



REPORT from the CAPITAL

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NEWSMAKERS

Britain's Prince Charles recently objected to the notion that as king he would defend only the established Church of England. British monarchs, at their coronations, swear to protect the Church of England's position of supremacy in the realm. In return, the lofty rank, "Defender of the Faith" is bestowed on the monarch. But Prince Charles in a recent television interview said Britain has many faith groups, and if he is ever crowned, he wants to be the "Defender" of them all.

Barry W. Lynn, executive director of Americans United for Separation of Church and State, has criticized the governor of Maryland for setting up a toll-free telephone number to dispense information about Pope John Paul II's planned Oct. 8 visit to Baltimore. In a July 10 letter to Gov. Parris Glendening, Lynn wrote that the "promotion of the pope's visit should be left to the Archdiocese of Baltimore, lest the impression be created that the state of Maryland is granting special favors to one church." A Glendening spokeswoman said the toll-free number was a necessary part of planning for the safety and traffic requirements associated with the papal visit.

U.S. delegates to an upcoming international women's conference in China have been warned that they may be arrested if they take Bibles into the country or participate in religious activities while there. A State Department official warned Americans planning to attend the United Nations-sponsored conference in Beijing that the United States will not be able to protect them if they violate laws of the Communist nation. House Speaker Newt Gingrich, R-Ga., has suggested the location of the conference should be changed in light of the warnings about religious activities. Δ

Clinton issues landmark school-prayer directive

President Clinton has directed his administration to inform public school officials that student religious expression is protected, not prohibited, by the First Amendment.

In a major speech on religious liberty July 12 at a northern Virginia high school, Clinton announced that he had directed Secretary of Education Richard Riley and Attorney General Janet Reno to provide the nation's 15,000 school districts with a "detailed explanation of the religious expression permitted" already in the public schools. The directive calls for the information to reach school officials before classes begin in the fall.



"The First Amendment does not ... convert our schools into religion free zones."

—President Clinton
July 12, 1995

"The First Amendment does not — I will say it again — does not convert our schools into religion free zones," Clinton told a gathering of students, teachers, parents and religious leaders at James Madison High School in Vienna, Va.

"If a student is told he can't wear a yarmulke, for example, we have an obligation to tell the school the law says the student can, most definitely, wear a yarmulke to school," Clinton said. "If a student is told she cannot bring a Bible to school, we have to tell the school, 'No, the law guarantees her the right to bring the Bible to school.'"

The president's speech and directive emphasized that the First Amendment already protects a broad range of student religious expression and that it is only when such expression is sponsored or endorsed by the school that it

runs afoul of the U.S. Constitution.

"While the government may not use schools to coerce the consciences of our students, or to convey official endorsement of religion, the government's schools also may not discriminate against private religious expression during the school day," Clinton's directive states.

While most schools do a good job of protecting students' religious rights, Clinton cited rare instances of students

being prohibited from reading the Bible silently during study hall, advertising religious meetings and saying grace before lunch. Clinton said he hopes the

materials sent to school districts will help protect students' rights.

"What we have to do is work together to help all Americans understand exactly what the First Amendment does," he said. "It protects freedom of religion by allowing students to pray, and it protects freedom of religion by preventing schools from telling them how and when and what to pray."

Clinton's directive will offer school officials clarification on a range of issues, including the right of students to engage in prayer and religious discussion, participate in baccalaureate services, distribute religious literature and wear religious garb.

The president said his directive "borrows heavily and gratefully" from a statement produced in April by a

broad coalition of religious and legal groups who "put themselves on the solution side of this debate." The document, titled "Religion in the Public Schools: A Joint Statement of Current Law," spells out what the diverse groups agree to be current church-state law.

The Baptist Joint Committee was among 12 groups that drafted the statement, which was endorsed by 24 other organizations.

While the president did not address a proposal backed by religious conservatives and some in Congress to tack a "religious equality amendment" onto the Constitution, his remarks emphasized that the First Amendment has served Americans well.

