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# REPORT from the CAPITAL

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## NEWS MAKERS

President Bill Clinton will travel to meet with Pope John Paul II as planned, Vatican officials said. The meeting is scheduled June 2 at the pope's summer residence where he is undergoing rehabilitation for his recent thigh bone injury. Population issues are expected to weigh heavily in the meeting. The president will commemorate the 50th anniversary of the liberation of Rome while there.

Daniel E. Weiss, general secretary of American Baptist Churches, U.S.A., joined 20 other Christian leaders to urge the U.S. Congress to change the philosophy of the U.S. foreign aid program. The leaders sent a letter to Congress, calling for more emphasis on peace, protection for human rights and the environment, and the alleviation of poverty. The leaders requested more aid for Africa, Asia, Latin America, the Caribbean and parts of the Middle East. Weiss is first vice chairman of the Baptist Joint Committee.

Samuel B. Casey has been named executive director of Christian Legal Society, a nationwide organization of over 4,000 Christian attorneys, judges, law students and law professors. "Within this decade we will be tens of thousands of Christian attorneys helping hundreds of thousands of needy people experience 'justice with the love of God,'" Casey predicted of CLS. He previously practiced and taught law in California.

Stephen Carter, author of *The Culture of Disbelief*, is the first non-theologian to win the Louisville Grawemeyer Award, one of the most prestigious prizes in the world of religion. Carter, whose book argues that faith and religious values have a key place in public life, received a \$150,000 cash prize. Δ

## Don't invade collection plate, religious groups say

The Justice Department's view that a Minnesota church cannot keep tithes given by a couple headed for bankruptcy has drawn a rebuttal from religious groups.

Baptists and others want a federal appeals court to reject the Clinton administration's argument that Bruce and Nancy Young were giving away creditors' property when they donated \$13,450 to Crystal Evangelical Free Church during the 12 months before they filed for bankruptcy in 1992.

Most of the groups earlier sided with the church's appeal of an order to turn over the funds to a bankruptcy trustee to help pay the Youngs' debts.

The latest friend-of-the-court brief responds to the Justice Department's newly filed argument that the funds donated by the Youngs were actually the property of their creditors.

University of Texas Law School professor Douglas Laycock filed the brief on behalf of the Baptist Joint Committee, the Christian Legal Society, the Catholic League for Religious and Civil Rights, the Evangelical Lutheran Church in America, the National Association of Evangelicals, the Southern Baptist Christian Life Commission and the Traditional Values Coalition.

Laycock accepts the government's view that religious liberty does not include the right to give someone else's property to a church but insists that the Youngs donated their own property.

The government argues that recovering the funds does not "substantially burden" religious practice and is not barred by the Religious Freedom Restoration Act — which requires government to show a "compelling reason" to restrict religious practice. "Protecting the property of others" is the compelling interest here, its brief states.

"The government's interest is not in protecting anyone's property, but in enriching unsecured creditors at the expense of churches," Laycock counters. "The interest in enriching unsecured creditors is not generally pursued and is not compelling."

Laycock notes that money spent on "luxuries, travel, parties, gourmet food, liquor, prostitutes, casino gambling, or lottery tickets" could not be recovered.

"It is frivolous for the government to claim a compelling interest in prohibiting religious contributions when it claims almost no interest in preventing irresponsible consumption," he writes.

RFRA was enacted after Supreme Court ruled that in most cases, government no longer needed a compelling reason to restrict religious practice.

"The (Justice) Department's position reflects a remarkable disregard for the purpose intended for RFRA by a near-unanimous Congress and by President Clinton," said Steve McFarland, director of CLS' Center for Law and Religious Freedom. He said the Justice Department's view in the case "could leave RFRA functionally impotent."

BJC General Counsel J. Brent Walker said the government "is dead wrong" on RFRA.

"If invading the collection plate to take a tithe already dedicated to God's kingdom doesn't 'substantially burden' free exercise, I don't know what does," Walker said. "And the state hardly has a compelling interest in compensating unsecured creditors when the loophole-ridden bankruptcy code routinely exempts other property that could be used" to satisfy debts.

Tithing is "not just a way to keep the lights on in the church house," he said. "It's nothing less than an act of religious worship." Δ

## Clinton nominates Breyer to Supreme Court post

President Clinton has nominated another centrist, consensus builder to serve on the U.S. Supreme Court.

Federal appeals court judge Stephen G. Breyer — like Clinton's first high court nominee, Justice Ruth Bader Ginsburg — is viewed as centrist to slightly left of center on most issues.

Breyer's record on the 1st U.S. Circuit Court of Appeals and his stint as top counsel for the Senate's Judiciary Committee are earning broad bipartisan support for confirmation to become the high court's 108th justice.

Clinton nominated Breyer to replace Justice Harry A. Blackmun, who is retiring after a quarter century on the high court bench.

At a White House ceremony, Clinton praised Blackmun for discharging his high court role "with fortitude, vision, fairness and enormous courage and passion," and predicted Breyer would also "grace the court with greatness."

