

REPORT from the CAPITAL

First freedom



"The concept of separation of church and state is America's greatest contribution to the cause of freedom and to political science. Americans expect the right to practice any religious faith or no faith at all without the interference of the state."

—James M. Dunn

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REPORT from the CAPITAL

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

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A brush with greatness

Bill Clinton and I attended a prayer meeting. The event was sponsored by the Baptist Joint Committee and First Baptist Church of the City of Washington on the eve of the Inauguration.

Unaccustomed to a BWG (brush with greatness), I usually feel overwhelmed by big people. At that gathering, my BWG meter pegged. Honored, was I, to be included. I went to pray; also, to see Bill.

Ken Medema, a musician from San Francisco, orchestrated the meeting. You know Ken. A blind man with a big voice and a bigger soul. Always moving. Always amazing. We sang *Amazing Grace*. "... once was blind, but now I see," we sang. Ken still doesn't see. But he does perceive! Against a dark canvas, he clearly sights (cites?) injustice.

Ken pushes me from bondage toward freedom. The blind leading the blind.

Gentle and gentlemanly Jimmy Carter was there praying for the Clintons and the Gores and for us all.

Gardner Taylor, long-term pastor of a large church in New York City, was there. Grand fellow with a grand voice — like many rushing waters. I like how he says *great*. Delete the long *a* sound, extend a short *e* (el as in *set* for about a block, and you have it. *Greeceeeeh!* "Our God is a *Greeceeeeh!* God!" God seems greater when described by Gardner Taylor.

But, the high point was seeing Bill. I've respected him for a long time. Wanted to tell him so. A Christian role model — informed by faith, but not deformed by religion; politically aware but not politically owned; wordsmith; teller of truth; student of metaphor; church-state scholar; asker of hard questions; open. We are fellow alumni of Southwestern Baptist Theological Seminary.

Sure, I admire Bill Clinton. But I'm speaking of Bill Moyers. I think of Bill Moyers as kinfolk, even a brother. He testified. Told the story of Baptists. Owned our holiness and hellaciousness, our piety and our pompousness. Deep are his waters. Bill Moyers — teacher from afar. His documentaries are eye openers. The "Power of Myth" introduced me to the way of stories that speak the unspeakable. Plus, the "ideas" series; then "A Gathering of Men" with Robert Bly (it changed my life). Also, "Amazing Grace," never seen by me with dry eyes. What a gift.

When Bill Moyers finished, I wanted to gather at the river and immerse somebody. A great, late evening.

But the greatest treat was yet to come. I met him in the parking lot. Bill Moyers, speaking to Larry Chesser of the BJC (and a member of my church!) — a Providential moment. *Carpe Diem*.

I moved in. Larry introduced me. We talked. I recounted pieces of his work that touched me most deeply. Managed to say to him what I've always imagined saying: "I thank God for you, Bill Moyers." Bill smiled and responded: "Well, you guys out there in the trenches are the real heroes!"

Headlights shined. His car arrived. The meeting, over. Since I don't come equipped with a dimmer switch, I veiled my face for the trip home. But as Bill knows, it can get dark in Baptist trenches. *Carpe Diem*, ya'll.

James E. Lamkin
Pastor, Ravensworth Baptist Church
Annandale, Va.





THE RELIGIOUS FREEDOM RESTORATION ACT has been reintroduced in Congress and the prospects for speedy passage are bright. The bill (S. 578, H.R. 1308) was introduced by Sens. Edward M. Kennedy, D-Mass., and Orrin Hatch, R-Utah, along with 32 additional senators. The identical House version was introduced by Reps. Charles Schumer, D-N.Y., and Christopher Cox, R-Calif., along with 137 additional cosponsors. Support in both houses is bipartisan. RFRA, which failed to win approval in the previous Congress, will restore the high level of protection for religious practice that the U.S. Supreme Court abandoned in its 1990 *Employment Division v. Smith* decision. Before *Smith*, government could burden religious practice only if it had adopted the least restrictive means of accomplishing a "compelling interest." Now, government can restrict religious practice as long as the regulation is facially neutral and reasonable. RFRA will restore the compelling interest standard that existed before *Smith*.

Our optimism about the quick passage of RFRA is buoyed by two factors. First, during the last Congress, the U.S. Catholic Conference opposed RFRA. Now, it supports the bill. The conference last year insisted upon three exemptions dealing with challenges to governmental funding of religious activities, tax exemption and abortion restrictions. Statutory and committee report language was altered slightly to make clear what we contended all along -- that RFRA would affect none of these three areas. With that assurance, the conference embraced the bill. We understand that the National Right to Life Committee has decided not to oppose it and will not use a vote on RFRA as a part of its abortion score card. The second factor that spells optimism for RFRA is the endorsement of the Clinton administration. Attorney General Janet Reno, in her confirmation hearing, told Sen. Hatch that "the president is very anxious to sign the bill as soon as Congress can get it to his desk." And at the press conference announcing RFRA's reintroduction, Sen. Kennedy read a letter from President Bill Clinton that said, among other things: "RFRA is urgently needed to restore full legal protection for the exercise of religion. I look forward to working with the Congress to secure speedy enactment of this important legislation."

Thus, with the most powerful opponent to the bill's passage now endorsing it and with the weight of the administration behind it, we see no reason why RFRA should not be adopted very quickly. However, it's no time to rest. It still remains important that members of Congress hear from citizens on this issue. Religious liberty is too precious a commodity to wait any longer than is necessary to restore its vitality. ● (JBW)

Fair play

High court weighs claims of discrimination

Veteran church-state attorneys expect the U.S. Supreme Court to have little trouble finding that school facilities opened for a variety of community purposes must also be available for religious purposes.

It's a much tougher call, they say, to predict whether the court will insist the First Amendment bars school districts from providing a paid sign language interpreter for a deaf student attending a religious school.

In Feb. 24 oral arguments, the high court heard challenges to a New York school district's policy barring after-hours use of school facilities for religious purposes and to an Arizona school district's refusal to provide an interpreter for a deaf student who attended a Catholic high school. The two cases are *Lamb's Chapel v. Center Moriches Union Free School District* and *Zobrest v. Catalina Foothills School District*, respectively.

Decisions in these two cases and in a dispute over a Florida city's attempts to ban animal sacrifice are expected by summer.

Baptist Joint Committee Executive Director James M. Dunn hopes the outcome in all three cases preserves the principle of governmental neutrality toward religion.

"The concept of separation of church and state is America's greatest contribution to the cause of freedom and to political science," Dunn said. "Americans expect the right to practice any religious faith or no faith at all without the interference of the state."

Lamb's Chapel, an evangelical church, and its pastor asked the high court to reverse lower court rulings that upheld the Center Moriches Free Union School District's policy against the religious use of its facilities. The church had sought to use the facilities to show the James Dobson film series titled "Turn Your Heart Toward Home."

The case is about censorship of Lamb's Chapel's speech, attorney Jay Alan Sekulow told justices.

While Sekulow insisted that the district's policy violated the First Amendment's religion clauses as well as its free speech clause, the court's discussion focused on the latter.

School district attorney John W. Hoefling said Center Moriches had established a "limited open forum" and that officials had restricted use of the

"If the court decides in favor of Zobrest, it will show the Lemon test can be applied in a way that is flexible, not hostile to religion and respects the needs of the student while not advancing religion by payment of money to parochial schools."

— J. Brent Walker



facilities for commercial and partisan political purposes as well as religious reasons.

