



REPORT from the CAPITAL

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NEWS MAKERS

John Binder, a Baptist Joint Committee board member, has announced his intention to retire as executive director of the North American Baptist Conference. A former BJC chairman, Binder will retire at the denomination's Triennial Conference in Dallas in August. He has held the position since 1979 and has been active in conference ministry since 1960.

W.W. Finlator, former longtime pastor of Pullen Memorial Baptist Church in Raleigh, N.C., is featured in a national campaign launched by the American Civil Liberties Union to counter what it calls "misleading assertions by the far right" about religion in public schools. The ACLU has distributed a new legal bulletin to more than 16,000 school superintendents and released a video titled "America's Constitutional Heritage: Religion and Our Public Schools." Finlator narrated the 35-minute video, which disputes arguments that the United States was founded as a Christian nation.

Carol Franklin Sutton, a former BJC staff member, will become executive director of American Baptist Women, effective Jan. 17. Previously, she was a policy advocate for 11 years in the ABC Office of Governmental Relations in Washington, D.C.

Alex Awad, an Arab Baptist pastor, returned to his homeland for a holiday visit after a four-year struggle to obtain a visa from the Israeli government. Awad, a native of Jerusalem, wants to serve as pastor of East Jerusalem Baptist Church, but the Israeli government repeatedly has refused to grant him a work visa or even a temporary tourist visa — that is until now. The Baptist Joint Committee has worked with Awad in this effort. Δ

Church and state: How much separation?



How much separation between church and state is required by the Constitution?

For three decades that question has fueled an often contentious debate. This spring, the nation's high court apparently will take another look at the issue in deciding the constitutionality of a special public school district created to accommodate the religious needs of a New York Hasidic Jewish community.

At the center of the debate is a legal standard known as the *Lemon* test. Under this test, government violates the constitutionally required separation of church and state when its policies lack a secular purpose, advance or inhibit religion or create excessive entanglement between government and religion.

Opponents of the *Lemon* test argue that it is difficult to apply and has led to governmental hostility, not neutrality, toward religion. Backers say it is a useful tool in preserving neutrality and that no alternative offered to date would work as well, much less better.

In accepting the New York case, the court signaled it may revisit *Lemon*, but finding five votes to overturn that standard may not be easy.

Four justices — Chief Justice William Rehnquist and colleagues Anthony M. Kennedy, Antonin Scalia and Clarence Thomas — have criticized *Lemon*. But a fifth *Lemon* critic, Justice Byron R. White, has been replaced by Justice Ruth Bader Ginsburg, expected to be more supportive of the test.

"I'd be surprised if the court did a wholesale revision of *Lemon*," said J. Brent Walker, general counsel at the Baptist Joint Committee. "It takes four

votes to accept a case for review but five to change the law. And unless I misread Justice Ginsburg's church-state philosophy, I can't count five."

National Association of Evangelicals attorney Forest Montgomery thinks the court may vote 5-4 to affirm a lower court's decision striking down the special school district.

While Montgomery believes the Supreme Court has gone too far in enforcing church-state separation, formulating a satisfactory successor to *Lemon* will not be easy.

Montgomery, immersed in First Amendment law issues for 13 years, said he has not been able to come up with a different test that would work in all Establishment Clause cases.

"The religion clauses of the First Amendment require government to be neutral toward religion, neither advancing it nor inhibiting it, but leaving it alone," Walker said. "*Lemon* simply is a legal formulation to help the court reach that result."

Montgomery agrees that neutrality should be the result. But, he added, "It turns out that that's not so easy to define, either."

Walker is more satisfied than Montgomery with the court's use of *Lemon*.

"In the main, it has been properly applied by the court," he said. "While *Lemon* may be an imperfect tool, it is far better than anything that has been proposed to replace it."

Montgomery said the debate has been marked by too much overreaction. More civility is needed, he said.

"As far as I'm concerned as an evangelical lawyer, we spread the gospel by loving people into the kingdom," he said. "Our Lord never looked to Caesar to carry out his mission." Δ

Court rejects challenge to Scouts' religious oath

The nation's top court has refused to hear a challenge to the Boy Scouts of America's requirement that members affirm a belief in God.

Without comment, the U.S. Supreme Court rejected the appeal of an Illinois youth who argued that the requirement violates a federal anti-bias law.

Left standing is a federal appeals court's decision that a 1964 civil rights law barring discrimination in public accommodations does not require the Boy Scouts to admit members who do not affirm a belief in God.

