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# REPORT from the CAPITAL

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## NEWS MAKERS

Stan Hastey and Jeanette Holt, former Baptist Joint Committee staff members, recently were honored by the Alliance of Baptists for five years of service as the organization's executive director and associate director, respectively. The Alliance honored them at a Sept. 23 banquet at First Baptist Church, Silver Spring, Md.

Bridget L. Johnson, a political science student at Carson-Newman College in Jefferson City, Tenn., is serving as an intern at the Baptist Joint Committee. Vice president of the Phi Eta Sigma honor society, Johnson previously traveled to China on a missions trip, worked as a volunteer at a homeless shelter and was youth minister at a Baptist church in Tennessee and a Presbyterian church in Missouri.

C.S. Yang, general secretary of the Presbyterian Church in Taiwan, will not have to serve a prison sentence for publicly urging the boycott of one of Taiwan's most prominent newspapers, the Supreme Court of Taiwan recently ruled. The Supreme Court overturned a lower court decision that found Yang and three others guilty of slandering the newspaper by calling for the boycott and accusing it of bias.

William J. Brennan Jr., who retired from the U.S. Supreme Court in 1990, recently was presented the 1994 American Bar Association Medal. "Justice Brennan's contribution to American jurisprudence is immeasurable," said ABA President R. William Ide III. "He provided great leadership and helped forge a direction for our society, and he did it in a way that earned admiration and respect from his colleagues on the court and all elements of society." Brennan served nearly 34 years on the bench. Δ

## Church-state lawyers offer court forecasts

*While attorneys are understandably hesitant to speculate about future U.S. Supreme Court actions, three church-state specialists — Forest Montgomery of the National Association of Evangelicals, Steve Green of Americans United for Separation of Church and State and J. Brent Walker of the Baptist Joint Committee — ventured the following forecasts at the request of REPORT from the CAPITAL:*



MONTGOMERY

argument in some 44 cases, none of them religious. Factor in two other considerations: The court this decade has decided a disproportionate number of religious issues, and there are no earth-shaking religious cases for which review has been requested, with the possible exception of *Rosenberger v. Rector*, a religious speech case.

Certainly one issue the court should have resolved is whether students can constitutionally lead public school graduation prayers. It declined a chance to decide this issue of great concern to public school administrators, who are caught in the middle. This may be yet another straw in the wind indicating that the court is going to take a breather this term from religious issues. Considering that the court gutted the

Free Exercise Clause in *Employment Division v. Smith* (1990) — since legislatively overruled by the Religious Freedom Restoration Act — maybe that's not all bad.



GREEN

While I usually avoid engaging in predictions, especially when they concern possible developments in Supreme Court church-state law, a limited amount of speculation is probably safe. First (assuming the court takes a church-state case this term), I do not foresee the court abandoning the much-maligned, but still vital, three-part *Lemon* test that has been used for adjudicating Establishment Clause cases over the past 30 years. On one level, the decisions of the last three terms have taught us that the court is unwilling to be held to any one standard for judging the church-state cases (a "Grand Unified Theory" as Justice Sandra Day O'Connor describes it). On the other hand, the court is equally unwilling to abandon the *Lemon* test and will continue to use it where appropriate. Fortunately for church-state separation, Justice Antonin Scalia's acerbic critique of the court's church-state jurisprudence has been able to attract only two other justices.

Although several interesting church-state cases are awaiting grants of review, none have the potential for bringing about a significant change in

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# Is the Christian Right more right than Christian?



KENNETH  
CHAFIN

Those who are squeamish about being critical of anything with the word "Christian" attached should remember that just as there are politicians who wrap their personal ambition in the American flag and call it "patriotism," there are also preachers who wrap their fears and frustrations in the cloak of religion and call it "the will of God." Both are branches off the same root and when they join forces, as they have today, many of us fear both for our country and for the church.

The new-found political clout of the Christian Right is being written about constantly. Much of the media focus is on the political perspective rather than analyzing what drives the movement's members, what they really mean by the things they say, and what is their understanding of what's Christian and what's right.

The first mistake in dealing with the Christian Right has been to allow its definition of the issues to go unquestioned. While the movement's reasoning is faulty, its use of rhetoric is flawless. Whether political or religious, when they have finished defining the issues, they feel free to do whatever they want to in implementing those issues — even if it involves the destruction of property or reputations, or, for some, the murder of a doctor who works in an abortion clinic. All who disagree even slightly are branded as unpatriotic, murderous, immoral perverted, communist, heretical or loose on family values.

The whole Christian Right movement feeds off a "theology of resentment" — things its members are mad about. They are not coming out of a love of righteousness or justice, nor do they exhibit compassion or mercy. They are mad!

