest test enjoys broad support among U.S. religious groups and lawmakers but failed to pass in the final days of the 102nd Congress. □

Parents oppose school "choice," study shows

Most parents of public school students oppose school "choice" plans that would provide tax-funded vouchers to send children to the public, private or religious schools of their choice, according to a new study.

The survey, conducted by the Carnegie Foundation for the Advancement of Teaching, found that fewer than 2 percent of parents choose to participate in school choice programs in the states that offer them.

The study showed that 70 percent of public school parents would not send their children to different schools—public or private, either inside or outside their current district. Sixty-two percent of parents surveyed opposed financial vouchers to enroll children in the public, private or religious schools of their choice.

The Carnegie report noted that the idea of having choices is generally appealing to Americans and that past opinion polls had reflected support for the notion that parents should be able to choose the schools their children attend. Those polls, the report says, did not reflect the trade-offs involved.

When the Wirthlin Group, the polling firm used for the Carnegie study, asked a general audience (not just parents) what is the best way to improve public education, 82 percent favored giving every school the resources needed to achieve excellence, while 15 percent would encourage competition through choice, leaving quality schools strengthened and weak schools facing the option of improving or closing.

Carnegie researchers studied the effects of school "choice" as it has been implemented in 13 states and scores of individual districts, concluding that choice alone "will not result in widespread school improvement."

Participation in choice programs in states that offer them ranges from a high of 1.8 percent of the school population in Minnesota to a low of 0.1 percent in Massachusetts.

To date, only a districtwide choice program in Milwaukee allows parents to choose among public and private (but not religious) schools.

During the most recently completed school year, only 632 students (0.65 percent) left public schools for private schools.

"Whatever else may be said of it, Milwaukee's plan has failed to demonstrate that vouchers can, in and of themselves, spark school improvement," the Carnegie report states.

"... no evidence can be found that participating students made significant academic advances or that either the public or private schools have been revitalized by the transfers." □

Public, court divided over prayer, poll says

Americans sharply disagree with the U.S. Supreme Court's interpretation on school prayer, according to a poll released in the November issue of *Reader's Digest*. But a Baptist church-state attorney said the survey also indicates a widespread misunderstanding of the court's action.

The article purports that the court and the country's cultural establishment are willfully denying the public what it wants regarding school prayer. J. Brent Walker, associate general counsel for the Baptist Joint Committee, countered that the Supreme Court is not a measuring-stick for public opinion but an interpreter of the U.S. Constitution.

"The court should not call up George Gallup to find out how to decide a case," Walker said.

One survey question, "Do you generally favor or oppose prayer in public schools?," garnered a favorable response from three-fourths of those surveyed. Those findings seem to indicate most Americans are at odds with the court's 1962 decision declaring public school-sponsored prayer unconstitutional, the article said.

But Walker said that "a lot depends on what and how the question is asked. Almost everyone favors allowing our kids to pray in school. But when you ask whether the state should write the prayer or promote prayer or direct the prayer, the support falls off sharply."

The *Reader's Digest* poll, conducted by The Wirthlin Group, also noted another apparent division between the public and the court. Eighty percent of Americans surveyed said they disapproved of the court's 1992 ruling in *Lee v. Weisman* that "it is unconstitutional for a prayer to be offered at a high-school graduation."

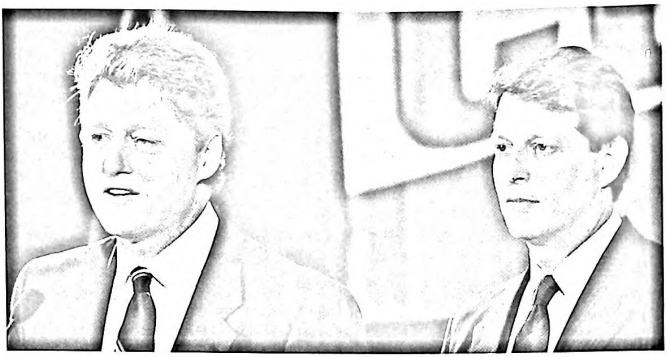
Walker said this question misrepresents what the court ruled in *Weisman* and is another example of how the phrasing of a question can influence the outcome.