Sekulow said the school district could bar after-hours use of the facilities by all outside groups, but could not restrict religious use when the buildings were available for a broad range of social, civic and recreational purposes.

School districts cannot open their facilities to drama and then exclude a religious play, Sekulow said.

Hoefling said the district's policy is neutral because nobody with a religious viewpoint is allowed to use the facility.

Four church-state attorneys said the issues appear to be clear enough in the case that justices should find little problem in siding with Lamb's Chapel.

"The oral argument went extremely well," said J. Brent Walker, associate general counsel of the Baptist Joint Committee. "The state's position was simply untenable."

"To say it's OK to allow secular lifestyle topics to be discussed, but not religious ones, or that anti-religious family values can be taught, but not religious values, borders on the absurd."

Walker was joined in predicting a victory for the church by Oliver S. Thomas, BJC general counsel; Steve McFarland, director of the Christian Legal Society's Center for Law and Religious Freedom; and Forest Montgomery, attorney for the National Association of Evangelicals.

"Lamb's Chapel is a slam dunk. ... I would not be surprised if the court was unanimous," Montgomery said.

McFarland noted that Lamb's Chapel will prevail because the school district

"has discriminated on the basis of the viewpoint of the religious group."

At issue in the second case is whether the provision of an interpreter for a deaf student at a religious school unconstitutionally advances religion or entangles church and state.

The Education of the Handicapped Act authorizes federal funds for special services, such as sign language interpreters, but the Catalina Foothills School District in Arizona refused to provide James Zobrest an interpreter because he attended a religious school. The district said it would have supplied Zobrest an interpreter if he had gone to a public or non-sectarian private school.

His parents, Sandra and Larry Zobrest, challenged that decision, and lower courts upheld the district's position that providing an interpreter would violate the First Amendment's ban on government establishment of religion.

During oral arguments, William B. Ball, the Zobrests' attorney, said the court could reverse the lower court rulings by holding that the benefit sought by the student does not violate the *Lemon* test. *Lemon* is a test used by the court to determine governmental neutrality toward religion.

The key issue is the second prong of the three-part test, he said, which requires that government neither advance nor impede religion.

Ball and William C. Bryson, acting U.S. solicitor general, said providing a neutral interpreter who merely translates a language does not advance religious beliefs.

Nothing in *Lemon* bars providing an interpreter, Ball added.

John C. Richardson, attorney for the

Arizona school district, said using state employees as interpreters in religious schools would necessarily involve them in religion. Part of what goes on in Catholic classrooms is the exercise of religion, he said, and government employees must not be required to engage in religious activities.

Richardson pointed out the school district has paid for non-religious services, such as speech therapy, for Zobrest but draws the line at federal workers participating daily, essentially and involuntarily in religious education.

Justice Antonin Scalia questioned the neutrality of the school district's approach, suggesting it could be a "disincentive" for parents to select religious schools. He also asked Richardson if the school district had considered sending the parents money to hire their own interpreter.

Richardson said the federal statute does not give the school district the authority to pay parents directly — an arrangement that would not place state employees in a religious classroom.

Church-state attorneys present for oral arguments agree that the decision in *Zobrest* will be close — perhaps a one-vote decision.

Thomas said, "It's difficult to predict who wins this case, but we would like to see a decision that neither penalizes James Zobrest nor violates the separation of church and state. I think both can be accomplished."

If the court decides in favor of *Zobrest*, Walker said, "it will show the *Lemon* test can be applied in a way that is flexible, not hostile to religion and respects the needs of the student while not advancing religion by payment of money to parochial schools."

Walker cautioned that a decision in favor of the *Zobrests* could have a down side if it were used to open the door to aid to parochial schools.

Montgomery said making court predictions is very hazardous but he thinks the court will reverse in a split decision, maybe 6 to 3. The court probably will not use either case to re-examine any basic precedents, he said.

McFarland said he couldn't predict the outcome in *Zobrest*. While he said the case has the potential for redrawing the line separating church and state, he said he "is not sure a majority of the court is ready to embrace a particular test, in which case, *Lemon* may by default remain fairly unscathed."

The Baptist Joint Committee, along with several other religious groups, filed briefs on behalf of *Lamb's Chapel* and the *Zobrests* in the two cases. □

— Larry Chesser and Pam Parry

Free speech, free religion

This case is a remarkable paradigm of First Amendment violations. The government officials in this case, including the courts below, have breached the First Amendment in the following ways: violated the neutrality requirement of both the free exercise and establishment clauses; discriminated against speakers because of their religious status and religious ideas; engaged in excessive entanglement with religious doctrine; discriminated among religious viewpoints; exercised unbridled discretion in determining whether citizens' speech is religious; and enforced a content-based restriction on religious speech without a reasonable, let alone compelling, justification for censorship.

A facially discriminatory policy necessarily has the effect of inhibiting religion and, indeed, conveys a message of hostility toward religious persons who are excluded from an expressive forum solely because their speech is religious.

Once again, this Court is asked to sanction state censorship of private religious speech. In rejecting numerous past attempts to censor private religious speech, this Court has intentionally and wisely avoided the morass created by the court below, whereby state officials, including judges, determine whether citizens' speech is religious. If allowed to stand, the decision below signals "open season" for the suppression of religious speech on virtually any public property by any federal, state, or local official.

— Brief filed by BJC and other amici
Lamb's Chapel v. Center Moriches Union Free School District

★ ★ ★

Amici believe that separating church and state, including a ban on government funding for religion, is as an indispensable element of religious liberty as is protecting religious practice from governmental interference. To this end, they have opposed schemes to provide aid to parochial schools.

But like any constitutional principle, the principle of separation of church and state can be carried too far. When that happens, the establishment clause ceases to protect religious liberty and begins to impede it. The decision below falls into the category of too much of a good thing and hence unnecessarily penalizes a child exercising his right to attend a parochial school.

In short, the *Lemon* test is not an inflexible rule which operates in isolation from social and political realities. Rather it is a device for screening those practices which are likely to bring about church-state relations of the kind which are harmful to religious liberty and those that are not.

Where a form of governmental assistance creates no structural links of the kind the Constitution proscribes, the establishment clause is not violated merely because the state provides an incidental, episodic benefit to religion. To take the simplest example, the provision of routine police and fire services to religious institutions does not implicate the establishment clause because it does not imply any special, structured relationship between church and state. ... [A]id to the child does not create the structured relationship between religion and government which the Framers believed threatened religious liberty.

— Brief filed by BJC and other amici
Zobrest v. Catalina Foothills School District

BJC panel accepts settlement

Agreement ends dispute over foundation funds

The Baptist Joint Committee Executive Committee voted unanimously March 1 to settle a dispute with the Southern Baptist Convention Executive Committee over a \$300,000 capital needs account.

Also at its spring meeting, the BJC panel was told that the Religious Freedom Restoration Act, described by BJC General Counsel Oliver S. Thomas as "the most important religious liberty legislation of our time," may receive a major boost toward enactment when it is reintroduced — perhaps March 11.

"At the same meeting in which the SBC funds dispute was resolved, we celebrated the prospects for imminent passage of the Religious Freedom Restoration Act," BJC Executive Director James M. Dunn said.

Dunn praised the work of many religious leaders but singled out the broad coalition of religious groups backing RFRA, and BJC Associate General Counsel J. Brent Walker in pursuing its passage for nearly three years.

"It is exactly this sort of work from which they should not be distracted by any internal Baptist dispute," Dunn said.