Demagogues know that frustration and fear are powerful emotions in society, and the Christian Right has developed an expertise touching those hot buttons that focus those frustrations on some external enemy. The existence of pent-up anger is as necessary to the Christian Right as the fear of racial integration is to those

recruiting for the Ku Klux Klan.

All groups organized by what they are against carry the seeds of their own destruction. If they run out of enemies, they have to find a new enemy or invent one, because without something to hate, they will lose their appeal.

Even worse, when they successfully take over an institution — whether a school board, a government or a denomination — they don't know what to do with it. They are geared to criticism — not responsibility. Unfortunately, by the time they self-destruct, they have destroyed peoples and institutions, an irreparable loss.

A much larger problem with the Christian Right is that its agenda is too short either to address the real issues of our society or to reflect the great breadth of historic biblical faith.

Much of the heat goes out of the Christian Right when it moves too far beyond its feelings about abortion and homosexuality. These biblical literalists forget that their Bible never discusses abortion as society is dealing with it today. They are correct that both the Old Testament and the New Testament appear to treat homosexual conduct as a sin, but they completely ignore the fact that the same Bible supports war, never questions slavery, assumes that women are the property of their fathers or husbands, allows parents to execute children who disobey and even pictures God as ordering the slaughter of innocent children.

The Bible is set in a specific time and culture, not a book to be put in the hands of some Forrest Gump-type preacher who applies it literally to the complex problems of our society.

Abortion is the Christian Right's lead issue and it goes forth to battle under the banner "pro-life." No one doubts that they are against abortion, but people have a right to question whether they are really pro-life. If the movement is so pro-life, why are many in it unwilling to support legislation to benefit poor children?

While abortion and homosexuality are the emotional engines driving the Christian Right, the movement's cargo also includes such goals as state-sponsored prayer in schools and government aid to religious schools. They are all too eager to merge church and state.

"Family values" is a big word with the Christian Right, but what do they mean? I have spent a 45-year ministry, both as a

pastor and professor, supporting family values in my speaking, writing and teaching.

But when "family values" in the pulpit sounds more like the platform of the Republican Party than the Bible, it frightens me. It comes across not as an affirmation of family but a condemnation of every form of family that falls short of the Christian Right's idealized family.

Unfortunately, both society and the churches are full of less-than-happy marriages, failed marriages, children out of control, unwed mothers, single-parent families, blended families, couples who live together without marriage and many other combinations. Does the Christian Right offer nothing to these people but condemnation?

The worst thing about the Christian Right is that at its very heart it is not very Christlike. That it springs from the church does not make it Christian. History reveals that in Gods' name unspeakable horrors have been committed or justified by the church. Wars were called Christian by putting a cross on the Crusader's armor; the burning of those who disagreed with official doctrine was called "purifying the church;" both slavery and continuing racial discrimination have been upheld by countless preachers. Parts of the church even tried to rationalize the Holocaust.

The essence of biblical faith is righteousness, justice, mercy and love. These create a dream of a day when all people would be gathered into one family — living in peace with God and each other.

I have watched the Christian Right closely for years — in both its political and church activities. It does not have a dream of a better day, nor does it have "good news" — a literal translation of Gospel — for anybody.

For politicians to cater to the power of the Christian Right will undermine democracy. From the church perspective, the Christian Right has already sold its soul, abandoning a more powerful spiritual message for the illusion of secular power. Δ

*Kenneth Chafin is a free-lance writer, speaker and author who taught evangelism and preaching at Southern Baptist Theological Seminary in Louisville, Ky., and at Southwestern Baptist Theological Seminary in Fort Worth, Texas. His pastorates include South Main Baptist Church, Houston, Texas, and Walnut Street Baptist Church, Louisville.*

# First Monday in October



**J. BRENT WALKER**  
General Counsel

**I**t's that time again — the U.S. Supreme Court began its 1994-95 term on the first Monday in October.

Continuing the high court's recent trend of taking fewer and fewer cases, the justices have not yet granted review on any

church-state cases this term. Review has been requested in nearly a dozen cases. We don't know that the court will take any of them. Nevertheless, it's important at the start of the court's term to think about the church-state possibilities over the next several years.

With regard to the court's Establishment Clause jurisprudence, the much-criticized *Lemon* test continues to be the law. It survived the challenge launched last term in *Board of Education v. Grumet*. Justice David Souter in his majority and plurality opinions did not specifically rely on *Lemon*, but *Lemon*'s core principle of governmental neutrality clearly informed his decision. Harry Blackmun — a friend of the separation of church and state — has retired. His successor, Stephen Breyer, may not provide the leadership on church-state issues that Blackmun in his later career supplied. But, given Justice Breyer's record on the 1st Circuit Court of Appeals and his Judiciary Committee testimony, it is likely that he will adopt a fairly separationist stance. Neutrality should continue to be the court's guiding standard.

