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REPORT FROM THE CAPITAL

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NewsMakers

◆ U.S. Rep. Dale Kildee, D-Mich., said a school voucher plan contained in legislation designed to aid low-income areas could lead to "cherry picking" of better students by private and parochial schools. He criticized the voucher scheme included in Community Renewal Project legislation at a recent congressional hearing.

◆ Retiring U.S. Sen. Mark Hatfield, R-Ore., was honored at a recent Washington gathering for serving 30 years in the Senate. "If all of us could be more like you, America would be an even greater nation," President Clinton told Hatfield, a fellow Baptist.

◆ Andre Fitament of Brittany, France, is protesting plans to spend tax funds to help pay for a visit to France by Pope John Paul II. Fitament leads a group that filed a lawsuit challenging the expenditure and said that "public subsidies planned for the visit contradict republican law, which since 1905 has decreed a separation between church and state."

◆ Cardinal Roger Mahony said the Roman Catholic Archdiocese of Los Angeles will not build a replacement cathedral on the site of St. Vibiana's Cathedral. His decision was based in part on the continuing legal fight with historic preservationists over the earthquake-damaged cathedral's fate. Δ

Religious groups divided over amending Constitution

The split between religious leaders who want to keep the constitutional boundary separating church and state and those who want to change it resurfaced at a congressional hearing.

The wall separating church and state has become a "wall of shame," said proponents of a constitutional amendment that would limit the separation required by the First Amendment.

Foes said the proposal pending before the House Constitution Subcommittee

would upset the delicate balance of church and state and allow, if not require, government to finance religious activities.

The amendment offered by Rep. Dick Arme, R-Texas, is designed to give religious groups equal access to government benefits and bar discrimination against religious expression.

Panel chairman Henry Hyde, R-Ill., said, "Our problem is not with the Constitution itself, but with the courts that interpret the First Amendment in such a way that undermines, rather than protects, religious freedom."

The First Amendment bars government from establishing a religion and from prohibiting its free exercise.

Rep. Barney Frank, D-Mass., ranking minority member of the panel, said existing law already protects truly voluntary student prayer and other acts of religious expression by individuals. He said an amendment would be useless. "Are we

going to pass a law that says you have to obey the law?" Frank asked.

Oliver Thomas, special counsel for religious and civil liberties at the National Council of Churches of Christ, told the

panel that "amending the First Amendment is the most liberal thing you can do." He said the measure could undo the 1993 Religious Freedom Restoration Act and might undermine the very freedoms supporters want to protect.

"The last thing America needs is a

new First Amendment," Thomas said.

Barry Lynn, executive director of Americans United for Separation of Church and State, questioned the use of government dollars for religious purposes. "Do we seriously want to allow the Southern Baptist Convention, just on record urging the conversion of all Jews to Christianity, receiving tax dollars to promote this mission?"

"Yet under this amendment every agency associated with that denomination would be able to cry discrimination if denied funds because of religious beliefs, expression or exercise," Lynn said.

At a news conference the day before the hearing, a coalition of religious groups opposed the Arme proposal.

"I'm a born-again, Bible-bred, Texas-born Baptist preacher," said BJC executive director James M. Dunn. "And this is precisely why I oppose any kind of government meddling in religion." Δ



Thomas testifies at House hearing.

1936-1996

Six Decades
of Securing
Religious Liberty



In its October 1980 meeting, the Baptist Joint Committee unanimously elected James M. Dunn to become the agency's fourth executive director. Dunn who had served for 12 years as director of the Christian Life Commission of the Baptist General Convention of Texas, declared his first priority as "faithfulness to religious liberty and church-state separation."

Also at that meeting, the BJC issued a statement warning that "the current activities of the Religious Right may pose a more dangerous threat to the American principle of church-state separation than any previous similar movement." The statement cautioned against "judging candidates as 'Christian' or 'non-Christian,' 'moral' or 'immoral' on the basis of highly selective, essentially political, rankings by the Religious Right." The statement also called on the BJC staff to monitor and report future developments relating to the Religious Right. Δ

Baptist leaders disagree over use of voter guides

Baptist leaders disagree over whether churches would jeopardize their tax-exempt status by using Christian Coalition voter guides.

The question surfaced after the Federal Election Commission (FEC) filed a lawsuit accusing the Christian Coalition of violating election laws.

The FEC, an independent bipartisan agency of the U. S. government, said in its complaint that the Christian Coalition failed to report money spent from its corporate treasury during the last three federal election campaigns to "influence the election of candidates for federal office."

An FEC spokeswoman said corporations are prohibited from contributing funds from their treasuries for federal elections, but can cover the administrative costs of political action committees (PACs). PACs can accept donations from individuals for political purposes but may not use corporate funds.