The dispute over the funds arose after the Southern Baptist Foundation declined the BJC's request to release the funds to purchase a building and the SBC authorized reallocation of the capital needs account. In recent years the SBC, one of the founding members of the BJC, dropped its financial support and severed ties with the Washington, D.C.-based religious liberty agency.

The settlement calls for the SBC to pay the BJC \$100,000 in four annual payments of \$25,000 beginning April 1 and for the BJC to relinquish claims to the \$300,000 account set aside for BJC capital needs by the SBC during the 1960s. The agreement was accepted by the SBC Executive Committee Feb. 25.

The settlement also requires officers and staffs of both organizations to avoid "impugning the motives and integrity of the other party, its officers, staffs, or members, over the facts and circumstances of surrounding this controversy."

The settlement acknowledges that the controversy "has constituted a distraction to both parties."

Citing the drain on resources and the uncertainty of the outcome associated with seeking to recover the funds through a lawsuit, Dunn and Thomas

Pitts: BJC took high road

The Executive Committee of the Baptist Joint Committee is proud to announce that its dispute with the Southern Baptist Convention over the \$300,000 account with the Southern Baptist Foundation has been settled. We would have preferred to receive a larger monetary settlement, but the BJC Executive Committee wanted to take the high road as we believe our mandate to follow our risen Savior compels this. Suing a fellow Baptist body in the secular courts goes against much of what we stand for as the Baptist Joint Committee, but because this fund was our only significant financial asset, we felt we had no choice but to aggressively pursue these negotiations.

Resolving this issue as amicably as possible offers the BJC and the Southern Baptist Convention the opportunity to work together toward resolving church-state issues that are critical to both organizations.

With the present climate in our nation and the possible destruction of the free exercise clause by the Supreme Court, working together as a religious community on church-state issues is more important than ever. Obviously, the BJC must be about the business of replacing the \$200,000 we have lost. But \$200,000 is a small price to pay for peace and harmony among Baptists. We call upon our Baptist friends nationwide to join us in the fight for religious liberty by contributing to the Baptist Joint Committee.



—Tyrone Pitts
Chairman, Baptist Joint Committee
General Secretary, Progressive National Baptist Convention, Inc.

recommended that the panel accept the settlement.

"It is not the best of possibilities and it is certainly not the worst of possibilities, given the uncertainties of litigation," said Tyrone Pitts, BJC chairman and general secretary of the Progressive National Baptist Convention Inc.

Pitts, who joined Thomas in negotiating the settlement with SBC Executive Committee President Morris H. Chapman and legal counsel James P. Guenther, said, "It was in their best interest to settle, just as it was in our best interest."

Pitts told his colleagues that in the long run, the BJC's willingness to accept the settlement will pay dividends larger than the \$200,000 the agency is forgoing. The BJC already had received the \$81,000 the foundation account had appreciated.

In a formal statement issued March 2, Pitts said the BJC "would have preferred to receive a larger monetary settlement, but the BJC Executive Committee wanted to take the high road as we believe our mandate to follow our risen Savior compels this."

Pitts also said the BJC "must be about the business of replacing the \$200,000 we have lost" and called on "our Baptist friends nationwide to join us in the fight for religious liberty by contributing to the Baptist Joint Committee."

In a report to the committee, Thomas said the future looks brighter than ever for RFRA, legislation that would restore a high level of protection for the rights to Americans to practice their religion without government interference. The legislation was first proposed after the

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VIEWS OF THE WALL

Oliver S. Thomas
General Counsel



The U.S. Supreme Court heard arguments in a constitutional double-header last month that could shape the future of church-state relations in America. The first case, *Lamb's Chapel v. Center Moriches Union Free School District of New York*, involves the after-hour use of public school facilities by outside groups.

The New York school district had adopted a policy that permitted its building to be used after hours by outside groups for social, civic, recreational and other community purposes. Interestingly, the policy prohibited use of the facilities for religious purposes although several religious groups had been allowed to use the facility for non-religious purposes. The case arose when Lamb's Chapel Church sought to show a James Dobson film on family issues. When the church acknowledged that the film had a distinctly religious perspective, its request was denied.

The case raises issues of content and viewpoint discrimination both of which are suspect under the First Amendment. Content discrimination exists when government attempts to exclude an entire category of speech — in this case religious — from an otherwise open public forum. Viewpoint discrimination exists when government suppresses selected viewpoints on the same subject. In this case, non-religious viewpoints on the family were permitted; religious viewpoints were not.

On its face, the school's policy seems to be a textbook example of content and viewpoint discrimination. Yet, the justices seemed concerned only about the latter. Both Justices David Souter and Antonin Scalia in oral argument seemed to imply that a school district could exclude all controversial speech from its public forum including religious and political speech.

Excuse me, but I thought that's exactly what the First Amendment was designed to protect — controversial speech. Speech that isn't controversial is never challenged or excluded by government. If potential controversy alone is sufficient cause to exclude a group from an otherwise public forum, the First Amendment has been turned inside out — protecting only those things that do not need protecting.

Fortunately, the court reacted strongly to the school's suggestion that it could allow anti-religious family values in the same forum in which religious family values were excluded. The school's at-

"If potential controversy alone is sufficient cause to exclude a group from an otherwise public forum, the First Amendment has been turned inside out — protecting only those things that do not need protecting."

orney called this policy "reasonable and neutral." Chief Justice William Rehnquist responded that calling such a policy "reasonable and neutral" was like calling a ban against all "left wing speech" reasonable and neutral because it excluded both communists and socialists.

The school's attorney also suggested that the establishment clause requires exclusion of religious speech even if political and commercial speech are allowed. Such a twisted interpretation of the First Amendment is exactly why religious people are leaving the public schools in droves. We can only hope that the court's opinion once again will draw schools attention to the critical distinction between *government* speech endorsing religion that the establishment clause forbids and *private* speech endorsing religion that the free exercise and free speech clauses protect.

The second case, *Zobrest v. Catalina Hills School District*, is more difficult. An Arizona school district (pursuant to federal statute) provides sign interpreters to deaf students attending both private and public schools. The district denied the request of James Zobrest for an interpreter when it learned that young Zobrest would be attending a Catholic high school. The question for the court is whether handicapped students should be required to forfeit their public aid if they choose to attend a state-accredited parochial school.

If this were a case in which the state were merely reimbursing the parents for out-of-pocket expenses in hiring an interpreter, the answer is relatively simple. None of the benefits are flowing to the parochial school. None of the benefits defray the cost of tuition. And, there is no inducement to attend a parochial school. It is a classic example of the "child benefit theory" in which all benefits flow to the child; therefore, it is constitutional.

But the case isn't so simple. The statute does not authorize reimbursement but rather requires the state to hire its own sign interpreter to accompany James Zobrest to his parochial school. In other words, a state employee will be sent into a pervasively religious institution to translate lessons, doctrine, and yes, even worship services. Therein lies the rub.

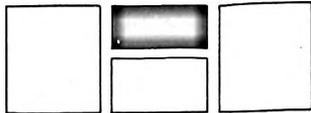
One side argues that the interpreter is little more than a machine, like a hearing aid or tape recorder. Zobrest's counsel argues that all sign interpreters are bound by a code of conduct that requires them to give a straight, unbiased translation — no paraphrase, no spin, no nothing. A machine. Counsel distinguishes interpreters from tutors who, he acknowledges, are different because they would be imparting their own viewpoints on religious subjects.

The other side argues that notwithstanding these restrictions on the interpreter's conduct, the interpreter is an integral part of young Zobrest's religious education. Involving a state employ in such sectarian activity advances religion and creates a symbolic union between church and state.