Clinton said Breyer had served in all three branches of government with the heart and head of a reformer. He said Breyer possesses "a well-recognized and impressive ability to build bridges in pursuit of fairness and justice."

A former clerk for the late Justice Arthur Goldberg, Breyer pledged to "try to make the law work for people, because that is its defining purpose in a government of the people."

If confirmed, Breyer said he would work to ensure "that both the letter and the spirit of our laws continue to serve the people of this country."

After reviewing some of Breyer's writings as a federal judge, Baptist church-state attorney Brent Walker described the 55-year-old San Francisco native as "a balanced separatist who seems willing to enforce both religion clauses in a way that takes into account the impact that judicial decisions have on ordinary individuals."

As a federal judge, Breyer:

- held that certain provisions of a federal labor law did not apply to a religiously affiliated college;

- held that a Baptist school's free exercise rights were not violated by requiring its secular curriculum to be approved by local school officials;

- wrote a concurring opinion hold-

ing that state-paid transportation for private school students is constitutionally permissible as a student benefit, even though it involved inter-district busing;

- dissented from the appeals court's ruling that theology students seeking federal assistance had to complete the application's statement of compliance with the military draft.

"It is fair to say that Judge Breyer carefully applied the compelling interest test in free exercise cases, though he didn't always rule for the religious claimant," said Walker, general counsel at the Baptist Joint Committee. Breyer authored no free exercise decisions after the Supreme Court ruled in 1990 that government no longer needed a compelling reason to restrict religion.

Walker said Breyer has shown a concern for church autonomy and rigorously applied Supreme Court's ban on church-state entanglement.

Breyer's writings, Walker said, reveal no philosophical problem with the controversial Lemon test used by the Supreme Court to preserve governmental neutrality toward religion. Lemon requires government actions to have a secular purpose, neither advance nor inhibit religion and avoid excessive entanglement between religion and government.

"Even if Breyer turns out to be very good on church-state issues, it will be difficult for him to match Justice Blackmun's record," Walker said.

## D.C. prayer initiative draws court challenge

A proposed school-prayer initiative that would allow student-initiated prayer in District of Columbia public schools has been challenged by People for the American Way and the National Capital Area American Civil Liberties Union.

The two groups filed suit May 16 against the D.C. Board of Elections, stating that the school prayer initiative is unconstitutional and a threat to religious freedom.

The initiative, sponsored by council member and former mayor Marion Barry and co-sponsored by four other members, would allow student-initiated prayer during required or voluntary school-related assemblies, sporting

events, graduation and at other student events.

This measure is a re-draft of a similar 1993 initiative rejected by the D.C. Board of Elections on constitutional grounds.

## Court declines to review religion-based exclusion

A month after ruling that lawyers cannot eliminate potential jurors because of their gender, the U.S. Supreme Court refused May 23 to review the exclusion of a potential juror based on his religion.

Left standing was the Minnesota Supreme Court's decision upholding a prosecutor's exclusion of a Jehovah's Witness practitioner from a jury that eventually convicted a Minnesota man of armed robbery.

During jury selection procedures, the prosecutor explained that she struck the potential juror because of her view that Jehovah's Witnesses "are reluctant to exercise authority over fellow human beings in this courthouse."

The refusal to review the case brought a sharp dissent from two justices. Justice Clarence Thomas, joined by Justice Antonin Scalia, wrote that the case should have been accepted and returned to the Minnesota Supreme Court for reconsideration in light of the April 19 ruling that barred gender-based exclusion of jurors.

Before last month's ruling, the high court had barred only juror challenges based on race.

Thomas and Scalia, who objected to the court's April decision to bar also challenges based on gender, questioned why the logic of that decision would not also bar the exclusion of jurors based on religion.

In a brief note concurring in the court's rejection of the case, Justice Ruth Bader Ginsburg wrote that Thomas and Scalia provided an "incomplete" portrayal of the Minnesota court's opinion.

"That court made two key observations: (1) '[R]eligious affiliation (or lack thereof) is not as self-evident as race or gender;' ... (2) 'Ordinarily ... inquiry ... into a juror's religious affiliation and beliefs is irrelevant and prejudicial, and to ask such questions is improper.'" Ginsburg wrote.

## LIBERTY & LAW

The Department (of Justice) contends that the state does not impose a "substantial burden" on religious liberty when it seizes the tithes that church members have given out of a feeling of religious obligation. ... [I]ts interpretation of "substantial burden" is simply untenable.

In avoiding these tithes under the Bankruptcy Code, the trustee has appropriated the power of the state to repossess, in effect, religious offerings made in good faith. Through the trustee, the state seeks to pry open the church's coffers, seize the fruits of the Youngs' religiously motivated generosity, and give them instead to third parties. If ever there were a substantial burden on religious exercise, this is surely it.

Moreover, depriving the Crystal Church of these tithes would significantly burden its institutional freedom to conduct its religious and financial affairs without undue intrusion by the state.