Five of the justices in the *Grumet* case suggested their willingness to revisit the court's landmark parochial ruling of *Aguilar v. Felton* (1985), which struck down the practice of paying public school teachers to provide remedial instruction on parochial school campuses. Although not exactly an *Aguilar* case, there is presently pending for review a case called *Rosenberger v. Rector and Visitors* dealing with public

funding of religion. It involves the claimed right of a religious club on a college campus to receive a portion of the student activity fund to finance a religious publication. Since it takes only four votes to review a case, this one might be accepted in an attempt to whittle away further at the court's parochial jurisprudence.

Within the next couple of years the court probably will take another school prayer case. There is much confusion about the meaning and application of *Lee v. Weisman*, the Rhode Island middle school graduation prayer case decided by the court in 1992. School districts around the country have tried numerous devices to get around that case — such as putting the matter up to a vote of the students and allowing a student to voice a “non-sectarian, non-proselytizing” prayer. The lower federal courts are split on whether these steps are permissible. Supreme Court resolution seem inevitable sooner or later.

On the free exercise front, cases interpreting and applying the Religious Freedom Restoration Act continue to be decided. By last count, there are 28 of them. Most are prisoner cases; many of them we have won. The constitutionality of the act continues to be challenged, but no court has yet struck it down. A federal judge in the Southern District of New York has said that it at least appears to be facially constitutional.

Three cases pending for review in the Supreme Court have RFRA claims, two of which are noteworthy. One deals with a landlord's refusal, based on religious convictions, to rent to a co-habiting unmarried couple (*Swanner v. Anchorage Equal Rights Commission*). The Alaska Supreme Court ruled in favor of the tenant and against the free exercise claim. The constitutionality of RFRA is being contested. Other cases involving housing discrimination from California, Minnesota and Massachusetts have gone the other way. The court may well take the *Swanner* case for decision in light of this conflict and the constitutional challenge.

The court also has pending an RFRA

challenge to the application of a Puerto Rico school licensing scheme to religious schools (*Association of Christian Academies and Colleges of Puerto Rico v. Puerto Rico Department of Education*). The high court in Puerto Rico upheld the regulation as a legitimate attempt to ensure quality education. The court may find this case sufficiently intriguing to grant review.

We hope and expect that the court eventually will uphold the constitutionality of RFRA and apply it expansively. Justice Ruth Bader Ginsburg has not rendered a free exercise decision even though she has sat for one term. Obviously Justice Breyer has not either. From what we know about both of their past writings and previous appellate court decisions, there is every reason to think that these two Jewish justices will be friendly to free exercise values and, therefore, to RFRA.

Stay tuned to the news, and this column. Δ

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## COURT PREVIEW

Continued from front page

church-state law (the possible exception being a case involving the funding of college-student religious newspapers). The court is still two years away from reviewing several of the headier issues such as student-initiated prayers in public schools, vouchers for parochial schools or the propriety of publicly funded teachers and instructional materials on parochial school campuses. However, several such cases are making their way up the pipeline. Also, as a result of last year's decision in *Church of the Lukumi Babalu Aye v. City of Hialeah* (the animal sacrifice case), the court appears to be in no hurry to reconsider its earlier holding in *Employment Division v. Smith*, which severely limited legal protection for the free exercise of religion. While it is unlikely to do so this term, the court could be asked to review the constitutionality of the Religious Freedom Restoration Act, legislation both the Baptist Joint Committee, Americans

United and others worked hard to see passed.



WALKER

goes.

I think the court will grant review in *Swanner v. Anchorage Equal Rights Commission*, a case involving a conflict between the Religious Freedom Restoration Act and Alaska's fair housing law. The case is replete with issues that could attract the four votes needed for review: the application of RFRA to anti-discrimination laws, conflicting holdings among the lower courts, an

Trying to predict what nine independent jurists on the Supreme Court will do is terribly risky. And, my track record is not too good. I'm almost tempted to flip a coin and then take the other side. But, anyway, here

argument over RFRA's constitutionality and an invitation to overrule the infamous *Employment Division v. Smith*. If it agrees to review the case, the court probably will uphold RFRA's constitutionality, rule the anti-discrimination in housing laws do not supply a compelling state interest sufficient to trump RFRA and decline to overrule *Smith*.

The court may take *Rosenberger v. Rector*, but I think the likelihood is that it will not. This case deals with the claimed right of a religious club on a college campus to receive a portion of the student activity fund to finance its publications. The law is well settled. But the fact that it involves colleges (rather than elementary and secondary public schools) and equal access concepts (although it's a purely funding case), may prompt justices who want to revisit the court's parochial jurisprudence to vote for review. If review is had, the court will probably continue to rule out direct subsidies for religious speech.

The court likely will decline to review the remainder of cases pending. Δ

### REPORT from the CAPITAL

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