Even more important than what the court decides to do with James Zobrest is what it decides to do with the establishment clause. If the court reverses the case and orders that the benefits be provided to Zobrest, it should do so on the basis of *existing* Supreme Court precedent and on the narrow child-benefit theory. The court should not disturb the law governing the delicate relationship between church and state that has been worked out over the last 50 years by abandoning the principle that government be neutral in matters of religion. The so called *Lemon* test (coming from the 1971 decision *Lemon v. Kurtzman*) that requires that government action have a legitimate secular or civic purpose, not have a primary effect of advancing or inhibiting religion and not cause excessive entanglement between church and state is more important than ever given the nation's religious diversity.

The chilling moment came near the end of oral argument when Chief Justice Rehnquist suggested that perhaps the court should reconsider its position on the establishment clause to which one attorney replied "perhaps." I think I heard Justice Byron White mutter under his breath "careful."

I hope they will be. □



Ruling against state kosher law stands

Consumers and government share a stake in preventing fraudulent marketing, but protecting that interest can be tricky when the products at issue are prescribed by religious tenets — as are kosher foods.

The tricky part is to provide consumer protection while avoiding excessive entanglement between government and religion.

That's no easy task, as is evident in New Jersey's attempt to bar misrepresentation of kosher food. That state's Supreme Court held in July that the state kosher regulations unconstitutionally entangled government with religion, a ruling the U.S. Supreme Court on Feb. 22 declined to review.

The New Jersey regulations, which defined kosher as "prepared and maintained in strict compliance with the laws and customs of the Orthodox Jewish religion," imposed complicated guidelines governing the handling of kosher food and set up a panel of 10 rabbis to advise the state attorney general on kosher matters.

The New Jersey court said the state regulations violated the First Amendment's ban on governmental establishment of religion by advancing religion and failing to have a secular purpose, but mostly by fostering too much entanglement between government and religion.

Three judges dissented in the case, arguing that the regulations served the state's interest in preventing consumer fraud in the marketing of kosher foods.

"The constitutionality of kosher food legislation presents very difficult and close issues," said Richard T. Foltin, director of governmental affairs of the American Jewish Committee, which did not take a position in the case.

Seventeen states have approved laws related to kosher foods. Foltin noted that the Maryland Supreme Court upheld that state's kosher foods statute.

J. Brent Walker, associate general counsel of the Baptist Joint Committee, agreed with Foltin that the case presents difficult issues.

"The prevention of consumer fraud is certainly a legitimate secular concern," Walker said. "But it also puts government in the business of policing what are essentially religious standards of

"The prevention of consumer fraud is certainly a legitimate secular concern. But it also puts government in the business of policing what are essentially religious standards of purity. This tends to advance religion and results in unwholesome entanglements between government and religion."

— J. Brent Walker

purity. This tends to advance religion and results in unwholesome entanglements between government and religion."

In other actions Feb. 22, the high court:

- Declined to review an appeals court decision upholding the constitutionality of a Hagerstown, Md., ordinance restricting adult businesses to certain commercial zones and preventing them from operating within 1,000 feet of a church, school, hospital, nursing home, park or public multi-family dwellings.

The appeals court noted that the First Amendment protected the sale of non-obscene, sexually explicit material but that government may impose reasonable restrictions on the time, place and manner of protected speech.

- Agreed to decide whether the 1991 Civil Rights Act applies to cases pending when the law was enacted. The court will review lower court rulings that the 1991 act did not apply in a sexual harassment lawsuit filed by an employee of a Tyler, Texas, firm nor in a race discrimination complaint filed by two African American mechanics against

Roadway Express. When it approved the measure, Congress sent mixed signals about whether the bill was retroactive. □

Clinton urges Congress, country to reset course

Americans must seize the moment and change course toward progress and prosperity, President Bill Clinton said Feb. 17 in a nationally televised State of the Union address.

Speaking to a joint session of Congress, Clinton focused on the economy and called on lawmakers to deliver the change demanded by Americans.

"It has been too long — at least three decades — since a president has come and challenged Americans to join him on our great national journey, not merely to consume the bounty of today but to invest for a much greater one tomorrow.

"I believe we will find our new direction in the basic old values that brought us here over the last two centuries: a commitment to opportunity, to individual responsibility, to community, to work, to family and to faith," said Clinton, the second Southern Baptist president in two decades.

"If we have the vision, the will and the heart to make the changes we must, we can still enter the 21st century with possibilities our parents could not even have imagined and enter it having secured the American dream for ourselves and future generations."

Clinton appeared to want to lay aside partisanship when he said the country's economic woes could be blamed on both branches of government and both parties.

"The time has come for blame to end," he said to a standing ovation — one of 75 times his address was interrupted by applause of varying length.

Clinton said his economic stimulus package would create new jobs, cut \$140 billion from the deficit by 1997 and make more than 150 federal spending cuts totaling \$246 billion.

His plan would shift the federal budget from consumption to investment, he said, particularly investing in children and families. He proposed tax increases for the wealthiest Americans who earn



more than \$180,000 annually, as well as a broad-based energy tax.

Clinton urged Congress to help him "reinvent" government to make it work again.

"Tonight, the American people know we have to change. But they are also likely to ask me tomorrow and all of you for the weeks and months ahead whether we have the fortitude to make those changes happen. ... we must scale the walls of the people's skepticism, not with our words, but with our deeds.

"After so many years of gridlock and indecision, after so many hopeful beginnings and so few promising results, the American people are going to be harsh in their judgments of all of us if we fail to seize this moment.

"If we act boldly and honestly, as leaders should, our legacy will be one of prosperity and progress. This must be America's new direction. Let us summon the courage to seize it."

Following the address, Rep. Robert H. Michel, R-Ill., criticized Clinton for failing to communicate his long-range economic strategy and said Clinton has given the American people "a new political vocabulary" that describes taxes as "contributions."

"The American people would do well to remember: when you hear a Democrat call for taxes, do not ask for whom the tax rises — it will rise for you," the House minority leader said. "The president's answer is: more taxes on everyone." □

Legislation would encourage donations

A bill designed to encourage charitable giving was introduced Feb. 4 in the U.S. House of Representatives.

The legislation would make all gifts of appreciated property fully deductible. Appreciated property includes real estate, stocks and tangible items such as collectibles whose value increased after being purchased.

The Tax Reform Act of 1986 subjected the appreciated portion of charitable gifts to the alternative minimum tax, causing a decline in large gifts to universities, hospitals, museums and other charitable institutions.

The bill (H.R. 813) would exempt gifts of appreciated property from the alternative minimum tax so that all donors

would receive a deduction equal to the property's fair market value. If approved, the tax code amendment would apply to taxable years after Dec. 31, 1991.

Rep. Michael A. Andrews, D-Texas, said he introduced the bill because non-profit organizations depend on private donors. Since enactment of the Tax Reform Act, contributions of appreciated property have tremendously declined, he said, adding the bill would result in quality education, preservation of the humanities and economic aid to non-profit organizations.

J. Brent Walker, associate general counsel of the Baptist Joint Committee, said, "This bipartisan measure is important to all non-profit groups, including our Baptist institutions who rely on these gifts. We applaud Mr. Andrews' initiative and look forward to working for the bill's passage." □

Student aid in jeopardy at Liberty University

The Virginia Council of Higher Education agreed to defer until May a decision on whether students at Jerry Falwell's Liberty University are eligible for state tuition aid.