The law in question prohibits discrimination based on race, religion or national origin in public accommodations such as hotels, restaurants, retail establishments and places of entertainment.

Pennsylvania school unit discontinues Bible reading

A Pennsylvania public school district has discontinued its practice of daily Bible reading exercises after protests from community residents and a national church-state separation advocacy group.

Members of the Warrior Run Public School Board in rural Northumberland County voted 7-2 to drop the devotional practice after complaints from district residents and Americans United for Separation of Church and State, a religious liberty watchdog group.

"This is an important victory for church-state separation. It is up to families, not public school officials, to decide what religious training their children receive."

— Steven K. Green
Americans United Legal Counsel

Baha'is laud statement on Iranian persecutions

Representatives of the Baha'i faith are welcoming the United Nations resolution on human rights in Iran, saying it makes clear "in no uncertain terms" that Iran is persecuting Baha'is on the basis of their religion.

In adopting the resolution in a 74-23 vote, the United Nations General

Assembly cited religious discrimination directed at the Bah'is and warned that their "existence as a viable religious community is threatened."

"Given that the United Nations General Assembly represents the considered opinion of the community of nations, we are extremely gratified that the world has so explicitly called attention to the persecution faced by the Baha'i community of Iran."

"Further, today's resolution makes clear in no uncertain terms that the world community understands that Iran is persecuting Baha'is solely because of their religious beliefs, despite the Iranian government's assertions to the contrary."

— Techeste Aherom
Baha'i representative to the U.N.

Prevention beats cure in sexual misconduct cases

When it comes to protecting churches from damages associated with sexual misconduct, the proverbial ounce of prevention is worth a pound of cure, according to a Baptist legal specialist.

J. Brent Walker, general counsel at the Baptist Joint Committee, said the reported incidence of sexual misconduct by clergy and other church employees is escalating and drawing greater attention in the courts and the

media.

Walker suggested five precautions churches may take:

- Conduct a thorough background check when hiring ministers and other employees and soliciting volunteers.

- A minister, other employee or volunteer accused of sexual misconduct ordinarily should be suspended while an investigation is conducted. Because the church is obligated to protect ministers and others from unsubstantiated charges, the probe should be conducted as carefully and privately as possible.

- Professional rehabilitative treatment should be required for ministers and other employees not terminated after their involvement in sexual misconduct.

- Churches have a moral and legal obligation to disclose substantiated incidents of sexual misconduct when a prospective employer inquires about a former minister's employment record.

- Maintain adequate liability insurance covering sexual misconduct.

"More clergy are sued for sexual misconduct than for any other reason. It is much wiser and easier, not to mention more cost effective, for churches to take steps to avoid this problem than to deal with its consequences."

"Most importantly, churches should do this for the sake of preventing harm to potential victims."

— J. Brent Walker



BOOK REVIEW

BY LIBBY IVINS, BJC RESEARCH ASSISTANT

Battleground: One Mother's Crusade, the Religious Right, and the Struggle for Control of Our Classrooms

Stephen Bates. New York: Poseidon Press, 1993 (365 pp).

In this book Stephen Bates reviews a 1983 case, *Mozert v. Hawkins County Board of Education*. It involved a challenge by fundamentalist Christians for the right to protect their children from certain books in the school curriculum. The case brought to the fore the difficult task facing textbook publishers: trying to please anyone without offending someone. In a school system with a

tight budget, a unified curriculum seemed the best way to assure quality education for every student. What started as an alleged infringement on individual religious rights soon became a power struggle between two Washington giants: People for the American Way and Concerned Women for America. This, then, became the forum for a battle over tolerance and pluralism and took on national implications. The question is, as Oliver S. Thomas is quoted by Bates as saying, "How do we live together with our deep religious differences?" The writer brings to life the individuals, organizations, courts and conflicts. This is a book worth reading and studying. Δ

Parish Law

Q: Can a church be held liable for damages caused to person or property by a volunteer worker?

A: Yes. Though the specific answer may vary from state to state, generally speaking the church can be liable for negligence in deploying and supervising volunteer workers when those workers' acts harm other people or destroy property. Sometimes the church can be held liable even when it is not negligent if the volunteers' wrongdoing occurred within the scope of their work duties. So the stakes are potentially high. It behooves churches to screen, check references, supervise and control volunteers (particularly those working with youths and children or operating dangerous machinery), the same as they do for ministers and paid employees. Churches should also check their insurance policies to make sure that volunteer liability is covered. (JBW)

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VIEW OF THE WALL

Post-RFRA vigil needed



J. BRENT WALKER
General Counsel

RFRA counters the disastrous effects of *Employment Division v. Smith* (1990) and restores by statute the high level of protection for religious liberties that used to be recognized under the Free Exercise Clause of the First Amendment. As Vice-President Gore stated at the signing ceremony, RFRA permits "Americans to practice their religion not as government sees fit, but as they see fit."