"It (the question) leaves out the fact that the school organized the event, picked the clergy to give the prayer and then gave him guidelines to follow in how to pray. I'd be surprised if 80 percent would condemn the ruling if they knew all the facts of the case. The decision did not rule out voluntary student prayer." □

"Two Baptists in the White House who understand our history and are committed to religious liberty and the separation of church and state offer bright hope for the future.

"This administration will clearly oppose the use of public funds for private and parochial purposes, and it will not try to tinker with the Bill of Rights to provide government-prescribed prayers for public schools."

— James M. Dunn



President-elect Bill Clinton and Vice President-elect Al Gore prepare to take office on Jan. 20.

Under Clinton-Gore—

Church-state playing field to change

The playing field for American church-state relations is expected to shift noticeably during the administration of Baptists Bill Clinton and Al Gore.

That shift will reflect more emphasis on both separation of church and state and the rights of Americans to freely practice their religion.

For more than a decade America's Religious Right has teamed with the Reagan and Bush administrations to wage full-scale, but largely unsuccessful, battles to win government money for religious schools and to promote government prayer for public schools.

During the next four years, church-state specialists say, the playing field will become more uphill for the Religious Right's church-state causes. Not only will those proposals face difficult odds in Congress, they no longer will benefit from the bully pulpit of the White House.

"Two Baptists in the White House who understand our history and are committed to religious liberty and the separation of church and state offer bright hope for the future," said James M. Dunn, executive director of the Baptist Joint Committee.

"This administration will clearly oppose the use of public funds for private and parochial purposes, and it will not try to tinker with the Bill of Rights to provide government-prescribed prayers for public schools," Dunn said in an assessment shared by two church-state lawyers—BJC general counsel Oliver S. Thomas and National Association of Evangelicals legal counsel Forest Montgomery.

While they think Clinton-Gore policies will reflect a stronger commitment to church-state separation than those of the Reagan and Bush administrations, all three predicted renewed support for free exercise of religion.

They expect the new administration to provide a fresh spark toward passage of the Religious Freedom Restoration Act—legislation that would restore a high level of protection for Americans' free exercise of religion. The measure was introduced in Congress after the Supreme Court ruled in 1990 that government no longer needed a compelling reason to justify a generally applicable law or policy that happened to restrict religious practice.

Montgomery placed particular significance on Clinton's endorsement of RFRA.

"That's the most important bill relating to religious freedom ever considered by Congress," he said. "President-elect Clinton has endorsed it, and I think this, coupled with Sen. (Edward M.) Kennedy's recent speech saying RFRA will be high on the agenda of the new Congress, is promising.

"This is the third Congress that's considered it (RFRA), and I think this time we're going to hit a home run," he said of the proposal that is backed by most U.S. religious bodies.

Thomas said it is reasonable to expect the "new administration to be more supportive of free exercise of religion claims. President-elect Clinton has endorsed the Religious Freedom Restoration Act while the Bush administration has been neutral at best."

Thomas noted that the reduced level of free exercise protection adopted by the high court in 1990 was first proposed by the Reagan-Bush administration in 1987 in an obscure Florida case.

"It's ironic that the religious right has sought to portray Bill Clinton as anti-religious given the track record of the Bush administration on church-state issues," Thomas said. "The Reagan-Bush administrations gave us the problem we're trying to solve (with RFRA)."

Because of the 1990 *Employment Division v. Smith* decision and 12 years of generally conservative judicial appointments, the Reagan-Bush impact on church-state relations has been much more pronounced in the courts than in the Congress, where parochial aid or school prayer proposals routinely lost.

But, even in the courts, the religious right's agenda has not always been successful. Thomas noted that the Bush administration failed in a Rhode Island commencement prayer case last year to persuade the Supreme Court to abandon the principle of government neutrality toward religion.

Dunn, Thomas and Montgomery expect Clinton's judicial appointments to change the direction of the courts.

"President-elect Clinton is likely to fill two, possibly three, Supreme Court vacancies during his first term," Thomas said. "Obviously his views will have a major impact on how the court responds to church-state issues over the next decade."

"It's ironic that the Religious Right has sought to portray Bill Clinton as anti-religious given the track record of the Bush administration on church-state issues. The Reagan-Bush administrations gave us the problem we're trying to solve (with RFRA)."