But the council, while expressing unhappiness with the school's foot-dragging in complying with church-state separation rules, did release about \$600,000 in aid to Liberty students for the spring semester.

At the same time, it ordered the school to tell all students and all prospective students that the financial aid might not be available next year.

The council's scrutiny of Liberty was prompted by a 1991 Supreme Court of Virginia ruling that found the school is "pervasively sectarian." Under state law, students who attend schools whose primary purpose is to provide religious training or theological education are barred from receiving state financial aid.

Americans United for Separation of Church and State asked the higher education council to investigate whether the school had secularized itself enough to properly receive the aid.

A first examination found the school violated the law in several ways, including a requirement that faculty and students sign a pledge of adherence to the school's doctrinal position and statement of purpose. It also required com-

pulsory attendance at worship services and school convocations.

On Jan. 25, A. Pierre Guillermin wrote the council saying there were "no restrictions on the freedom of faculty to teach and publish materials that conflict with Liberty University's doctrinal positions" and that neither students nor faculty will be "required to sign any statement that they personally believe or accept Liberty University's doctrinal position."

The council, however, had told Liberty officials that such pledges of openness must be included in printed materials the school distributes, such as recruiting brochures, the Faculty Handbook and other information.

The school has not yet provided the council the wording of the pledges and council officials said they wanted to see the wording before acting on funding for the next year.

And at least one council member raised the concern that because Liberty does not grant tenure and faculty members work on one-year contracts, there are no safeguards to preserve academic freedom. A faculty member could simply not have his or her contract renewed the next year.

Americans United told the council that the school's policies "create a 'chilling effect' on academic freedom at the threshold. Liberty must omit all restrictions on academic freedom, including those contained in the Faculty Handbook. So far it has failed to do so."

On the issue of compulsory church and convocation attendance, however, the school failed to satisfy the council, and a council spokesman said the agency would continue to scrutinize the school on that issue.

"They danced around the issue" of worship and convocation attendance, a council spokesman said. He said that a site visit by council officials suggested that the mandatory convocations were "very religious in nature."

Guillermin acknowledged that the school continues to require students to attend worship services except for pre-approved community service and that it "does require attendance by students and faculty at convocations." □

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

Ignoring the polls

Colorado voters increase parochial aid losses

Generally overlooked in the 1992 election results was the rejection by Colorado voters of Initiative 7, which would have required their state to subsidize school tuition by means of education vouchers.

The rejection was by a solid 67 percent, which should be no surprise. In the past, 17 of 18 ballot propositions to give various kinds of state aid to private schools have been rejected by large margins in many states. With the Colorado vote, subsidy plans for private schools have been battered by the voters 18 times since 1966.

Despite this long history, some signs suggested private-school subsidies might fare better this year. Then-President George Bush campaigned for education vouchers for private schools, presumably thinking this would win votes. A national opinion poll taken in July 1992 found that a majority of respondents would favor state or federal choice programs. Even the Colorado proposition was ahead in early polls. And in the influential 1990 book published by the Brookings Institution, two researchers called for public support of private education.

The voters, however, ignored all this and stuck by their long record of rejecting public subsidy of private schools. The reasons are not hard to find.

Opinion polls may go wrong when uninformed respondents reply after two seconds of thought. But when a proposition is put on the ballot, both sides of the issue are aired publicly and fully for weeks before the election. When voters have the time to ponder both sides, they overwhelmingly reject public subsidy of private schooling.

The Reagan and Bush administrations have spent the last 12 years making the case for subsidization of private schools. Yet, given a few weeks to make their case before an election, the opponents of private-school subsidies almost always persuade the voters. Why?

Obviously the costs of education vouchers, or other subsidies to private schools, are a major concern. Much of the voucher funding would underwrite the tuition of families already using

The voters of Colorado undoubtedly considered these issues in deciding that educational vouchers are a bad idea. In so doing, they made the record for private-school subsidy propositions 1-of-18 with the voters, a losing streak that can be understood easily when the arguments against such subsidies have a chance to be heard.



private schools. This gift would be borne either by the taxpayers or by the children left in the public sector. While vouchers might help some families gain access to private schools, it is also likely that the subsidy would permit private schools to raise their tuition rates and so remain inaccessible to most people.

A less discussed, but potentially more important, problem is that the vast majority of private schools are religious schools. Almost amazingly, George Bush and his two rivals in the presidential debates managed to ignore this bedrock fact. (Bill Clinton has said he opposes private school choice.) Even the authors of the Brookings volume seemed almost blind to this reality.

Voters might reject government subsidy of religious schools for very good reasons, beyond the obvious constitutional prohibition of an establishment of religion. Religious-school curriculum might well be deemed undeserving of public subsidy. For example, many fundamentalist schools, which are a fast growing segment of the private sector, teach "creationism" instead of standard biology. Should a nation already weak in science education encourage this approach?

Voters probably also are suspicious of claims that competition among private schools will automatically produce academic excellence. Some churches subsidize their schools and so protect them from the market forces that otherwise would force inferior but unsubsidized schools to close. Parents of private-school students are unlikely to be effective consumers if they are also members of churches operating the schools. How does one remove Johnny from an inferior religious school if one's pastor is going to want to know why? Competi-

tive pressures are short-circuited in the case of church-run schools.

Despite widespread concern about public education, there is little convincing evidence that private schools can produce uniformly better results. The 1990 National Assessment of Educational Progress reported that in mathematics public-school students performed better than private-school students when both groups had taken the same background courses. It also reported that between grades 8 and 12, public-school, not private-school, students made more improvement in math. And several times during the 1980s public-school students outperformed private students on the math section of the Scholastic Aptitude Test.

These differences in performances are small and limited to math, but they do raise serious questions about the belief that more private schooling would improve academic performance.

Voters of a philosophical bent might suspect the argument that educational vouchers will enhance "choice." Has one's choice really been enhanced if government subsidy allows him or her to choose among denominational schools that are objectionable from his or her perspective? Should education be treated as just another consumer item, or does the larger community have a stake in the process?

The voters of Colorado undoubtedly considered these issues in deciding that educational vouchers are a bad idea. In so doing, they made the record for private-school subsidy propositions 1-of-18 with the voters, a losing streak that can be understood easily when the arguments against such subsidies have a chance to be heard. □

This article by Donald E. Frey was distributed by Scripps Howard News Service and appeared in the Dec 11, 1992, Winston-Salem Journal. It has been reprinted with permission. Frey is professor of economics at Wake Forest University and the author of Tuition Tax Credits for Private Education.

Beyond the Beltway

Advocating religious freedom across America

To be a successful advocate outside the D.C. Beltway requires information. There are several excellent sources of information on church and state issues. Magazines such as *Americans United's Church and State*, the Baptist Joint Committee's *Report from the Capital* and the Seventh Day Adventists' *Liberty* offer news, keen insights and commentary on religious liberty concerns.

Religious groups that maintain offices on Capitol Hill are an invaluable yet underutilized source of information. The Anti-Defamation League, for instance, has some of the finest pamphlets and issue papers available. For individuals wanting a scholarly perspective on church and state issues nationally and globally, the quarterly *Journal of Church and State* published by the J.M. Dawson Institute of Church-State Studies of Baylor University is the place to turn. If keeping close tabs on developing court cases is important, then the *Religious Freedom Reporter* is a resource that is indispensable.

There are even a few annual meetings and seminars on church and state issues that can be helpful. Many of the groups already mentioned offer an annual briefing that provides excellent preparation for speaking out for religious freedom. To be sure, advocates outside the Beltway need to be informed voices for their cause.

