



REPORT from the CAPITAL

Volume 50, Number 21

October 31, 1995

NEWSMAKERS

Kelemedi Bulewa, Fijian attorney general, said that although most Fijians now are Christian, Christianity often has been "virtually shoved down their throats." The government of Fiji plans to review a pre-independence law that bans ancestral worship as "witchcraft," according to a news report. Prior to the nation's independence in 1970, Fijians worshiped ancestral gods and spirits and believed their chiefs were descended from deities. Most Fijians, Bulewa said, reluctantly gave up worshipping their ancestral gods after laws declared such practices witchcraft.

Maureen Roselli, a former special projects coordinator with National Right to Life, has been named the executive director of the new Catholic wing of the Christian Coalition.

U.S. District Judge **John Kane** said he would retain custody of copies of Church of Scientology secret documents. Kane said he was taking the action to eliminate a claim by the church that its religious rights would be violated if the documents were returned to former Scientologists and current church critics **Larry Wollersheim** and **Robert Penny**. The church claims the documents are copyrighted scripture that it alone is entitled to distribute. Wollersheim and Penny were distributing the documents via the Internet until the church convinced a different judge to allow it to confiscate the documents in August. **A**

Senate panel weighs religion amendment

A Senate committee weighing the need for a religious equality amendment to the U.S. Constitution found religious leaders and constitutional specialists divided over the issue.

Two Baptists, **J. Brent Walker** and **Oliver S. Thomas**, opposed an amendment during Oct. 20 and 25 hearings before the Judiciary Committee. Other witnesses, including representatives of the Christian Legal Society and the National Association of Evangelicals, favored it.

Assistant Attorney General **Walter Dellinger** said Oct. 25 that an amendment would add to the confusion.

"In a country as diverse as ours, we must take care that well-intended discussion about the role of religion in public life — and especially in public schools — does not have the effect of heightening religious tensions and undermining our sense of shared community," he said.

"Before the country embarks on what has the potential to be a very divisive debate on this subject, it is important that we share a common understanding of the kind and amount of religious activity that already is permissi-

ble in the public schools."

He pointed to guidelines recently distributed by the administration to every school district in the country. The guidelines are designed to combat "genuine confusion on the part of school officials and the public" about what is permissible in the public schools, he said.

Walker, general counsel of the Baptist Joint Committee, and **Rabbi David Saperstein**, director of the Religious Action Center of Reform Judaism, also testified Oct. 25 against amending the Constitution. They told senators that the current religion clauses provide appropriate government neutrality toward religion.

Walker rejected the notion that church-state separation is anti-religious.

"When we tie the church and state together, the church tends to use civil power to enforce its brand of religion and the state palms off the name of God to support its stripe of politics," **Walker** said. "But when we separate the two, religion tends to flourish, and the state



BJC General Counsel J. Brent Walker testifies at Senate hearing.

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SAVE
THESE
DATES!

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**Plan to celebrate
the Baptist Joint Committee's
60th anniversary Oct. 6-8, 1996,
in the nation's capital.**

NEWS & COMMENT



"These legal issues go to the heart of the Constitution and the soul of the Republic."

— Sen. Orrin G. Hatch



"Before we adopt a new constitutional amendment on religion, let's try using the one we have."

— Oliver S. Thomas



"Mixing government and religion corrupts both. ... with government money flows government rules, regulations and control."

— Rabbi David Saperstein

AMENDMENT, Continued from Page 1

is relieved of the daunting task of making decisions about religion — something it does poorly."

Walker said one of the problems with the religious equality proposal is that it would permit, if not require, government funding of religion.

"When religion bellies up to the public trough, it becomes lazy and dependent. How can religion raise a prophetic fist against government when it has its other hand opened for a handout?"

Speaking in support of the amendment Louis Sheldon, chairman of the Traditional Values Coalition, said that for more than 50 years "public manifestations of Christianity ... have been continuously and systematically separated from American society."

"We have now reached the point where a state of religious apartheid exists in the United States of America," Sheldon added.

In the Oct. 20 hearing, Thomas said the religious equality amendment represents "a serious assault on the Establishment Clause (and would) hurt religious and political institutions."

Thomas, special counsel for civil and religious liberties for the National Council of Churches of Christ, urged senators, "before we adopt a new constitutional amendment on religion, let's try using the one we already have."