—Oliver S. Thomas

Montgomery said he expects Clinton appointments to shift the balance on the court.

Thomas predicted the Baptist Joint Committee's job as a religious liberty agency "will be easier in so far as we will have an administration that will take the same position that we do on many church-state issues.

"We won't be forced to oppose a lot of legislation," he said. "Our job has been extremely difficult over the past decade because at times we have had to oppose a very popular and very effective president.

"Now we'll be able to make more positive contributions to the development of policy in this area."

While his organization disagrees with Clinton's views on parochial aid and social policy issues such as abortion and homosexual rights, Montgomery said the NAE is looking forward to working with the Clinton administration in passing RFRA and in other areas.

"We are hopeful that this newly elected president will bring the country together," he said. "He has referred to the harsh politics of division, and we think there is a real need for healing and are hopeful the incoming Congress and the White House can work together to face the problems that have been unattended too long, such as the staggering deficit, 37 million of our fellow Americans without health insurance and the steady erosion of our job and manufacturing base."

Thomas sees a more vocal and active role for the religious right during the Clinton administration.

"They're not going to have access to the levers of power that they have in the past and because they're on the outside, they may become more strident than ever," he said. "They're not used to being in exile. Being on the outside tends to sharpen one's rhetoric and heighten one's role as a critic.

"When you're working within the system, compromise and moderation pay dividends." □

God not banished from public school

God and Country

Public schools and religion

Third in a Series

Has God been thrown out of the public schools? Not at all. The U.S. Supreme Court has held only that the *state* cannot constitutionally sponsor religion in the classroom. It is not the school's job to tell or even suggest to children how, when or what to pray. Teachers cannot and should not lead in devotional Bible reading or other religious exercises. School officials should not proselytize as if they were the outreach arm of the local Baptist church.

But God has not been banished from the classroom. Religion does have a place in the public school system. Religious expression can take many forms.

First, the schools are perfectly free to teach *about* religion even though they are precluded from sponsoring the practice of religion. America's children must be told about the influence of religion on the development of American culture. To fail to teach these truths would be to skew history and exhibit hostility to religion. Courses in comparative religion and Bible-as-literature can and should be included in the curriculum.

Second, schools may participate in "released-time" programs. A school may allow students to attend classes in religious instruction at an *off-campus* church or other site. Although not used much anymore, this has been a helpful and constitutionally permissible way to accommodate the religious needs of students.

Third, there is equal access. If a public school allows other non-curriculum related student groups to meet on campus before or after school, it must allow religious groups to meet on an equal basis. The Equal Access Act, upheld by the Supreme Court in 1990, disallows discrimination by the schools on the basis of "religious, political, philosophical or other content of speech." These meetings must be student-initiated but need not be devoted to learning *about* religion. They may be overtly sectarian, involving prayer and Bible study.

Fourth, within some limits schools cannot interfere with the individual free exercise rights of the students. Students may pray whenever and to whomever they like—whether in the classroom, lunchroom or the playing field—provided they do not disrupt the educational process. Students cannot be prevented from bringing Bibles or other religious literature to school. They may read their Bibles during free time and even discuss their reading with others. They cannot be prevented from sharing their faith as long as they respect the other students' rights to be left alone.

Again, it's only state-sponsored religion, not student religious speech and practice, that is prohibited by the Constitution. Indeed, the free exercise and free speech clauses often require the schools to accommodate the latter.

Has God been thrown out of the public schools? Maybe the faceless God of civil religion has, but the God of Abraham, Isaac, Jacob and Jesus has never missed a roll call. □

— J. Brent Walker
Associate General Counsel

INTERNATIONAL DATELINE

Church of England opens priesthood to women

By a narrow margin, the Church of England voted to open the priesthood to women, an action that is being hailed as the most important event in the church's history since the break with Roman Catholicism in 1534.

Church leaders overturned a centuries-long teaching that only men can be priests because Jesus chose only men to be apostles.

All three branches of the church's General Synod—bishops, priests and laity—gave the required two-thirds majority. The vote was closest in the House of Laity: 169-82. Bishops voted in favor 39-13; clergy, 176-74.

The decision was expected to create an exodus of priests, perhaps as many as 1,000, who are bitterly opposed to female clergy.