"The First Amendment has protected our freedom to be religious or not religious, as we choose, with the consequence that in this highly secular age the United States is clearly the most

conventionally religious country in the entire world, at least the entire industrialized world," Clinton said.

Later at a White House briefing, Riley and Assistant Attorney General Walter Dellinger made clear the administration's opposition to altering the First Amendment.

"It (the First Amendment) has never been altered in the entire history of this nation, and it should not be altered now."

—Richard Riley

Riley said, "It has never been altered in the entire history of this nation, and it should not be altered now."

Religious leaders both applauded and criticized the president's actions.

Baptist Joint Committee Executive

Director James M. Dunn said the president "made it clear that the First Amendment provides adequate and sufficient safeguards for the free expression of religion. Those who oppose his principled position simply categorize themselves as frantic fanatics."

"Using the presidential pulpit like no recent president has, Mr. Clinton made clear that religious liberty is the preeminent American value," said BJC General Counsel J. Brent Walker.

Greg Baylor, assistant director of the Christian Legal Society's Center for Law and Religious Freedom, commended Clinton's steps but questioned whether they removed the need for a religious equality amendment. He added that the administration's restating of current law "doesn't change some of the problem areas in church-state law other than in the public schools." Δ

Presidential Directive on Religious Expression

The following are highlights of President Clinton's directive on religious expression in public schools, unveiled in a July 12 speech at James Madison High School in Vienna, Va.:

- Students have the right to pray individually and in groups during the school day. However, students do not have "the right to have a captive audience listen, or to compel other students to participate."
- Students may read the Bible or other Scriptures, say grace before meals and pray before exams "to the same extent they may engage in comparable non-disruptive activities."
- Students may discuss religious topics with their peers, but school officials should intercede if student speech is considered harassment.
- School officials cannot authorize organized prayer at graduation ceremonies or organize religious baccalaureate ceremonies.
- Teachers and school administrators cannot

solicit, encourage or discourage religious activity while in their roles as government employees.

- Public schools can teach about religion, but not provide religious instruction. For instance, courses dealing with the history of religion, comparative religion and the Bible as literature are permitted.

- Students may express their religious beliefs in homework, artwork and other assignments when the expression relates to a school assignment.

- Students have the right to distribute religious literature when other literature unrelated to school activities is permitted for distribution.

- Students may wear religious messages on their clothing if they are allowed to wear comparable non-religious messages.

- Student religious groups have the same access to school facilities as other comparable student groups. Δ

Liberty & Law

The president took a step today that other presidents should have taken a long time ago. And that step was to instruct his secretary of education to be very aggressive about letting the school districts of this country know that it is not, in fact, the case that the Constitution has expelled religion from the public schools of America.

Needless to say, the application of these principles will sometimes require the making of careful judgments and the drawing of narrow lines. But the president has directed the secretary to make sure that every school district understands those rights of religion are available and that this be made clear to them, while the president is maintaining his commitment to the bedrock principle that forbids government itself from interfering with or promoting religion.

Walter Dellinger
Assistant Attorney General
July 12, 1995

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Baptist Joint Committee

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

VIEWS OF THE WALL

Court punches historic hole



MELISSA ROGERS
Associate
General Counsel

In *Rosenberger v. Rector and Visitors of the University of Virginia*, the U.S. Supreme Court ruled that public money must be used to pay the bills of a religious student magazine. This ruling is a historic break with earlier court decisions, a setback for reli-

gious liberty and the product of a deeply divided court.

It is not, however, a "green light" for tuition vouchers transferring public funds to religious schools. In fact, the court's narrowly written decision is likely to have little impact on the general rule that public aid may not be funneled to parochial schools through vouchers.

Although the court stressed the importance of extending governmental benefits evenhandedly to a broad range of activities, including religious ones, it did not purport to abandon the constitutional prohibition on direct funding of religion through tax revenue. In an effort to "preserve" this prohibition, the court identified a number of factors peculiar to the case and suggested that these factors saved this particular funding scheme from constitutional peril.

