



# REPORT FROM THE CAPITAL

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## NewsMakers

◆ **Jonathan Converse**, a recent graduate of Bethel College, St. Paul, Minn., has begun a spring internship at the Baptist Joint Committee. He will provide administrative support and work with the general counsel's office on legal and legislative matters.

◆ **Thomas Melady**, **Frank Shakespeare** and **William Wilson**, former U.S. ambassadors to the Vatican, have urged **President Clinton** to avoid partisan politics in replacing envoy **Raymond Flynn**, who plans to resign. Their letter to Clinton said Flynn has "clouded the integrity of the U.S. diplomatic mission" by pushing administration domestic policies.

◆ **Rabbi A. James Rudin**, the American Jewish Committee's interreligious affairs director, received the *Figure of Reconciliation Award* presented by the Polish Council of Christians and Jews for his role in building bridges between Jews and Roman Catholics in Poland.

◆ After being re-elected speaker of the House, **Newt Gingrich**, R-Ga., told colleagues that "until we learn in a nonsectarian way ... to re-establish the authority that we are endowed by our Creator, that we owe it to our Creator, and that we need to seek divine guidance in what we are doing, we are not going to solve this country's problems." ▴

## Clinton seeks churches' help on welfare, immigration issues

**P**resident Bill Clinton has called on churches to help implement welfare reform in a way that provides work for able-bodied welfare recipients.

At a Jan. 6 White House breakfast for 100 religious leaders — the fourth ecumenical breakfast of his presidency —

Clinton also asked religious leaders to help change what he said were unfair cuts in aid to legal immigrants in the welfare package signed into law last year.

Clinton said some religious leaders probably thought he made

a mistake signing the welfare measure, but he defended the bill, which ends an historic guarantee of aid to the poor.

He also promoted a provision in the new welfare laws, which some observers say violates the First Amendment's ban against government-established religion. It would allow states to give welfare checks to an employer, including a church, as an employment and training subsidy for hiring someone from welfare.

"If every church in America just hired one family, the welfare problem would go way down," Clinton said. The welfare bill also contains a "charitable choice" provision allowing churches to provide social services with public funds.

He sounded themes of unity and common ground and spent nearly two hours fielding questions and engaging in discussions with the leaders.

"We have devised a system — we have nurtured and maintained it now for 200 years — in which people can reconcile their differences and come to a consensus

and an agreement which will push the country forward," Clinton said. "So we are enlarged when we come to agreement after honest debate in the right way. We are diminished if, in the way we treat each other, we preclude the possibility of resolution and going forward," he added.

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—PRESIDENT CLINTON

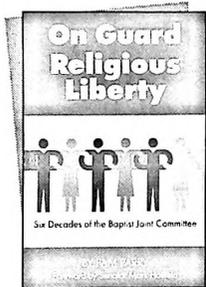
Legal immigration has served the nation well, he said, noting that the United States has "hundreds of different racial, ethnic, and religious groups."

"Against the background of what you see in Bosnia, Rwanda, Northern Ireland,

the Middle East, all of these things, these destructive impulses people have, how can we prove in America that we can all get along — without giving up our basic beliefs but in finding a ground of mutual respect?" Clinton asked. "It seems to me that that may be the single most significant decision facing the United States."

Elaine Smith, president of the American Baptist Churches U.S.A., said Clinton called religious leaders together "not only to speak to us, but to listen to what we had to say." She said it showed "a great deal of vision" that Clinton has made the breakfast meeting with religious leaders a regular event.

Brian Harbour, pastor of First Baptist Church in Richardson, Texas, and Clinton's former pastor, said Clinton emphasized the need for respect in the midst of diversity. "It is becoming more evident what I have known for years since I was his pastor — that he is a committed Christian man whose faith influences and energizes everything he does," he said. ▴



"While the State earns most of our repudiation today, it is not alone in turning its back to religious liberty. The ecclesiastical authority of the institutional church has more than once shown dissenters little of God's mercy, or His love. It was the clenched hand of the established church that drove the famous Baptist Roger Williams into Rhode Island in search of freedom to worship.

"Unlike John Bunyan and Roger Williams, I have come to naturally expect religious liberty, and under our Constitution, it is a freedom each American has the right to demand. But sometimes, however unobtrusively or even unintentionally, there are moments when our religious liberties are put in jeopardy. Therein lies the purpose of the Baptist Joint Committee: struggling to ensure that what so many take for granted is never taken away."