For too long, this issue has been dominated by two extremes, said Thomas, former BJC general counsel.

One extreme tried to use the public school to make Protestant converts, and the other was an overreaction to the first, turning public schools into religion-free zones.

"Both are wrong; both have failed."

Thomas, a member of the school board in Maryville, Tenn., touted a third approach — finding common ground through education on what religious expression is permissible.

Thomas said he has worked with more than 300 school districts nationwide, helping educators, parents and students understand their rights and responsibilities.

"We don't need more law. The framers did a good job; they gave us only 16 words, and it's taken us 200 years to figure out what (the First Amendment) means."

"I appeal to your conservative nature," he said to senators. "The most liberal, radical thing we could do today is amend the First Amendment. Don't do it."

Steven T. McFarland, director of the Christian Legal Society's Center for Law and Religious Freedom, said that education alone cannot combat the "virus of religious discrimination" in America's schools.

McFarland said that the problem isn't with the First Amendment but with the courts' misinterpretation of it.

Michael W. McConnell, professor of law at the University of Chicago, said that comparatively speaking, religious liberty in America is "in excellent

shape" but falls short of being "all it should be, or all that our Constitution promises."

Discrimination against religious expression does not always take the form of denial of access to forums but often results in the denial of government benefits, McConnell said.

Forest D. Montgomery, counsel of the National Association of Evangelicals, pled strongly for a religious equality amendment to the Constitution, offering a version for discussion. Montgomery said the proposal represented the views of other groups, such as the Christian Legal Society, not just the efforts of the NAE.

The proposed language says that no federal or state government "shall deny benefits to or otherwise discriminate against any persons, acting in a private capacity, on account of their religious expression, belief, or identity."

Montgomery said that the proposal "does not change the Establishment Clause" but would correct the court's erroneous construction of it.

To say such a proposal would not alter the First Amendment is "just wrong," Thomas responded. This language will lead to litigation on what is meant by "benefits," he said.

Senate Judiciary Committee Chairman Orrin Hatch of Utah said that while he loathes the prospect of amending the Constitution, both sides in the debate have made valid arguments. A spokesman said Hatch is still "weighing" the matter. Δ

QUOTING

I come from a religious tradition which has known the heavy hand of government. People of my faith know what it is like to be a minority religion subject to persecution by other religions and by the state and federal governments. In the middle of the last century, the Mormons were driven from state to state, and ultimately out of the then-United States altogether, and even then they were not unmolested by the federal government. I am concerned that government not drive religion out of the public square and from our public dialogue on issues confronting our people. Persons of faith have much to add to the discussion of public issues. The religious perspective is enlivening to debates on public issues in all fora, and it should not be silenced or harassed because of misinterpretations of the relationship between the Free Exercise Clause and the Establishment Clause.

—U.S. Sen. Orrin G. Hatch

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Baptist Joint Committee

200 Maryland Ave., N.E.
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202-544-4226

VIEWS OF THE WALL

No government funding



J. BRENT WALKER
General Counsel

things about the proposed constitutional amendment on "religious equality" is that it would permit not only government-sponsored religious expression but also government-funded religious activities. Each of the proposals we have seen would allow, if not require, government to fund religion just as it funds other secular activities. We Baptists who believe in separation of church and state often assume *everybody* can understand the wisdom of keeping government from funding religion. Then we smugly conclude that it "violates the Establishment Clause."

But that's not good enough nowadays because it's the Establishment Clause that some are trying to amend. What's wrong with government funding religion? Plenty!

First, it would violate the religious liberty of citizens whose taxes are used to advance someone else's religion. This is exactly what Thomas Jefferson had in mind when he said that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical."

Second, it would open the door for invasive governmental regulation of, and unwholesome entanglement with, religion. This is what my friend from Virginia, Bill Wilson, meant when he asked government not to give us any "pats on the back." For all too often a friendly pat by Uncle Sam turns into "hostile shoves" by Big Brother.

Third, when religion bellies up to the public trough, it becomes lazy and dependent. How can religion raise a prophetic fist against government when it has its other hand opened for a handout? It can't. This is what my

One of the really insidious things about the proposed constitutional amendment on "religious equality" is that it would permit not only government-sponsored religious expression but also government-funded religious activities.

hell-fire preaching colonial Baptist ancestor John Leland had in mind when he said: "The fondness of magistrates to foster Christianity has done it more harm than all the persecutions ever did. Persecution is like a lion. It tears the saints to death, but it keeps Christianity pure. State established religion, though, is like a bear. It hugs the saints, but it corrupts Christianity."

