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## REPORT from the CAPITAL

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NEWS  
MAKERS

Arkansas Gov. **Jim Guy Tucker**, a Presbyterian, recently declined to proclaim a "Christian Heritage Week," believing his state should not favor one religion over others, according to a Little Rock newspaper. But Lt. Gov. **Mike Huckabee**, a Baptist minister, later took advantage of Tucker's absence to issue the proclamation and termed critics of his move "Christian bashers."

**Ashley Householder** of Nashville is an intern in the Baptist Joint Committee Information Services Office. A 1993 graduate of Samford University in Birmingham, Ala., with a journalism/mass communications degree, Householder will help with congressional news coverage and newsletter production.

**Dennis Balcombe**, Paul "Star" **Fergusson** and **Daughin Chan**, three American Christians, recently were released by authorities in China after being held for five days on charges of violating a new law restricting foreign religious work. Reports said the foreigners, who have left China, participated in an unregistered house church meeting.

**Prime Minister Yitzhak Rabin** said Israel would release between 800 and 1,000 Palestinian prisoners as a gesture to help keep the peace process with the Palestine Liberation Organization from stalling, according to the *Washington Post*. The recent massacre of Palestinian worshippers by a radical Jewish settler has caused concern that the peace process could be set back. Israel also said it would disarm some Jewish extremists and create a commission to investigate the massacre, but PLO Chairman **Yasser Arafat** said the measures are "hollow." Arafat also called on the international community for protection. Δ

Maintain neutrality

Keep church, state separate, religious groups say



The Baptist Joint Committee has joined other groups in asking the U.S. Supreme Court to maintain its stance requiring governmental neutrality toward religion.

In a friend-of-the-court brief, the groups urged the court to reject appeals to discard its long-held *Lemon* test for assuring church-state separation.

*Lemon* requires government's actions to have a secular purpose, neither advance nor inhibit religion and avoid excessive entanglement between religion and government.

In addition to the BJC, the brief was filed on behalf of the American Jewish Congress, the National Jewish Community Relations Advisory Council, People for the American Way, the General Conference of Seventh-day Adventists and the Union of American Hebrew Congregations.

The brief was filed in a dispute over creation of a special school district for a New York Hasidic Jewish community.

The special district encompassing the all-Hasidic village of Kiryas Joel was created to provide special education services to disabled Hasidic students, whose insular lifestyle prevented them from receiving the services in Monroe-Woodbury public schools.

New York's top court said that because the special services were available to Hasidic students in the public schools, the primary effect of creating the special district "is not to provide those services, but to yield to the demands of the religious community."

Both school districts want that decision reversed and want *Lemon* reconsidered. Arguments in the case are scheduled Wednesday, March 30.

The BJC brief argues that the special

school district is "an actual union of church and state," a violation of the First Amendment's ban on governmental establishment of religion evident even without applying *Lemon*.

The brief asserts that the *Lemon* test is not unworkable as critics have contended. Proposed replacements, such as the "coercion" test favored by Justices Anthony M. Kennedy and Antonin Scalia, would not lead to more predictable results, the brief states.

Kennedy and Scalia, the brief notes, disagreed over whether clergy-led commencement prayers at issue in a 1992 Rhode Island case were coercive.

*Lemon* opponents' "quarrel is not with the Court's formulation of a test; it is that the Court's decisions take the Establishment Clause seriously," the brief asserts.

The special district, the brief states, is not a permissible accommodation.

"Petitioners' accommodation argument is also not new; practically every practice that has been condemned by this court as an establishment has been defended as an accommodation."

The special district intrudes on church-state separation more than necessary to ensure services to the disabled Hasidic students, the brief states, noting that the Monroe-Woodbury school district could provide the services at a neutral site within the village.

"We are profoundly concerned that government accommodate the free exercise rights of its citizens," said BJC General Counsel J. Brent Walker.

"But accommodation must not be done in a way that violates the Establishment Clause, as it did here," he said. "Providing remedial services at a 'neutral site' is a permissible accommodation. Creating and turning over a political entity to a religious sect is a blatant establishment." Δ

## Public schools should teach about religion, Walker says

Failure to teach about religion in the public schools can amount to governmental hostility, according to a church-state specialist.

J. Brent Walker, general counsel of the Baptist Joint Committee, said, "Religion should be taught within its appropriate historical, cultural and pedagogical context. Courses in art, music, literature and history will offer natural opportunities to include discussion about religious influences."

Addressing an Equal Access Forum at Williamsport (Pa.) High School, Walker said that students are generally more free than teachers to express and exercise their religion. The U.S. Supreme Court has ruled that teachers, as government representatives, cannot engage in religious indoctrination, proselytize or lead devotionals, but they can teach about religion.

Permissible teaching about religion includes:

- an academic, not devotional, approach to religion;
- an aim of enhancing awareness of religion without pressing for acceptance;
- a study that does not involve the practice of religion;
- exposure to diversity of views without promotion, denigration or imposition of a particular one;
- information about beliefs that does not seek conformity.

