



REPORT from the CAPITAL

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NEWSMAKERS

Roberta Cooper Ramo, president-elect of the American Bar Association, said March 11 that America is facing a serious constitutional crisis that threatens its citizens' freedom and democratic system of government. Citing recent attempts in Congress to weaken or alter the Bill of Rights, the first woman to be elected ABA president said that this threat comes not from "foreign foes at our shores" but from the public having "lost sight of the U.S. Constitution and Bill of Rights as our nation's lodestar and soul."

President Bill Clinton, following tradition, has declared the first Thursday in May — May 4 — a National Day of Prayer. "In times of blessing and crisis, stability and change, thanksgiving and repentance, appeals for divine direction have helped the citizens of the United States to remain faithful to our long-standing commitment to life, liberty, and justice for all," he said in a presidential proclamation.

George Pataki, governor of New York, has come under criticism from the Islamic Society of North America for his plan to reduce the chaplaincy staff in the state's prison system. New York state prisons hold about 13,000 Muslim prisoners, served by about 34 Muslim chaplains. Pataki is asking the legislature to cut the number of Christian, Muslim, Jewish and Rastafarian chaplains from 159 to 84 to save \$3.2 million. There are about 66,800 prisoners in the system. Sayyid Muhammad Syeed, secretary general of the national umbrella group of Muslim organizations, told Pataki in a letter that religion is an effective reform mechanism. In his letter, he said "a good number of inmates who are touched by religion get reformed and come out useful citizens who contribute positively to society." ▴

School prayer divides religious leaders, too

Religious leaders, like politicians, can be found on both sides of the nation's contentious debate over school prayer.

That division was apparent at a March 28 forum where leaders on both sides of the issue used the First Amendment to make their case. The forum was sponsored by the Anti-Defamation League of B'nai B'rith and the Greater Washington Jewish Community Center.

Baptist Joint Committee General Counsel J. Brent Walker objected to the reduction of a personal act of worship to "a political football."

"I recoil at the idea of having the sacred act of communicating with the almighty God turned into some kind of game chip used to the advantage of politicians," Walker said. "As a Baptist minister I think that prayer is the highest form of religious worship, and as a lawyer, I at the same time revere the Bill of Rights and its protection for individual liberties."

"It is precisely because I think so highly of prayer and because of my reverence for the Bill of Rights that I do not want to see government get into the business of tinkering with the Bill of Rights for the purpose of trying to restore state-sponsored prayer to the public schools."

David Saperstein, executive director of the Religious Action Center of the Union of American Hebrew Congregations, said that students presently are

granted near-complete freedom for religious expression under the Equal Access Act.

"Despite what (House Speaker) Newt Gingrich has said over and over and over, kids can pray any time they want just so long as it isn't organized by the school and it doesn't infringe on the rights of other students," Saperstein said.

"I think everyone agrees that prayer is good, and kids ought to be able to pray in school. Some of us just differ on what extent kids now have the right to do so," he added.

Nat Lewin, a Washington attorney who last year defended before the U.S. Supreme Court New York's creation of a special school district for a Hasidic Jewish community, disagreed. Lewin cited recent polls showing that Americans overwhelmingly "want prayer restored to the public schools."

Prayer in the classroom and at graduation are part of the American tradition, not a divisive or coercive activity, Lewin said.

"The First Amendment is the center of this argument," Lewin said. "And yet it only guarantees protection for religion, not from religion. There is no need to shelter our school children from contact with other faiths. Prayer can only strengthen the schools and our culture."

Forest Montgomery, general counsel



**Don't turn
prayer into a
political
football.**

— J. BRENT WALKER

School voucher bill resurfaces in U.S. Senate

The U.S. Senate apparently will again debate the merits of school choice legislation.

Two senators introduced March 24 a bill designed to test school voucher systems. The Low Income School Choice Demonstration Act, co-sponsored by Sens. Joseph Lieberman, D-Conn., and Dan Coats, R-Ind., would spend approximately \$30 million a year for three years to create 10 to 20 school choice test projects for low-income children.

"Until now, only middle- and upper-income families have been able to choose the best school for their children," Coats said. "I think all families should have that choice, and this bill provides an opportunity to study how well this concept would work."

Both senators claimed that rather than lowering the educational quality of public schools by robbing them of funding, choice plans would stimulate quality by introducing competition into the educational system.

"School choice programs should be tested," Lieberman said. "They create alternatives to failing bureaucracies and failing schools. They reward public and private schools that work. And most important, they give our poorest students the chance for a better education and a better life."

Melissa Rogers, Baptist Joint Committee associate general counsel, said that the co-sponsors' claim that the bill would give low-income children the same opportunity as other children is false. School choice plans usually fall far short of providing low-income children with enough money to afford private schools, she said.