Excerpts from *Amicus Brief* of Sen. Orrin Hatch in *Christians v. Crystal Evangelical Free Church*

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## VIEWS OF THE WALL

### Issues, yes — candidates, no



**J. BRENT WALKER**  
General Counsel

**W**ell, it's another election year. Calls are already coming in about whether, and to what extent, churches can become involved in political campaigns. Thus, it's a good time to review the provisions of

the Internal Revenue Code concerning political activity by tax-exempt organizations, including churches and religious institutions.

The tax code provides that exempt organizations cannot "participate in, or intervene in ... any political campaign on behalf of (or in opposition to) any candidate for public office." If they do, they risk losing their tax-exempt status. Two recent cases against Jimmy Swaggart Ministries and Jerry Falwell's Old Time Gospel Hour, resulting from their respective political activity, show that the IRS is serious about enforcing this provision.

The bottom line is this: Churches and religious organizations may engage in a limited amount of lobbying and they are free to take public positions on public issues; but they may not support or oppose candidates for elected office without jeopardizing their tax-exempt status. Here are a few do's and don'ts.

Churches may become involved in several legitimate voter education (issue oriented) activities.

(1) **Voting record and candidate questionnaire.** Exempt organizations can distribute the voting records of candidates and the results of candidate questionnaires if they include a wide variety of subjects and provided the form and content of the distributed material is unbiased and accurate.

(2) **Public forum and debates.**

Exempt organizations may sponsor non-partisan forums or debates if all bona fide candidates are invited to par-

ticipate. The moderator should be neutral, and the exempt organization should state clearly its non-endorsement of any candidate.

(3) **Individual political action.** Ministers and employees of churches, of course, may become involved in politics as *individuals*. If they do, it should be made clear that they are not representing the church. A minister who speaks at a political gathering should not be introduced in his official capacity as representing the church.

A church will be well-advised not to engage in the following activities if it is interested in preserving its tax-exempt status.

(1) **Political endorsement.** Candidates for public office should not be endorsed either directly or indirectly whether through a sermon, church bulletin or other official organ of the church. If this happens, the church should issue a disclaimer in the same or similar form indicating the organization does not support or oppose candidates.

(2) **Financial support.** Financial or other support should not be provided to a campaign or to a candidate. In the same vein, a church may not provide volunteers, lists, free use of facilities and the like, unless it is made available to all on an equal basis.

(3) **Partisan campaign literature.** Partisan campaign literature should not be distributed or displayed on church premises. This, generally speaking, includes the parking lot.

(4) **Political Action Committees.** Do not organize or become involved in a political action committee.

Even if tax exemption were not jeopardized by political activity, it's still a dicey venture. Explicit support of a political candidate by a church will almost always cause dissension in the congregation and water down the church's prophetic witness. By all means, speak out on political issues that your congregation can agree on; but steer clear of endorsing political candidates.

(This summary of a complicated body of law is not intended to be legal advice governing all conceivable issues.)

## GUEST VIEWS

**KENNETH  
L.  
DEAN**

**A** minister addressing the "concept of God and values in public schools" is in a kind of trap. One who says a concept of God is necessary establishes the premise that public

schools should advocate religion. One who says a concept of God is not necessary to values likely has to deny his faith commitment. A rebel religious leader once was asked this kind of question. "Is it right to pay taxes to Caesar and compromise one's faith to God?" You know the answer: "Give to Caesar that which belongs to Caesar, and give to God that which belongs to God." Today's answer is the same. Don't ask me to decide for you what you must decide for yourself.

What we are actually interested in has to do with escalating violence in our society. The question is: Can the schools help youths develop values for coping with violence and immorality without teaching confessional religion?

I have an answer. It is not the responsibility of the schools to teach religion to students. This does not mean that schools are without values. Almost anywhere a person engages another for any significant period of time, an exchange occurs having to do with values and learning.

We should not focus either the problems or responsibility for problems on public education. Few, if any, serious problems are caused by public schools.

In a world in which we have to decide what to adjust and what to keep, my concerns about values include:

- Too many religious, political, legal, business and health care leaders have compromised public images. Values in any society are directly related to leadership character.

- Persons and issues become polarized. Competition in politics and economics encourages this. Whether black or white, young or old, religious or secular, poor or rich, north or south, we find attitudes or values defining each pole as either good or evil.

- Every nation has a story. Our ancestors represented a range of religious belief and no belief. It is important to

teach this truth in our schools. Neither the devoutly religious, the deist, the skeptic nor the atheist should be slighted in the telling of this story.

- Political rights are only half the American way of life. Major problems related to violence are the result of many being left at or below the margin of poverty. To be politically empowered does not necessarily mean one is economically secure.

- Another important value in any society or with any individual is HOPE. When one has insufficient reason for hope, societal norms tend to fall by the wayside.

It is not the responsibility of public education to teach, support or establish religion in a confessional sense. It is a part of the responsibility of public schools to help create a society in which all individuals can have hope and in which they have a say concerning how life is ordered or changed. Δ

*Excerpted from remarks by American Baptist Churches minister Kenneth L. Dean to the Genesee Valley, N.Y., chapter of the American Civil Liberties Union.*

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