Walker said that Williamsport School District was "right in the thick of the pre-legislation judicial fights" to establish equal access of religious clubs. Williamsport received national attention when a student asked the high court to rule that the Constitution requires equal access. The court disposed of *Bender v. Williamsport* on procedural grounds rather than ruling on the merits of the student's argument.

The BJC, along with others, led the fight for the 1984 Equal Access Act that allows for Bible clubs or religious groups to have the same access to meet before and after school as other non-curriculum groups. If a school district allows the "Young Republicans" to meet, it must allow the "Young Baptists" to meet, he said.

Teachers do not "shed their constitu-

tional rights" but as representatives of the state in the classroom, their free exercise rights are not unlimited.

Walker said teachers frequently are asked if they can discuss their personal beliefs when teaching about religion.

"The answer is not all that clear," Walker said, adding that some teachers prefer not to risk interjecting personal beliefs into the classroom setting so they do not talk about them. "If you are teaching very young children this may be preferable. Others want to do so, particularly if asked."

## House tackles controversy over home school licensing

The federal government will not license parents who teach their children at home. That message resounded loudly from Capitol Hill as lawmakers scrambled to quell a controversy that generated a public outcry.

The U.S. House of Representatives Feb. 24 attempted to end the controversy by twice amending an education spending bill. Both provisions were adopted overwhelmingly.

The furor began when the House Education and Labor Committee approved a bill with language indicating teachers must be certified in the subjects they teach. Some home-schooling proponents interpreted the language as requiring parents to be licensed to teach their children at home.

That interpretation led several Religious Right groups such as Pat Robertson's Christian Coalition to campaign against the bill.

In fact, the outcry was so strong that it prompted lawmakers to adopt what Rep. William Ford, D-Mich., described as "an unnecessary solution to a non-existing problem."

Ford offered the first amendment that struck out the original language and added a phrase that said nothing in the Elementary and Secondary Education Act (H.R. 6) applies to home schools. Ford said the amendment was designed to end a false perception, because the original language "had nothing at all to do with home schooling."

Ford, chairman of the Education and Labor Committee, said, "There was unfortunate language adopted in the committee that was ambiguous enough

so that it could be, as it has been, misconstrued to apply to 'home schools.'"

Rep. Dick Armey, R-Texas, offered another amendment that was broader in scope. Armey's amendment said that nothing in the bill would "require the certification or regulation of teachers in any private, religious, or home school."

The two amendments were approved 424 to 1 and 374 to 53, respectively.

*"The chances that the certification requirement could ever be interpreted to apply to home schooling were virtually nil. They (groups campaigning against the bill) really made a mountain out of a mole hill and then came off looking like heros."*

— J. Brent Walker

## Murders of Baptists listed as examples of persecution

Religious persecution was the motive behind a mass murder of Baptists on New Year's Eve in Tajikistan, according to on-site testimony reported to the Helsinki Commission, an independent agency created by Congress to monitor compliance with the Helsinki Accords.

An ethnic Russian Baptist, Vladimir Limorev, and eight others — including his four children — were brutally beaten, then killed or left to die in a burning home in Dushanbo, Tajikistan, a former Soviet republic in Central Asia. Limorev and his family were active members of Dushanbe Baptist Church.

During a Feb. 16 Capitol Hill briefing, a former Soviet political prisoner listed the nine victims among 16 people confirmed as Christian martyrs in 1992-93 in areas of the former Soviet Union.

The briefing speaker, Boris Perchatkin, is president of the Russian American Institute for Adaptation, which serves as a voice for Christians in the former Soviet Union who are in danger for their faith.

*"There is no doubt these particular murders were committed for religious motives. These are cases we have been able to document from eyewitness testimony, coming from close friends and relatives of the victims. There is no way of knowing how many others suffered the same fate."*

— Boris Perchatkin  
Russian Baptist

## LIBERTY & LAW

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Justice Sandra Day O'Connor  
Quoting Justice Jackson in *Barnette*  
Concurring Opinion  
*Oregon v. Smith*  
April 17, 1990



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## VIEWS OF THE WALL

# Lemon opponents try again



**J. BRENT WALKER**  
General Counsel

Those who want to knock holes in the wall of separation between church and state are at it again. Two years ago a number of groups, as well as the solicitor general of the United States, filed briefs in *Lee v. Weisman* (the Rhode Island middle school graduation prayer case) asking the court to overrule the *Lemon* test. For decades that test had assisted the court in deciding Establishment Clause cases in a way that requires government to remain neutral in matters of religion. Opponents recommended a so-called "coercion test" under which governmental action promoting religion would stand as long as it does not set up an official national church or coerce persons to practice their religion in a way that violated their conscience. Though five justices had registered opposition to *Lemon*, this attempt failed. *Lemon* survived and, in fact, it was cited with approval last year in *Lamb's Chapel v. Center Moriches Union Free School District*.