The impact on public schools aside, the BJC is concerned about the constitutional problems of public dollars supporting religious schools, she said. The bill would allow any school, public or private, to benefit from the voucher plan.

"Laundering public money through parents' pockets does not change the fact that significant tax dollars eventually will be paid directly to parochial schools."

"While the [Supreme] Court has not ruled on vouchers per se, it is settled

that one cannot do through the back door what cannot be done through the front."

— Melissa Rogers
BJC Associate General Counsel

White House wants RFRA ruling appealed

The White House has asked the Justice Department to appeal a federal court ruling in Texas that found the 1993 Religious Freedom Restoration Act unconstitutional. RFRA restored a high level of protection for religious practice that was virtually abandoned by the U.S. Supreme Court in 1990.

U.S. District Court Judge Lucius Bunton ruled the law, signed by President Clinton Nov. 16, 1993, unconstitutional, declaring that Congress did not have the power to overturn a Supreme Court decision.

"The act affirms the historic role that people of faith have played in the history of this country and the constitutional protections those who profess and express their faith have always demanded and cherished."

— Michael McCurry
White House Spokesman

Sudan's 'anti-Christian' laws denounced

A new Sudanese law, the Missionary Societies Act, has come under sharp attack by Roman Catholic bishops in southern Africa.

Sudan is an Islamic state and the central government is involved in a fierce civil war with Christians and animists in the southern part of the nation.

The new law was designed to replace a law first passed in 1962. It requires Christian churches to register with the government but exempts Muslim organizations. It also regulates church publications, including pastoral letters.

"The new law is not only as discriminatory as the previous one, but is more vicious and degrading. The Southern African Catholic Bishops' Conference support their fellow Sudanese bishops who categorically refuse to register the church under the new law."

Southern African Catholic Bishops' Conference Statement

Russians complain about 'atheistic' religion teachers

Officials of the Russian Orthodox Church are upset about the "atheistic character" of religion classes in Russia.

Religion, an all-but-forbidden topic in the former Soviet Union, is now a popular subject in schools.

"In practice, many so-called religious subjects are being taught by former atheism teachers who have merely changed their colors."

— Marina Kandurina
Russian Orthodox Church

PRAYER

Continued from Page 1

for the National Association of Evangelicals, complained that rather than protecting religious expression, the First Amendment was being interpreted in such way as to "shut God out of the public square."

"The Establishment Clause is being used as a sword rather than a shield protecting the faithful," Montgomery said.

The most heated debate involved the effect of prayer on impressionable school children. Members of the mostly Jewish audience testified that being subjected to Christian prayers as children led to feelings of confusion and isolation.

Lewin countered that the First Amendment was not meant to protect citizens from such incidental offense. Rather, the Free Speech Clause guarantees citizens the possibility of being offended by anyone, at any age.

"We do, however, all have a right not to be offended by our government setting up official time and place for prayer," Saperstein said. "That's exactly the right that the Establishment Clause protects. Even if three-fourths of the class wants to set up official prayer time, we can't ignore the other fourth."

Walker added that "the Bill of Rights is not up for popular vote by the city council, the U.S. Congress or the student body." Δ

— Shannon Harton
Information Services Intern

Pew, Pulpit & the Law

New provisions of the tax law require taxpayers to obtain from churches written substantiation for gifts to take a tax deduction. The new law applies to the 1994 tax year and requires that taxpayers have a "contemporaneous written acknowledgement" of each gift of \$250 or more. The law defines "contemporaneous" to be the due date (including extensions), or when the taxpayer files the return, whichever is earlier.

The IRS has said that the "contemporaneous" requirement will be met if the taxpayer obtains the acknowledgement by Oct. 17, 1995, (six months after the due date of April 17), or if a good-faith effort has been made to obtain the acknowledgement by that date. A letter to your church requesting the written acknowledgement is an example of a good-faith effort.

This is good news — who would expect grace from the IRS? (JBW)

VIEWES of the WALL

Third branch & RFRA



MELISSA ROGERS
Associate
General Counsel

third branch of government, the courts. RFRA recently arrived at a critical juncture in this journey when a trial court in Hawaii upheld the act as constitutional and another trial court in Texas struck it down as unconstitutional.

As you will recall, RFRA restores a legal test known as the "compelling interest test" to free exercise claims. This test requires government to have a compelling interest to override the free exercise rights of religious adherents. In 1990 the U.S. Supreme Court virtually abandoned this stringent test in favor of a test that merely required the government to show a "rational reason" for its restrictions on free exercise. In 1993, Congress reinstated the compelling interest test by passing RFRA.

But now the legal question arises: Does the Constitution give Congress the power to protect free exercise rights in this way? Or does this power belong strictly to the judicial branch? Thus far, the Congress, the president and a Hawaiian court have found that Congress does have the power to pass RFRA while a Texas court has found that it does not.