The decision also is expected to set the tone on the issue of women priests for affiliated churches in the worldwide Anglican Communion where the issue is still being debated.

It is expected that it will be at least a year before any women are actually ordained to the priesthood. The next step is up to Parliament, where both houses will have to approve the measure before it is passed on to the queen for royal assent. If those approvals are forthcoming, as observers expect, canons implementing the decision will have to go back to the synod for approval.

Archbishop of Canterbury George Carey favored opening the priesthood to women.

"We must draw on all available talent if we are to be a credible church engaged in mission and ministry to an increasingly confused and lost world," he said. "We are in danger of not being heard if women are exercising leadership in every area of our society's life save the ordained priesthood."

He added that opponents of female clergy "could continue to play a full part in the life of the church."

But bishop of London, David Hope, predicted that opponents will increasingly find themselves marginalized.

Bitter debate on the issue has embroiled the church for more than two decades, and the battle heated up in the waning days leading to the synod, the church's top policy-making body.

The Anglican Communion is made up of 29 churches, including the Episcopal Church in the United States, which voted in 1976 to ordain women. □

> *"We must draw on all available talent if we are to be a credible church engaged in mission and ministry to an increasingly confused and lost world. We are in danger of not being heard if women are exercising leadership in every area of our society's life save the ordained priesthood."*
>
> **—George Carey**
> **Archbishop, Canterbury**

Refugees, homeless must become a policy priority

Worldwide policy makers must make the hunger crisis of uprooted people (refugees and the homeless) a high priority, according to Bread for the World Institute.

The institute, the research arm of a 44,000-member Christian citizens' movement to eradicate world hunger, released its third annual world hunger report on World Food Day, Oct. 16.

The report notes that refugees worldwide doubled from 9 million to more than 18 million in the last seven years. An additional 20 million people are displaced within their own countries.

While the number of uprooted people has increased, the international resources to help them have not grown accordingly.

This crisis confronts the world at a time when hunger overall is on the increase:

- This century's worst drought has placed tens of millions of Africans at risk of starvation;
- Communism's collapse, while offering hope for long-term peace, has led to conflicts and hunger in Eastern Europe and the former Soviet Union;
- 785 million people are hungry across the globe and at least another 500 million receive insufficient food to maintain productive lives;
- More than 40,000 children worldwide die daily from hunger-related causes.

The institute defines uprooted people, particularly refugees, in a traditional and non-traditional way. Traditionally, refugees are people who cross international boundaries to escape persecution. But the report also recognized other people displaced against their will from their homes as a means of survival. They include people who cross borders but, for political reasons, are not recognized as refugees by a host government, internally displaced people and "environmental refugees."

Environmental refugees, whose numbers now exceed 10 million, are forced to abandon their homeland as a result of man-made environmental conditions that threaten their lives or work.

The report offers two major recommendations. First, developed nations must increase aid to uprooted people at home and abroad. Second, the international community must establish procedures assuring United Nations intervention to meet uprooted peoples' needs. □

Southern Baptists, Swiss seminary make amends

Southern Baptist officials have apologized for last year's abrupt decision to cancel funding for a Swiss seminary they considered too liberal, smoothing relations with European Baptists who were outraged by the decision.

As a result, the Executive Council of the European Baptist Federation approved guidelines for continued relations between the church and federation during its recent annual meeting in Hoddesdon, England.

The SBC Foreign Mission Board had withdrawn $365,000 in funding for the Baptist Theological Seminary in Ruschlikon, Switzerland, last year over concerns that the seminary was too liberal, despite a promise to continue funding at least through 1992. □

Compiled from staff and news service reports, including Religious News Service, Associated Baptist Press, American Baptist News Service and European Baptist Press.

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One of the staunchest allies of all real believers in a free church in a free state is Freemasonry.

REFLECTIONS

James M. Dunn
Executive Director

I am not a Mason.

Yet many of us are deep in debt to Freemasonry.

I do know a bit about the history of the expansion of Christianity.

I do affirm the separation of church and state as the only guarantee for true religious freedom.

I despise heresy hunts, religious extremism, bigotry and "every form of tyranny over the mind of man."