Meanwhile, Justice Byron White, a long-time opponent of *Lemon*, retired and Ruth Bader Ginsburg has taken his place. Her background and previous decisions as a judge on the D.C. Circuit suggest a more friendly attitude toward *Lemon* and the neutrality principle it embodies. Nevertheless, in a case set to be argued on March 30, *Board of Education of Kiryas Joel v. Grumet*, the anti-*Lemon* voices are again making another run. (See Page 1.)

This time the proposed alternatives to *Lemon* are more variegated. The school district itself argues that *Lemon* ought to be changed. It proposed the following test: "The State will not engage ... in 'sponsorship, financial support, and active involvement ... in religious activity,'" citing *Waltz v. Tax Commissioner* 1970. But, *Waltz* is a part of *Lemon*, not contrary to it. Its entanglement prong a year later was folded into the three-pronged *Lemon* analysis.

Other groups, like the Rutherford

Institute and Pat Robertson's American Center for Law and Justice, continue to beat the "coercion" drum. The coercion standard is much too lenient and would result in extraordinary governmental involvement in and promotion of religion, not neutrality.

The Southern Baptist Convention's Christian Life Commission, a former advocate of a version of the coercion test, has modified its position and moved in the right direction. The CLC offers a four-pronged test that could be read to prevent government from promoting religion in general at the expense of irreligion. But unfortunately, the fourth prong arguably would allow tax support for parochial institutions, such as religious schools. A related alternative is offered by the Christian Legal Society, National Association of Evangelicals and others. In a brief written by Professor Michael McConnell, a scholar whose thinking has informed much of the anti-*Lemon* sentiment, these groups disavow any aim to overturn *Lemon* but only to "clarify" it.

Our brief, along with many others, defends the principles embodied in *Lemon*. That test has served to assist the court in negotiating a course of neutrality between burdening or failing to accommodate religion on the one hand and impermissibly advancing religion on the other. It would be a grave mistake for the court to throw out this useful compass — particularly since no one has come up with a suitable alternative.

No matter what test one selects, it can be applied to reach varying results. For example, even Justices Kennedy and Scalia — two proponents of the coercion test — themselves disagreed over the application of the standard in *Lee v. Weisman*. Both found it an easy case, but one was confident that coercion existed and the other insisted just the opposite.

The problem is not that the *Lemon* standard is unworkable; rather, it is the difficulty of applying the Establishment Clause itself to a kaleidoscope of fact patterns, each with its own unique twists that create difficult cases. *Lemon* may not be the perfect formulation; but it is better than all the rest. To vary a Churchillian theme, *Lemon* may be the worst way to decide Establishment Clause cases — except for all others. We hope the court will agree. Δ

## GUEST VIEWS



**DAN BAGBY**

**O**ur concern in the religion in public schools debate is what will help our children gain a set of values that will strengthen them and this nation for the present and future challenges. Will a public prayer in school do that? I

doubt it seriously.

Why? First, because such uses of prayer are "magical" thinking, seducing people into the mistaken belief that if all our children are "prayed" over every morning, they will magically develop moral standards and high ideals.

We need to get away from a superstitious view of prayer as "covering all our sins." Rather than instill faith and affirm values, such rote exercises demean faith, rob prayer of its true meaning and teach a very shallow religious routine which betrays any biblical view of prayer.

Prayer is not magic, and its superficial parading (whether at a football game, a public gathering where it is immediately forgotten or with a crowd of people who have anything on their minds but worship) is a sacrilege.

Perhaps the greatest problem with public prayers in school, however, is the illusion they create that we have "given our children religion."

Such mistaken notions often free parents from the primary responsibility of teaching prayer and faith at home, where it rightly begins and belongs.

No public prayer in school will ever "teach" religion, and parents, educators and citizens can easily absolve themselves of the responsibility of communicating values to children when they've instituted a morning prayer in school. If that's what we're counting on to turn our children toward values — we are all in real trouble.

Parents who want prayer in school, yet rarely pray with their children, confess by their practices that they really don't believe very much in prayer. Values and beliefs are most significantly taught at homes; schools will never substitute the

home as the center for religious belief and values.

What opportunities arise out of this issue? I see these:

- Those who believe in providing values and religious direction in public schools can use the "equal access" legislation to provide student-led or church-led prayer gatherings and Bible studies in school buildings before or after school hours.

- Believers in the teaching of faith and values will be busy at home giving direction and modeling a life of values. If they go to church with their children, rather than drop them off, their lives will reflect what they claim is important.

- Church leaders and other believers who have strong convictions about the importance of instilling values in all children will spend time and energy praying for, and also becoming involved in, the lives of children and youth — at home and school.

*Article is adapted from a column by Dan Bagby, pastor of Seventh and James Baptist Church, Waco, Texas, published Feb. 5 in the Waco Tribune-Herald.*

### REPORT from the CAPITAL

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