In a 15-page opinion, the Hawaiian court interpreted the act with a careful eye toward Congress' intentions and Supreme Court decisions. It found that, in certain situations, the Constitution allows Congress to pass laws that heighten the protection for some constitutional rights. The court

Much fanfare accompanied the 1993 enactment of the Religious Freedom Restoration Act by the legislative and executive branches of government. Now the act makes a less-publicized but no less important journey through the

recognized that, in enacting RFRA, Congress was availing itself of powers recognized by both the Constitution and the Supreme Court rather than usurping the power of the judiciary. It approvingly cited similar exercises of congressional power such as passage of the Voting Rights Act whereby Congress raised the level of protection for certain voting rights even though the Supreme Court had declined to do so.

The Texas court disagreed. Despite the fact that the issue requires detailed analysis, the judge confined his discussion of RFRA's constitutionality to two pages of text. The judge disregarded key portions of legislative history and found that Congress' passage of RFRA improperly intruded on the judiciary's powers.

Thankfully, our civil court system always provides at least one chance to appeal, and the parties in Texas already have asked for an expedited rehearing of the matter. As we did in the lower court, the Coalition for the Free Exercise of Religion (of which the BJC is a member) will file a brief supporting the act's constitutionality. The U.S. Justice Department also will register its support for RFRA in the court of appeals. We are cautiously optimistic that the appellate court will find the lower court opinion wanting and uphold RFRA's constitutionality. If the appellate court affirms the lower court decision, however, the parties will have the opportunity to seek review in the nation's high court, the ultimate interpreter of the Constitution.

In the meantime, RFRA will continue to be applied by courts across the country. As it has already, RFRA will protect the rights of churches to feed the homeless, schoolchildren to wear religious garb, prisoners to worship and employees to refuse to take loyalty oaths that contradict their religious tenets. To secure these rights, we will do all we can to ensure that the ringing endorsement RFRA received in the legislative and executive branches echoes through the judicial branch as well. Δ

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Baptist Joint Committee

200 Maryland Ave., N.E.
Washington, D.C. 20002
202-544-4226

BOOK REVIEW

Faith and Freedom

Marvin E. Frankel, Hill and Wang, New York, 1994, 131 pp.



Marvin Frankel has succeeded in reducing a half century of legal debate into this 100-page plain-English survey that even the least legal-minded among us can enjoy.

Frankel examines the most dramatic and influential court cases that have shaped the terrain of church-state relations in America and argues persuasively that only a bare minimum of breaches in the "wall of separation" are acceptable. The author manages to investigate many of the issues that seem to divide the faithful, but he does so without becoming bogged down in the minutia and emotions that so often cloud the issues. What were the intentions of the founders as they described the neutrality of the state in religious affairs? What power does the government have to prosecute "religious" scam artists? To what extent can gov-

ernment money be used by religious schools? And what danger do we risk of imposing secular humanism as the state religion by separating the secular and the sacred?

As numerous and complex as these issues seem (and rightly so), Frankel describes them in the simplest terms, presenting fair-minded perspectives that cut through much of today's rhetoric. His contemplation of the role of the U.S. Constitution in preserving freedom of conscience should command respect even from those who disagree with him. This book makes one very aware of the risk we run by tinkering with the First Amendment.

Frankel's final chapter is perhaps the most important, as he convincingly asks his readers to adopt the lens of toleration when viewing religious issues. Building on the legislative and judicial history outlined in previous chapters, he concludes that the American experience dictates broad encouragement of diversity. The names of Roger Williams, Reinhold Niebuhr, Oliver Cromwell and Tom Paine are invoked

as examples of those who have stood against "being too sure" of personal convictions to allow the convictions of others to flourish. This is, after all, what the First Amendment is all about. No religious sect holds majority power over the others.

Readers will gain from this book a deeper understanding of church-state issues and an appreciation of the importance these issues have in American life. Each chapter has relevance on the personal and the national level. Those interested in more in-depth study will appreciate the comprehensive bibliography citing the most influential writings of the U.S. Supreme Court, the nation's founders and many influential scholars.

Frankel shows a rare talent that readers should appreciate: the ability to make a long story short, but without sacrificing substance. As a primer on religious liberty or as a research tool for the experts, this book is worthy of study and contemplation. **A**

—Shannon Harton
Information Services Intern

REPORT from the CAPITAL

James M. Dunn
Executive Director
Larry Chesser
Editor

Pam Parry
Associate Editor
J. Brent Walker
Book Reviews

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Baptist Joint Committee
200 Maryland Avenue, N.E.
Washington, D.C. 20002

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Dr. LYNN E. MAY JR.
HISTORICAL COMMISSION
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