But RFRA is not a cure-all. Religious claimants will continue to lose cases when the courts rule that government has adopted the least restrictive means of accomplishing a compelling state interest. RFRA tilts the playing field more in favor of religion and against government; it does not always ensure victory. Sometimes, therefore, it is appropriate for legislatures to create an outright exemption for religious practice, where even the strict scrutiny imposed by RFRA would inadequately protect the free exercise of religion.

Religious exemptions will be sought in several measures facing Congress this year.

1. The Native American Free Exercise of Religion Act of 1993 seeks to protect the religious practices of members of the Native American Church. Among other things, the bill shields Native Americans' sacred sites from intrusive government regulation and use, and permits the sacramental use of peyote. RFRA's compelling interest test by itself would not help the Native Americans here. The

Supreme Court ruled in *Lyng v. Northwest Indian Cemetery* (1988) that building a road over a sacred site did not burden Native Americans' free exercise, and even if *Smith* had been decided under the compelling interest test, the Native Americans probably would still have lost the peyote issue. Hence, specific legislation further protecting their rights is needed.

2. Congress is plowing ahead toward lobby reform with the Lobby Disclosure Act of 1993. The Senate has passed a bill, and one is presently pending in the House of Representatives. The bills require registration and disclosure on the part of those who engage in lobbying and continuing governmental monitoring of their activities. The Senate bill does not specifically exempt churches and religious organizations, but the most recent version of the House bill does. While most people welcome lobby reform, it should not come at the expense of the prophetic witness of churches. Having to obtain a license to lobby is no different from having to obtain a license to preach — something our forebears suffered persecution to avoid. In short, an exemption for churches and religious organizations is crucial here.

3. A bill soon will be introduced to amend the Civil Rights Act of 1964 to prevent discrimination on the basis of sexual orientation. Though such a provision probably could not be applied to the hiring of ministers, it might well apply to other church employees. Accordingly, an exemption for churches and religious organizations is necessary to the extent that the homosexual lifestyle is inconsistent with their religious beliefs and practices.

These are just several examples of bills in which exemptions will be sought. Yes, RFRA was desperately needed, and it will go a long way toward protecting our religious liberty against governmental interference. However, we must continue our vigil and work for specific legislative exemptions where warranted to protect our free exercise of religion. Δ

GUEST VIEWS

Following are excerpts from President Clinton's remarks Dec. 17 to nine religion reporters in the Cabinet Room of the White House. He addressed a variety of issues, including church-state separation.



President Clinton

I think what we have to do is to avoid having government and religion abuse or corrupt one another. The government should not abuse people's right to practice their own religion. That's what the Religious Freedom Restoration

Act was about. ...

... Then I also think that we have learned the hard way — throughout history we have seen it ... that religion itself can be abused when people in political power claim that every last

thing they do is because of an edict from God. ...

... And I've always tried to be sensitive about it and to draw what I think are the appropriate distinctions between what is sort of morally good for a society and still not get into, in effect, the business of preaching — that's someone else's business. ... But in another sense, the president has to minister to the nation's needs.

Violence

I am very, very worried about the enormous tide of crime and violence that's engulfing our country and is taking such a terrible toll on children in this country. And I'm worried about the fact that we have not been able to fashion an adequate response to it. ... to turn it around is going to require a massive highly concentrated effort by all Americans starting with the president and going down to every community. And will require some different policies, governmental policies and different private investment behavior, but also really requiring an almost spiritual

change in a lot of the communities. ... Young people have got to find ways other than violence to resolve their own frustrations and their conflicts.

The Church's Role

I think they (churches) can weigh in heavily on behalf of all the efforts that are being made to make the streets and schools more secure. ...

... Before I even was baptized, (the church) was a source of real security ... of reassurance. It made me feel valued. As a child, if I hadn't had my church I think my life would have been much more difficult, because I would not have been as aware as I was of my central place as a child of God.

Diversity

America has the opportunity to become the world's first truly multi-ethnic rainbow society where we can embrace our differences — this is not an easy thing by the way. ... If we get this done, I think, we will have to draw on the strength of our religious heritage and our basic sense of human kindness.

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