A successful advocate "outside the loop" needs to look for ways to disseminate current information and perspectives on the separation of church and state. Look to the local newspaper for their policy on letters to the editor. A well-written letter to the editor on a timely issue concerning religious freedom usually is welcome. With a little provocative twist, such letters are sure to encourage a healthy debate. Most newspapers allow input as frequently as once a month. Watching the federal courts, various legislative bodies and local school issues will provide ample material for such letters.

Jeffery Warren Scott is pastor of Broadman Baptist Church, Cuyahoga Falls, Ohio. Scott holds a doctor of philosophy degree from Baylor University in Waco, Texas, and has written numerous articles on church and state topics.

Perhaps the reason that appreciation of the importance of church-state separation has declined in some quarters has been the skillful use of the media by the Religious Right. Advocates for the nation's first freedom need to be more creative and assertive in making their case through all available media.



Another avenue of educating the citizenry on First Amendment guarantees is the radio talk show craze that has swept the country over the last few years. Certain talk shows have open line programs in which the listener can discuss any subject he or she would like. Arguing against religious observances in public schools will almost guarantee a barrage of responses. Advocates for religious freedom can do a better job of taking advantage of these kinds of opportunities.

Ways to speak out about church and state relations is limited only by one's imagination and creativity. For example, religious radio stations frequently have interview programs that may be interested in a well-prepared guest with views on prayer in public schools or equal access. Local television stations may be interested in brief reactions of clergy to Supreme Court rulings on religious freedom. The best prepared might even hazard a brief analysis of the case and its implications for the local church or synagogue.

Perhaps the reason that appreciation of the importance of church-state separation has declined in some quarters has been the skillful use of the media by the Religious Right. Advocates for the nation's first freedom need to be more creative and assertive in making their case through all available media.

Advocates outside the Beltway also can further the cause of church-state separation by building relationships.

They should meet the religion editor/editor of the local paper and their school board members.

Advocates outside the Beltway need to be pro-active for their important cause. Understand the power of the pen. Write letters regularly to state legislators and representatives in Washington. The legislative body hears all kinds of perspectives — they need to hear from those who value religious liberty. The adage, "The only thing necessary for evil to prosper is that good men do nothing," is certainly well taken. With a new administration on all levels of government, the process of education is important.

Beyond being active in writing, those interested in continuing the "lively experiment" of a free church in a free state should run for office. Every school board needs a member who understands the importance of a public education free from religious coercion. Every city council, every state legislature, every congressional delegation deserves an advocate for the free exercise of religion. The city council in Hialeah, Fla., is one example that illustrates this point. The fact that a city council had no problem targeting a specific religious group and outlawing their religious practice is a clarion call for stepped up efforts at education and action.

Advocacy for religious liberty does take place beyond the Beltway — in fact, it must. □

INTERNATIONAL DATELINE



South African leader asks Clinton's support

The South African Council of Churches has wasted no time seeking the support of President Bill Clinton in the fight against apartheid.

In a letter to Clinton, council General Secretary Frank Chikane asked Clinton to consider issuing an executive order for the cause.

He requested the president's order to instruct all U.S. banks to stop handling financial transactions in South Africa until an interim non-racial government is created and a body is appointed to write a democratic constitution.

"We all look forward to that day when apartheid will be a thing of the past."

— Frank Chikane

Anti-apartheid pressure groups have convinced some banks to end business in South Africa, mostly through demonstrations and shareholder resolutions. But others continue to conduct business there.

Although South Africa has taken a number of discriminatory laws off the books in the past three years, one law that remains is proving to be a major hurdle as the nation edges toward reform. It is the law allowing only whites to vote in South African national elections.

All of the major players on the government side remain white, and they are reluctant to give up their power by changing the law.

Chikane's letter says the council is "encouraged" that Clinton is prepared to help develop an aid and investment program for South Africa once a democratically elected government is in place.

He concluded by saying, "We all look forward to that day when apartheid will be a thing of the past. We continue to struggle assured of the support of the many good-willed people like yourself." □

Baha'i leader installed in chair for World Peace

A Baha'i leader and scholar has been installed in the world's first Baha'i Chair

for World Peace at the University of Maryland in College Park.

Suheil Badi Bushrui said his mission will be able to promote alternatives to violence through conflict management, education, economic development and spiritual awareness.

Bushrui was chair from 1970 to 1985 of the National Spiritual Assembly of the Baha'is of Lebanon. From 1966 to 1968, he was a member of the board of directors of the Temple of Understanding, an interfaith, international organization with U.N. affiliations.

Baha'i is a worldwide religion that emphasizes unity of the human race. □

Catholic group urges Israel to obey U.N.

A group representing 270 Roman Catholic religious orders has warned that Israel's refusal to obey a U.N. resolution on behalf of deported Palestinians could lead to a breakdown of "international structures of cooperation."

In a recent statement, Brother Paul Hennessy, president of the Conference of Major Superiors of Men, said enforcement of U.N. resolutions, such as those in support of bombing Iraq, "will have little credibility in the present environment if they are selectively applied on behalf of those who hold the most power in the world community."

The conference, an umbrella group of religious orders whose members are men, is based in Silver Spring, Md.

Defiance of U.N. resolution 799, which demands the return of some 415 Palestinians deported from the West Bank to Lebanon in mid-January, could lead to breakdown of cooperation, not only between Arabs and Palestinians in Middle East Peace Talks, but also "in other areas of international concern," the statement said.

The group acknowledged Israel's claims that it has been "treated unfairly and unjustly at key moments in its history by the international community." At the same time, the statement said, history does not justify "self help" solutions as the mass deportations.

The deportations "clearly violate principles of international law," Hennessy wrote. He also argued that there is a need to find ways to resolve international problems in evenhanded ways, "without respect to the self-interested

economic and military power" of the world's mightiest countries.

The conference represents more than 27,000 priests and brothers. □

Religious leaders appeal for hostage release

Top Muslim and Orthodox leaders in Azerbaijan and Armenia have issued a joint appeal for the unconditional release of all hostages and the humane treatment of prisoners of war in the continuing conflict over the disputed Nagorno-Karabagh territory.

The appeal was issued recently in Montreux, Switzerland, at the end of the three days of talks between His Holiness Vasken I, leader of the Orthodox Armenian Apostolic Church, which predominates in Armenia, and Sheikh-ul-Islam Pasha-zadeh, the religious leader of Muslims who predominate in Azerbaijan.

Historic antagonisms, underscored by religious differences, have pitted Armenians and Azerbaijanis against one another over control of Nagorno-Karabagh, an Armenian enclave inside Azerbaijan.

With the dismantling of the former Soviet Union, which included both Armenia and Azerbaijan, antagonisms escalated into bloody conflict that continues and frequently is viewed as a religious conflict.

The Montreux meeting was called by the Rev. Konrad Raiser, general secretary of the World Council of Churches in Geneva, and Jean Fischer, general secretary of the Conference of European Churches.

In issuing the appeal, Raiser said, "We believe that their courageous act of coming together at a time when the peoples in their lands are suffering so terribly is a significant sign of hope and a symbol that people of faith must risk trust if they hope to follow the God of peace."

The two leaders agreed to set up a "United International Humanitarian Fund" to help people caught in the conflict. □

Court allows food to be withheld from patient

LONDON — Church leaders here



have raised serious doubts about a recent court ruling that food and medication may be withheld from a 22-year-old accident victim who is comatose and for whom doctors hold no hope of improvement.