The FEC also charged July 30 that the coalition spent money on voter guides and get-out-the-vote efforts in consultation and coordination with specific Republican candidates for federal office, including former President George Bush, Sen. Jesse Helms, candidate Oliver North, Speaker of the House Newt Gingrich and Reps. Robert Inglis and J.D. Hayworth.

Tax laws for nonprofit groups are not an issue in the FEC lawsuit against the Christian Coalition, but if the guides are proved to be electioneering, the Internal Revenue Service could become involved.

A spokesman for the Christian Coalition said it is a 501c(4) or "social welfare" organization under tax laws.

It does not pay taxes, but contributions to it are not tax-deductible. To retain its tax-exempt status, the group must refrain from making electioneering its "primary" function. By comparison, a 501c(3) nonprofit organization such as a church must refrain from electioneering altogether.

"Churches must beware," said J. Brent Walker, general counsel for the Baptist Joint Committee. "Their tax category is even more restrictive than the Christian Coalition's. If churches embrace the voter guides or participate or acquiesce in their distribution, they will jeopardize their tax-exempt status," he said.

However, Will Dodson, director of government relations at the Southern

Baptist Christian Life Commission, said churches "shouldn't be wary at all." He said the voter guides simply record the voting record of candidates and their position on issues. He added that churches should be concerned about "government interfering in their business."

Joe Haag, associate director of the Texas Baptist Christian Life Commission, said that churches "should beware of any voter guide that purports to be nonpartisan but on reading is clearly in support or opposition of one candidate."

He said the Christian Coalition voter guides often "advocate support for certain candidates."

Ohio trial court upholds Cleveland voucher plan

An Ohio judge has upheld an educational voucher program that would use tax dollars for tuition at religious and other private schools in Cleveland.

Franklin County Court of Common Pleas Judge Lisa Sadler rejected arguments that the \$5.25 million program scheduled to be implemented this fall would violate the Constitution's requirement of church-state separation.

Voucher opponents say this is the first time a court has sanctioned the use of tax-supported vouchers for religious schools and have already initiated an appeal.

Ohio's pilot voucher program would pay \$2,250 in private school tuition for low-income students in Cleveland. Of the 671 students accepted into the program as of June 13, at least 580 had selected religiously affiliated schools.

While Sadler acknowledged that "a substantial portion of the function of all of the church affiliated schools is religious in character," she concluded that the program does not violate the First Amendment's ban against government advancement of religion.

She said the U.S. Supreme Court has rejected programs that provide direct benefits to religious schools. But she concluded that the Ohio voucher plan more closely resembles programs the high court has upheld in which religious schools were benefitted only indirectly and purely as the result of private choices of aid recipients.

Opponents of the plan filed a notice of appeal Aug. 1 and have asked a court to block implementation of the plan while the appeal is pending.

Reflections

James M. Dunn

Executive Director



The election we face is not a one-issue election. None of us lives in a one-issue world. Ours is not a one-issue faith.

Yet, to listen to the debate and frankly to talk with many Christians you'd get the idea that they approach the upcoming election with a single question for the candidates, or at best a single cluster of concerns.

The Baptist Joint Committee may sound a Johnny-one-note. We plead guilty. Our assignment comes from 12 national and state Baptist bodies with over 20 million Baptists. They have given us one task: attention to religious liberty.

The reasons for this are clear. Religious liberty is at the heart of Baptist identity; soul freedom binds us together. This non-creedal, free and faithful people have need of a shop to work at the implications of that distinctive.

Beyond that, it has become a practical necessity over the past 20 years to have a carefully focused agenda. Church-state issues are so many and so varied that any office our size, with always scarce resources, is taxed to touch all bases.

So, believing that it is better to do a few things well than many things poorly, we have concentrated on our main job. And, if I do say so, do it with competence.

Brent Walker, BJC general counsel, is adjunct professor at Georgetown University Law Center and is seen as a pre-eminent church-state authority. Larry Chesser, our communications director, a member of the White House press corps, is journalist guru and sought-after Court watcher. Karen McGuire, who runs the place, is kidded about having "run the Pentagon" when she was executive assistant to the Secretary of Defense.

When we analyze and criticize attempts to amend the Constitution, or experiments with public education that would funnel two and a half billion dollars into private and parochial schools, that's our chore. We have been at this

busy intersection for 60 years learning more and more about less and less. It is difficult, almost impossible, for you to understand all you want to know about the complexities of court decisions and the arcane acts of Congress. That's what we're paid to do.

So please understand, our goal is not to tell anyone how to vote but to engage in essential voter education. We don't need one-issue voters even on our issues. We all do need to know where politicians stand.