At Southwestern Baptist Theological Seminary in the 1950s, I took "Missions" with Cal Guy. We read all seven fat volumes of Kenneth Scott Latourettes's *History of the Expansion of Christianity.* We were tested over our readings weekly. I mean *tested,* down to dates, names, spellings and pronunciations.

Masons always have stood tall, sacrificially, even to martyrdom for freedom of conscience. Ask anyone who knows about Baptist beginnings in Brazil. The gospel could not have been preached, the Bible not distributed and missionaries could not have stayed in many instances without the courageous intervention of Masons who risked all for the free expression of all religious ideas.

One book, *A Wandering Jew in Brazil,* recounts in dramatic detail the struggle for an unhindered gospel by Solomon Ginsburg in that South American country just over a century ago. No mission-minded believer could read these tales without pledging eternal appreciation to the Masonic Order.

Also in Mexico, church-state separation had a strong anti-clerical bent after the revolution of 1910. There was an ongoing struggle with religious intolerance and the persecution of Protestants (Ah, esos protestantes!). So, even until the 1960s champions of religious liberty, pluralism, free expression, cultural diversity and spiritual integrity often were simply seen as "the Masons."

In 1959, my wife and I visited Saltillo and Torreon in northern Mexico and met with Methodist, Presbyterian and Baptist professionals and government leaders who, for good reason, identified themselves simply as Freemasons. Religious freedom moved forward in Mexico indebted to the Masons.

Missionary stories could be multiplied, but those who claim to be so hot for the spread of their religion and so dedicated to missions, ought to read a little history before opposing those who have for so long worked so hard and sacrificed so much for the freedom of *all* religions.

Then, one of the staunchest allies of all real believers in a free church in a free state is Freemasonry. As C. Fred Klienknect, Sovereign Grand Commander, has written in *The Scottish Rite Journal:*

"The U.S. Supreme Court is poised to change the way church and state interact....

"(Some propose) a new standard, money taken from all citizens through taxation could be turned over to the handful of religious groups that operate private schools....

"(There are) dismaying signs that the general public does not understand the value of church-state separation....

"Scottish Rite Masons ... must oppose plans that would divert scarce public resources away from the public."

Now there is a soul brother in the struggle for authentic religious liberty and the conservation of historic constitutional values.

Commander Klienknecht continues, "Separation of church and state is under fierce assault today.... it is time for all Masons to work with more dedication than ever before to reverse this unfortunate trend." Amen!

Those of us who have for decades studied, worked and advocated the conservative, traditional understanding of church-state separation identify with Masons as fellow lovers of liberty. We see them as no timid defenders of First Amendment freedoms. They stand today as they always have for pluralism, diversity and equal opportunity for all.

How then can any religious group ostensibly dedicated to free moral agency, personal faith, the priesthood of all believers and basic American values challenge the right of the church members to be active Masons *and* church leaders?

Could it be that the assaults on Freemasonry are really a smokescreen for those who denigrate the All-American doctrine of church-state separation?

Is it possible that some extremists are using the very freedom of expression, the self-same opportunity to open debate, the precise privilege of public challenge won for them in part by Masonic heroes to accuse and abuse those in that great tradition?

Or, worse have we fallen upon a day in which a climate of suspicion, distrust and ignorance allows heresy hunts and thinly-veiled bigotry to sway a mob-like band of fundamentalists?

If "yes" is the answer to any of the four questions above, it is time for all who love liberty to rise up and say "enough of this silliness."

The Scottish Rite Creed reads in part, "liberty of thought our supreme wish, freedom of conscience our mission."

I am not a Mason, but I'm glad they are around. □

REVIEWS

Redefining the First Freedom: The Supreme Court and the Consolidation of State Power

Gregg Ivers, Transaction Publishers, New Brunswick, 1992, pp. 185.

Throughout our history, religious liberty has been known as our "first freedom." Now, 200 years after the ratification of the Bill of Rights, our first freedom is not only no longer first, it is barely a freedom. Gregg Ivers, a political science professor at American University, has written a valuable book that chronicles this redefinition, if not demolition, of our first freedom over the past 10 years.