The House of Lords', Britain's highest court of appeals, ruled Feb. 4 in the case of Tony Bland, who was crushed in the rush of a crowd nearly four years ago at a soccer stadium in Sheffield.

Cardinal Basil Hume, archbishop of Westminster, has asked for a detailed study of the court's judgment in light of Catholic moral teaching, saying that the case "raises serious and complex moral issues." He is expected to issue a more detailed statement following the study.

The court decided that in Bland's case medical treatment, which consists of artificial feeding and the use of antibiotics, had "no therapeutic purpose of any kind" and also was "futile" because there is no prospect of any improvement.

Hume, in his brief statement, noted the agony of the dilemma faced by Bland's parents and "the acute difficulty of coming to the right decision."

The case is similar to several in the United States that divided ethicists and raised thorny issues about whether artificial feeding of patients in "persistent vegetative states" constitutes an extraordinary measure that can be interrupted.

"I am very concerned about the implications of this judgment if the effect is to sanction death by starvation, which cannot be morally right," Hume said.

In their judgment, the Lords upheld the fundamental principle of the sanctity of human life and drew the distinction between withdrawing treatment and the administering of a drug to a patient to bring about death. To sanction such a drug, said the court, even if prompted by a humanitarian desire to end suffering, would be "to cross the Rubicon" between the care of the living patient and euthanasia.

That distinction also was raised by Bishop David Sheppard of Liverpool, chairman of the Church of England's Board for Social Responsibility, who said he was concerned that the decision not be used to bring pressure on families of other patients in a persistent vegetative state. Meanwhile, the Rev. James Morrow, a Catholic priest who works full-time against abortion and euthanasia, was unambiguous. He threatened to bring a private prosecution for murder if the court ruling is followed and Bland is

permitted to die. He and others have maintained a picket outside the hospital in Keighley where Bland is being treated. □

Lutheran leader pleads on behalf of Ethiopia

Bishop Herbert Chilstrom, head of the Evangelical Lutheran Church in America, has called on U.S. leaders to pressure the government in Ethiopia to stop persecuting the church.

Fresh on the heels of a late January visit to the war-torn east African nation, Chilstrom spoke to government leaders, telling of broken promises and pirated buildings. And he expressed concerns that free and fair elections promised by the transition government have not been held.

Events in the small, distant African nation have put the Lutheran church in Ethiopia into a tailspin, Chilstrom told members of the U.S. Congress and representatives of the State Department.

For Chilstrom a bit of family history brings those events closer to home. In 18th century Sweden, his forebears helped support Ethiopian students who had come to Sweden to study.

The transition government of Ethiopia continues to occupy several important buildings belonging to the church, known as the Ethiopian Evangelical Church Mekane Yesus. The buildings include a radio station and the church headquarters in the capital city of Addis Ababa.

The loss of those buildings, originally taken over by the Marxist government of former President Mengistu Haile Mariam, has strained the ability of the church to operate effectively, according to Chilstrom.

Chilstrom, whose church is the largest U.S. Lutheran body with a membership of 5.2 million, believes the United States can help resolve problems in Ethiopia by putting pressure on the interim government.

Sen. Paul Simon, D-Ill., told Chilstrom he would write to the Ethiopian embassy in the United States to raise the issues.

Chilstrom said the U.S. ambassador to Ethiopia, Mark Bass, promised he would seek resolutions to the problems but pointed out that the U.S. government itself has lost control over some of its properties there. □

Uruguay has more agnostics and atheists than any other country included in a Gallup survey of people around the world. Seven percent of predominantly Roman Catholic Uruguay is atheist and 3 percent agnostic according to the survey, which was reported in the January issue of *Emerging Trends*, a publication of the Princeton Religion Research Center, Princeton, N.J. The survey involved 40,000 people in 19 countries. Following Uruguay, where 56 percent of the people are Catholic, countries with the highest percentages of atheists and agnostics were the United States, Great Britain and Bolivia, all at 4 percent. ... Concerns about the safety of American Baptist missionaries in Zaire's capital city of Kinshasa have been raised following sporadic violence, looting and the death of at least 100 persons there late in January. ABC International Ministries Mission correspondent Tom Mayre in a recent phone report noted that some military forces were causing disturbances in the city. Tom Howard, an ABC missionary stationed in Vanga, reported that all missionaries were safe. No evacuation is planned. All ABC missionary personnel left Zaire in 1991 in the midst of violence. ... Two thousand languages now have received translations of all or part of Scripture with the translation last year of the Gospel of Mark into *Bete Daloa*, according to the United Bible Societies. *Bete Daloa* is spoken by about 500,000 people in the west African country of Cote d'Ivoire. The American Bible Society, part of UBS, also responded to needs of U.S. military personnel stationed in Somalia. ABS produced 30,000 Protestant and 10,000 Catholic Bibles for the troops. ... Baptists in Romania are preparing to open a university in Bucharest. Baptist Union of Romania officials report the university will prepare teachers for public schools and students for medical schools, as well as train social workers and others. Courses in Bible, missions and evangelism will be offered to all students. ... More than two-thirds of all progress toward evangelizing the world has taken place in the 20th century, with 70 percent of that occurring since World War II, according to church growth expert George Otis Jr. □

Compiled from staff and news service reports.

Today, we all need Madison's warning that "religion and government will both exist in greater purity, the less they are mixed together."



James M. Dunn
Executive Director

REFLECTIONS

Rewriting history seems to be a growth industry these days.

Much of the danger lies in the failure to recognize even the most blatant revisionism — you probably have been exposed to this contagious civic plague.

Signals of this self-inflicted sickness include:

- Argument that this is a "Christian Nation" or the "Christ ordained" instrument of God. (George Bush, 1992);
- Appeal for a return to "our Judeo-Christian heritage," without the fuzziest definition of this hyphenated faith;
- Insistence that government is hostile to religion, an accusation often backed with nothing more than evidences of appropriate official neutrality;
- Contention that since the words "separation of church and state" are not found in the U.S. Constitution the concept is invalid, never mind that the phrase "separation of powers" is not there either;
- Assertion that church-state separationists favor keeping religion from the political process although they are "up to their gills" in politics defending separation precisely and specifically to allow believers a forceful and free, powerful and prophetic voice in the public forum;
- Demand for generic, lowest-common denominator, to-whom-it-may-concern, non-sectarian prayer in public schools. Who wants to waste any time or energy defending the rights of folks to publicly parade non-religious "prayers"? What an oxymoron!

While there is room for debate regarding the issues suggested above, there is no ethical justification for rewriting history, distorting facts or misrepresenting the past to make a point. I had a junior high debate partner who wanted to win every debate even if it meant inventing "facts," and "statistics" to make his point. His arguments out of thin air sometimes prevailed. It was a junior high tactic.

One would think such adolescent excess beneath the standards of a U.S. Supreme Court justice. Yet, Mr. Rehnquist pulled just such a stunt in his *Wallace v. Jaffree* dissent (1985). He dismissed as irrelevant the Senate debate on what became the First Amendment. He argued as if the proponents of non-preferentialism (Henry, et. al.) had won when, in fact, separationists (Jefferson, Madison, Leland) gave us the first freedoms of the First Amendment. He attacked the usefulness of church-state separation as a guarantee for religious liberty.

Finally, a peer on the court has challenged Mr. Rehnquist's unethical overreaching. Justice David Souter does it in his concurring opinion in *Lee v. Weisman* (1992).