Finally, government funding would engender unhealthy rivalry among religions and denominations. At a recent hearing in the House on this issue, Rep. Jose Serrano, D-N.Y., said the passage of an amendment would bring about another "civil war." Overstatement? Think Bosnia. The same divisions that have encouraged civil war in other countries would at least result in very uncivil competition in our own. Today our country is more divided than it should be. Too often we are fragmented along racial, economic and political lines. Government-endorsed religion would create another bitter division among Christian and Jew, Mormon and Muslim, Buddhist and Baptist.

I hasten to add that religiously affiliated organizations may receive governmental aid if it is not used to advance religion. For example, a church-related college can receive a federal grant to construct a science building, but not to erect a chapel. Religious social service agencies, such as Catholic Charities and Lutheran Social Ministries, routinely receive public money to feed the hungry, nurse the sick, care for the elderly and relocate refugees; but they cannot use it to proselytize, discriminate or teach religion. The language of the proposed amendments do not respect these time-honored distinctions. Public funds would go to a pervasively sectarian organization to propagate its religious mission.

No, when government takes sides in matters of religion — favoring one denomination over another or religion over irreligion — only mischief results. This is particularly the case when government puts its money where its mouth is. Δ

GUEST VIEWS

**WALTER
DELLINGER**

A constitutional amendment would not and could not solve the problem to which it is primarily directed. Most of the objections voiced by the witnesses who have appeared before you go not so much to the principles of law as it now exists, but rather to the question of compliance with or enforcement of that law.

... If underenforcement is the problem, then constitutional amendment of the First Amendment is not the answer. The new constitutional standard, like the old one, will be subject to underenforcement at the hands of those who apply it on a regular basis, and students will continue to bear the burdens of litigation in order to vindicate their rights. Constitutional amendments are not self-enforcing, and nothing about any of the proposed amendments I have seen would remedy this problem.

It also has been suggested that an

amendment might serve to clarify the law. ... I think it is most unlikely that any amendment could accomplish this goal. Where the Supreme Court has difficulty setting forth a bright-line rule, it is most often because none is available; even when broad principles are well-established, their application often turns on the specific factual contexts presented. ... A constitutional amendment might well prove downright counterproductive on this score, destabilizing the legal framework that has emerged at the Supreme Court level over the past 20 years and generating new ambiguity while its scope and meaning are tested in the courts.

... The Bill of Rights was ratified in 1791. Since that time, over two hundred years ago, the Bill of Rights has never once been amended.

... (James) Madison objected especially to amendment on issues that inflamed public passion, fearing that such actions might threaten "the constitutional equilibrium of the government." The deliberations before this Committee have been a model of civi-

ty and thoughtful discourse, and for this the Committee is to be commended. Once a proposed constitutional amendment is sent to the 50 state capitals, however, it is in important respects out of your hands, and the nature of that discourse may change, and may change for the worse. Any amendment that is perceived as an effort to redefine the relationship between religion and public education has the potential to generate a deeply divisive debate across this nation, setting one religious group against another and leaving religious minorities feeling like outsiders in their own communities and country. This prospect alone should be sufficient to convince you that we should adhere in this context to our historical unwillingness to amend the Bill of Rights. Δ

Above are excerpts from Oct. 25 testimony by Assistant Attorney General Walter Dellinger before the Senate Judiciary Committee.

REPORT from the CAPITAL

James M. Dunn
Executive Director

Larry Chesser
Editor

Pam Parry
Associate Editor

J. Brent Walker
Book Reviews

REPORT (ISSN-0346-0661) is published 24 times each year by the Baptist Joint Committee.

Established in 1936

Baptist Joint Committee on Public Affairs

200 Maryland Avenue, N.E., Washington, D.C. 20002

202-544-4226

Supporting bodies: Alliance of Baptists • American Baptist Churches in the U.S.A. • Baptist General Conference • Cooperative Baptist Fellowship • National Baptist Convention of America • National Baptist Convention U.S.A. Inc. • National Missionary Baptist Convention • North American Baptist Conference • Progressive National Baptist Convention Inc. • Religious Liberty Council • Seventh Day Baptist General Conference • Southern Baptist state conventions and churches.

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