Ivers argues persuasively that the Reagan-Bush court has become an "extension of the political process," no longer embracing the "countermajoritarian function" that the court historically has performed. Despite the rhetoric of judicial restraint, the court effectively has abandoned the enterprise of protecting the constitutional rights of the minorities, deferring instead to the political branches of government. Ivers here focuses on how the "Court's interpretation of the religion clauses has been consistent with this shift in constitutional jurisprudence." (p. 5) The author then sets out chapter by chapter to dissect the religion clauses and demonstrate how this redefinition of our first freedom has come at the expense of religious minorities.

The first three chapters focus mainly on the court's redefinition of the establishment clause. These chapters parallel the classic divides of establishment clause jurisprudence: religion and public education, public funds for private religion and religion in public places. In all three of these areas Ivers places the work of the Reagan-Bush court in historical context.

Most of the chapter on public education deals with the Equal Access Act and the court's decision in *Board of Westside Schools v. Mergens* (1990) upholding its constitutionality. The reader will find Ivers suspicious, if not critical, of the equal access concept and of the court's reasoning in *Mergens*. He concludes by musing that "time will tell if mortgaging the establishment clause for the sake of creating a right of student religious worship in public schools will have been worth this Faustian bargain." (pp. 40-41)

Here is one of the few places where Ivers can be criticized. He sees equal access as granting license to religious majorities to advance and proselytize their beliefs in the public schools. But he neglects to point out that religious minorities also are free to organize and meet. Moreover, he sees equal access as conferring a *benefit* on religion when, in fact, it simply lifts a *burden* on free exercise and religious speech. His suggestion that equal access will lead to public funding for religious education is something of a stretch. And, just because there is a potential for abuse of the equal access concept is no grounds for refusing to place religious speech on equal footing with other forms of expression.

In his chapter on public funding of religion, the author makes the case well that "independence from government financial coercion or comfort is the price of religious freedom." (p. 94) Starting with Madison's widely quoted "three pence ... for the support of any one establishment" admonition from his *Memorial and Remonstrance*, Ivers surveys the watering down of that principle up to and including the deferential posture of members of the Rehnquist court who advocate (or at least tolerate) the nonpreferential support of religion by the government. Ivers also quite adroitly analyzes the absurdities and ambiguities of the court's creche and Menorah decisions in the mid-1980s.

In the fourth chapter, the book's last and by far its longest, Ivers surveys the demise of the First Amendment's free exercise clause. Professor Ivers' chronicle starts with a discussion of *Cantwell v. Connecticut* (1940), a landmark decision striking down a state statute that limited religious proselytizing in public places and that applied the free exercise clause to the states. He then deftly chronicles the ups and downs of free exercise adjudication. He concludes with a ringing denunciation of the court's decision in *Employment Division v. Smith* (1990), that virtually eliminated the free exercise clause from the Constitution.

Ivers concludes with an interesting and quite informative discussion of the relationship between free exercise and federal civil rights laws. Even at the statutory level, he shows how protection for religious exercise has been whittled away in *Trans World Airlines v. Hardison* (1976) and, more recently, in *Ansonia v. Philbrook* (1986).

The book's major shortcoming is not the author's doing. The book went to press before the Supreme Court rendered its decision in *Lee v. Weisman* (1992), the Rhode Island middle school graduation prayer case. Since the court in that case declined the Bush administration's invitation to repudiate the historic *Lemon* test, *Weisman*'s omission from this book is not as consequential as it might have otherwise been. Nevertheless, Justice Kennedy's *de facto* usage of the coercion test (even if he did not expressly repudiate *Lemon*) may be seen as a harbinger of things to come that Professor Ivers was not permitted to discuss.

Nevertheless, many will find this book to be a valuable source as they seek to understand our first freedom and what has happened to it. The book is all business; it is not a superficial treatment of the area. So, the casual reader may feel overwhelmed at first. But college students and others who are serious about learning more about the court's church-state decisions of the past decade will find Professor Ivers' book revealing and quite helpful.

The book is not cheerful, but it is honest. Professor Ivers concludes:

"Freedom of religion, once considered sacrosanct among the fundamental freedoms entitled to vigorous judicial protection against majoritarian rule, enters the 1990s relegated to the unaccustomed and unforeseen position of second-class stature in our constellation of constitutional values.... [T]he power of temporal political majorities to exercise their discretion over and on behalf of religion will continue. This cannot be right. But, for now, it is the law." (pp. 172, 184-85) □

—J. Brent Walker
BJC Associate General Counsel