Just as it is possible to be too rifle-shot narrow, it's also possible to be to scatter-shot broad.

In this regard, the 1996 Southern Baptist Convention gives cause for pause. Those who met called on Baptists to vote for vouchers, advise the Republicans, beat up on the President of the United States (by name), eschew ecumenism, target the Jews and boycott Disney businesses. They practically practiced medicine in the mass meeting.

As with all national religious bodies there is a temptation to "speak for" when at best they can "speak to" the faith family. Alas, less than 1/10 of 1 percent of America's largest non-Roman Catholic denomination purport to have spoken for "most Baptists." And that was a highly harmonious band gathered with those of like mind.

We should be careful with our public witness, however moved to say something strong, however meritorious our particular message and however politically correct from our perspective. At the very least, actions of the recent Southern Baptist Convention were a bit much.

More than one issue, yes. Ride off in all directions, no. Δ

Welfare measure would fund religious groups

Congress approved and President Clinton has vowed to sign an overhaul of the nation's welfare system that includes a provision allowing religious groups to use federal funds to provide social services.

Phil Strickland, director of the Texas Baptist Christian Life Commission, said the "charitable choice" provisions will "put the fox in religion's henhouse."

He said, "Churches are supposed to be about pleasing the Lord, helping people with the resources that God provides and holding government accountable. Churches shouldn't be about pleasing government, depending on the resources government provides and being accountable to government." He said the measure also carries the "virus" of setting churches against other churches and human service providers competing for limited federal dollars.

The bill will allow states to contract with or give vouchers to religious or private organizations to provide services for the poor. Although it bars use of direct grants for sectarian purposes, it would not prohibit such activity when funds are in the form of a voucher.

"It is undisputably unconstitutional to give taxpayer dollars to a pervasively sectarian organization for any purpose, and that's exactly what this provision does," said BJC General Counsel J. Brent Walker. Δ

Baptist Joint Committee 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/churches

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Appeals court upholds RFRA

A third federal appeals court has upheld a 1993 act Congress passed to protect religious liberty.

The 7th U.S. Circuit Court of Appeals rejected arguments by Wisconsin officials that Congress overstepped its authority by enacting the Religious Freedom Restoration Act.

Wisconsin advanced its argument against RFRA after prisoners cited the law in a challenge to state regulations that banned inmates from wearing religious jewelry such as crucifixes.

Federal appeals courts in the 5th Circuit and the District of Columbia had earlier upheld RFRA's constitutionality.

The U.S. Supreme Court has been asked to review the 5th Circuit ruling. In that dispute, a Roman Catholic parish cited RFRA's protection in its battle with Boerne, Texas, officials over plans to raze part of a 72-year-old building the city wanted preserved.

RFRA was enacted in response to a 1990 Supreme Court decision that curbed religious liberty. In *Employment Division v. Smith*, the high court said government no longer needed a compelling reason to justify generally applicable laws that interfere with religious practice.

Under RFRA, government cannot substantially burden the free exercise of religion unless it uses the least restrictive means available to further a compelling governmental interest.

Opponents have attacked RFRA's constitutionality primarily on two grounds — that it exceeded Congress' lawmaking authority under Section 5 of the 14th Amendment and that it violated the constitutional separation of powers.

The 14th Amendment protects citizens from being deprived by states and local

governments of life, liberty or property without due process of law. It also empowers Congress in Section 5 to enact laws enforcing rights protected by the amendment. Section 5 is cited as the basis for Congress' enactment of RFRA, because the religious liberty guarantees of the First Amendment are among those liberties the Supreme Court declared to be protected by the due process clause.

The 7th Circuit's opinion, written by Chief Judge Richard A. Posner, said Congress did not reach or exceed the limits of its authority to pass laws that make religious liberty a meaningful right.

Posner also said Congress did not violate the separation of powers because Congress had not "overruled" the 1990 *Smith* decision.

"*Smith* remains undisturbed within its domain, that of the First Amendment," Posner wrote. "The Religious Freedom Restoration Act does not alter that meaning. It creates a new statutory right designed to buttress the constitutional right."

The ruling also made clear that RFRA protects religiously motivated conduct, not just religiously mandated practices.

Posner said that while wearing a crucifix may not be religiously mandated, Wisconsin's ban against prisoners wearing such jewelry "places a substantial burden ... on the plaintiffs' observance of their religion."

Posner concluded that while prison security is a compelling state interest Wisconsin had not justified a regulation that "forbids the wearing of a crucifix even if it is too small or light to be a weapon (at least more of a weapon than a fist, a tooth, or a fingernail)" and "too inexpensive to barter for a weapon." Δ

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