The absence of any one of these factors in a voucher plan aiding parochial schools would distinguish such plans from *Rosenberger*. The fact that numerous characteristics particular to *Rosenberger* would be absent in such plans indicates that *Rosenberger* does not clear the way for vouchers.

For example, the court's decision in *Rosenberger* emphasizes that the public funds at issue would be paid directly to third-party vendors rather than to the religious student magazine. In contrast, voucher plans generally would involve payments from the government to religious institutions.

The court also distinguished the public money at issue in *Rosenberger* (student activities fees) from funds generated by a general revenue tax and suggested that it would react differently to the latter. The court's ruling, thus, should not be read to sanction voucher plans funded with general tax money.

Additionally, the court in *Rosenberger* observed: "The student publication is not a religious institution, at least in the usual sense of that term as used in our case law." Regardless of whether this classification is correct, it seems clear that the court would view a pervasively sectarian parochial school as a religious institution in the "usual" sense. A voucher plan, therefore, would raise red flags not present in *Rosenberger*.

The court also suggested that funding religious as well as secular activities would pose less danger of church-state entanglement than continuing to determine which student activities were religious and thus ineligible for funding. If the government funds religious and secular education through vouchers, however, the potential for entanglement will be much greater — the state will be permitted, if not required, to monitor religious schools for compliance with educational standards and the law generally.

Another factor stressed by the court was the importance of free speech at a university. In contrast, vouchers would involve elementary and secondary schools and a much less clear free speech claim.

Finally, in her concurring opinion, Justice Sandra Day O'Connor found significant that religion did not dominate the forum in *Rosenberger*. In most voucher schemes, however, religious schools would get the lion's share of the public funds.

These are some of the factors emphasized by the court in *Rosenberger* that distinguish it from voucher schemes. *Rosenberger* did knock a hole in the wall separating church and state, but voucher initiatives for religious schools should find it quite difficult to squeeze through this breach. Δ

GUEST VIEW



James Forbes

My work has been guided by the strong conviction that moral and religious revitalization is necessary if our great nation is to fulfill its destiny as a leader among nations in the next century. How-

ever, religious revitalization can only come from the people and from their religious institutions, not from government. And I do not believe that involving government in the role of sponsoring or directly funding religious activity would be helpful to spiritual revitalization. Government would do best to remain neutral, and allow churches, synagogues and mosques and other religious institutions to do our job without even well-meaning intervention from government officials.

I share the convictions of fellow cler-

gy who have testified against amending the First Amendment's religion clauses. The First Amendment already provides rights for truly voluntary religious expression in public schools and other public places.

James Madison, Thomas Jefferson and their Baptist friend, John Leland, conceived of the protections embodied in Madison's timeless religion clauses of the First Amendment. They did so in full awareness of centuries of religious wars in Europe, of religious tyranny against Virginia Baptists in the 18th century and of the all-too-earthly temptation of religious majorities to seek to impose their views upon religious minorities. They were likewise aware that people emigrated voluntarily to this country in order to live in a place where people of different religions could pursue the common good with respect for the dignity of all.

I also believe that the law in its present form strikes the proper balance between the rights of all people of faith to practice their religion and the rights

of those same people and of non-believers to be free from coercive government-sponsored prayer.

Finally, I urge the committee to forego pursuit of a constitutional amendment for an additional reason: Our nation is presently too polarized to conduct a rational and caring debate on this issue. The divisions that ensue from a constitutional effort would simply result in the demeaning use of prayer as a political weapon on both sides of the debate.

Therefore, I believe that the true religious response to the present controversy would be for us to come together in dialogue to discover how we may best pursue the common good that will promote justice and liberty for all. Δ

James Forbes, senior minister at Riverside Church in New York City, testified before a House subcommittee hearing July 10 that explored the need for a religious equality amendment to the Constitution. Above are excerpts of Forbes' testimony.

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James M. Dunn
Executive Director
Larry Chesser
Editor

Pam Parry
Associate Editor
J. Brent Walker
Book Reviews

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