Thank God, (that's a prayer not mere rhetorical flourish) Justice Souter gave his chief, his peers and all who can read a history lesson. He answers pointedly the puzzling pettifoggery of Mr. Rehnquist.

Souter states a basic principle of constitutional law from which the Supreme Court "has not strayed" in the past 46 years: "The Establishment Clause forbids not only state practices that 'aid one religion ... or prefer one religion over another,' but also those that 'aid all religions.'"

Justice Souter corrects Mr. Rehnquist by quoting the majority in *Wallace v. Jaffree*, reminding him that "the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment

embraces the right to select any religious faith or none at all." We must have the option of freedom from religion for freedom of religion to mean anything.

No evangelist offering an altar call could put it more plainly than the high court did, saying "religious beliefs worthy of respect are the product of free and voluntary choice by the faithful." The court has held, as do friends of religious freedom, that it is none of government's business to require public officials to declare a "belief in the existence of God." (*Torcaso v. Watkins*, 1961)

Mr. Souter in *Lee v. Weisman* proceeds to remind Rehnquistians of the 1789 debate in which the very "non-preferential" state promotion of religion, now their darling, was rejected overwhelmingly and repeatedly by the House and Senate. Remarkable, indeed, is the persistent, possibly perverse, denial of the plain English that is not limited to laws respecting an establishment of "a religion," "a national religion," "one religious sect" or specific "articles of faith" but the prohibition of state support for religion in general.

Those who would have a mildly majoritarian, low-calorie Lite Religion, less filling with less content, are asked by Souter to remember that Jefferson and Madison condemned all establishments, however non-preferentialist. Today, we all need Madison's warning that "religion and government will both exist in greater purity, the less they are mixed together."

Justice Souter goes on in a 23-page concurring opinion to write a reader-friendly critique of the accommodationist approach that would allow the majority of the moment to redefine separation of church and state. Souter affirms that "history neither contradicts nor warrants reconsideration of the settled principle that the Establishment Clause forbids support for religion in general no less than support for one religion or some."

Read Souter; he'll do you good.

Sadly, most folks will not read Souter. I strongly suspect that the vast majority of even those who care passionately for religious liberty are unaware of Mr. Rehnquist's rewriting of history. But ordinary citizens in all walks of life encounter revisionism and bad history on the "Letters to the Editor" page, in the television evangelists' pleadings and now supremely in the deepest pool of ignorance in American life, the radio talk show. If you have an unfounded opinion, a bigoted bias, a smidgen of stupidity, call in, share it!

There also are products being peddled that promote historical error in audio tapes, video tapes, slick well-crafted books. Far more people are coming in contact with them than with the fight of the footnotes between justices.

The arguments are black and white in four-color publications. The pace of the videos is timed to short attention spans. The answers to complicated questions are so simple that they are untrue. A good many hawkers of mutilated history are on the market. Some are being pushed aggressively. Quite often they are enthusiastically received by the well-meaning audiences who haven't done their homework. Often pastors and other church leaders are not aware of the dangers. Understandably all of us

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REVIEWS



The Politics of God: Christian Theologies and Social Justice

By Kathryn Tanner, Fortress Press, Minneapolis, Minn., 1992, 262 pages.

At a time when many theologians are abandoning traditional Christian theology in favor of revisionist forms — such as liberation theology, feminist theology or even an ecological sensibility — Kathryn Tanner has set out to do just the opposite. In her book "The Politics of God," Tanner attempts to uncouple traditional Christian beliefs from their negative historical associations and to explore whether those beliefs can contribute to the development of a just society.

Tanner uses as her starting point the simple thesis that "one's understanding of God and the world influences one's understanding of the rights and responsibilities one has toward others" (p. ix). She then focuses on the positive potential of two Christian beliefs: a belief in the transcendence of God and a belief in God's universal providential agency.

A belief in the transcendence of God, according to Tanner, compels one to recognize that human ideas, proposals, and norms are limited and finite, are influenced by their historical and social settings and are fallible and terminable. Although human beings are radically different than God, they still may find relevance in God's divine truths and norms because God is intimately related to the world as its creator, guide and redeemer.

A belief in God's universal providential agency as Tanner explains it emphasizes that God works in and through all human agents to bring about God's intentions for the world. God is not bound to work only through a certain social class or even through Christians alone.

Tanner next undertakes to show the effects those basic beliefs can have on human social structures. She first argues that a belief in the transcendence of God and a belief in God's universal providential agency rule out the legitimate existence of fixed hierarchies, which foster oppressive relations of domination or exploitation and intolerance toward others. Instead, she contends, these beliefs promote the idea of equal regard and respect for others in all their diversity.

Tanner holds that equal respect is due all human beings because each is a

creature of God. It follows that equal respect should be unconditional (since no one earns the place of being a creature of God) and realistic (since people may be seen as they really are and still be considered creatures of God).

In addition, Tanner argues that the two beliefs make it clear that all oppressive social relations should be eliminated. In social structures of oppression, Tanner explains, the powerful tend to make idols of themselves, which is contrary to a belief in God's transcendence, and the powerless are degraded, which is contrary to a belief in God's universal providential agency.

Rather than being oppressed, every person should have the right to exist and be oneself, to develop one's capacities and to determine that process of development, according to Tanner. Each person also should have the goods that make those rights actual possibilities: minimum standards of well-being; participation or influence in any decision-making processes that govern one's fate; and access to what is necessary for one's self-development.

A belief in the transcendence of God and a belief in God's universal providential agency, according to Tanner, also call for a genuine respect for difference. Such toleration does not presume indifference. "Christians, as believers of God, and therefore believers in a truth about proper behavior and belief beyond the relatives and contingencies of human life, are zealous for the truth. A prohibition on dogmatism based on God's transcendence simply prevents them from being zealous for their own understanding of the truth" (p. 201). Tanner also argues that one's refusal to respect others' differences is a refusal to accept those others as creatures and agents of God.

Tanner draws all her arguments together in a call for activism in support of justice. She urges Christians to view themselves and their work with "non-idolatrous esteem" — an attitude in which one has the humility to accept oneself as not God and, at the same time, esteem oneself as a creature of God, encompassed by God's providential

and salvific intentions for the world. She also insists that Christian activism should have a distinctive shape: "Christian activism is neither cocksure of success nor desperate; it is firmly committed yet humble, uncompromising about the goal of greater justice yet flexible and free to maneuver with respect to the means to that end" (p. 227).

Tanner presents an intriguing challenge to Christians to take seriously such basic beliefs as the transcendence of God, creation, sin and salvation. Her careful unfolding of these beliefs and their interconnections with each other and other Christian beliefs presents a persuasive argument that the hierarchical and oppressive social structures that so often have been associated with Christianity are not inevitable.

Tanner uses traditional Christian theology to show how Christians can work toward just social structures in which all people, no matter how different, receive equal respect and treatment. And Tanner does so without falling into the same traps for which revisionist theologians often are criticized. For example, unlike most liberation theologians, Tanner argues that no one side can ever be identified as God's side. Ongoing self-criticism must be used by persons on all sides of an issue. Or, unlike many feminist theologians, Tanner insists on the importance of recognizing the differences that exist among people even within the ranks of a specific group, such as women or people of color.

Two words of warning should be offered about Tanner's book. First, the work is highly academic and at times difficult to work through. Second, the book does not offer concrete examples or descriptions of the type of social structures that Tanner advocates.

The book, however, is a rich resource, and the patient reader will come away with much about which to think and, hopefully, put into action. □

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