— **Sen. Mark Hatfield**  
in foreword to

*On Guard for Religious Liberty: Six Decades of the Baptist Joint Committee*  
a new Smyth & Helwys book by Pam Parry;  
available from the BJC and  
Smyth & Helwys for \$8.95

## High court rejects N.Y. bid to reinstate prison program

New York prison officials have lost their bid to condition expanded family visitation privileges on participation in a religion-based alcohol and substance abuse program.

The U.S. Supreme Court refused to review a lower court ruling that the visitation policy violates the constitutional separation of church and state.

Inmate David Griffin challenged the policy, claiming that the alcohol and substance abuse treatment program (ASAT) was based on the religious principles embodied in Alcoholics Anonymous programs.

Two lower New York courts sided with prison officials. But the state's top court ruled last summer that requiring prisoners to participate in a religion-based ASAT program to earn expanded visitation rights violates the Constitution.

The New York court said that the dominant theme of Alcoholics Anonymous' 12-Step program is religious. The court noted that five of the 12 steps refer to God. The AA program, the court said, includes confessing to God "the nature of our wrongs" and the acknowledgement of "a decision to turn our will and our lives over to the care of God as we understand him."

## High court rejects appeal of Bible club ruling

Students at a New York public school have won their dispute over whether their after-hours religion club can limit its leadership to professed Christians.

The U.S. Supreme Court declined to hear school officials' claim that the club's leadership posts should be open to all students.

In 1993 Emily Hsu and another student sought to form the "Walking on Water" Bible club at Roslyn High School in New York. Officials eventually approved the club's application to meet after hours, but only on the condition that the club's proposed constitution drop the requirement that officers be professed Christians.

School officials based their decision on a district-wide policy barring discrimination based on race, sex or religion.

In 1994, Emily Hsu and her brother, Timothy, filed a lawsuit claiming that forcing the club to comply with the non-

discrimination policy violated their rights under the Equal Access Act of 1984, the First Amendment and the Religious Freedom Restoration Act of 1993.

A federal district court sided with the school district. It held that by enforcing the nondiscrimination policy, the district permitted the Walking on Water Club to meet "on the same basis" as other clubs.

But the 2nd U.S. Circuit Court of Appeals disagreed, saying that the club's religion-based leadership requirement is similar to a chess club's eligibility requirement based on chess.

"Equal treatment should mean that the Walking on Water Club enjoys the same latitude that other clubs may have in determining who is qualified to lead the club," the appeals court concluded.

The appeals court also rejected arguments that exempting the club from its nondiscrimination policies would give the Bible club a special benefit in violation of the First Amendment's ban on establishment of religion.

"Exempting the Club from the nondiscrimination policy simply puts the Club on the same footing as non-religious clubs who make distinctions among their members on the basis of commitment," the appeals court said. Δ

## Book Review, Continued from Page 4

particularly evident in the cases being decided by the courts. The legal questions alone, not to mention the theological, are exceedingly complex — more so than at any other time in U.S. history — and every decision handed down is and will continue to be unacceptable to one group or the other. Those who disagree with a decision have a right to protest. This is the cost (or benefit) of living in a democracy.

The conflicts will not be resolved, however, by vacating the First Amendment or scrapping the historic understanding of the "wall of separation" as Thiemann recommends. Until people who differ on moral and religious questions learn to live together in mutual respect, the best way, likely the only way, to function in reasonable peace will be by scrupulously protecting and equitably applying the principles inherent in the Constitution and spelled out in the First Amendment.

— Alan Neely

*Henry Winters Luce Professor of Ecumenics and Mission, Emeritus  
Princeton Theological Seminary*

# Church-State Intersection

*Melissa Rogers*

Associate General Counsel



The U.S. Supreme Court has set oral argument in *City of Boerne v. Flores* for February 19. The case involves the right to attend the Roman

Catholic Mass in St. Peter Church in Boerne, Texas. Built in 1923, the church is now far too small to house all of its parishioners. When the church requested permission to expand its building, the city denied the request. The city said that the church could not modify the building due to its existence in a historic landmark district established by the city in 1991. The city's position effectively requires the Archbishop to abandon St. Peter and build a new church elsewhere, or to continue turning worshippers away from Mass. The church sued the city under the Religious Freedom Restoration Act (RFRA). The city responded by claiming that RFRA is unconstitutional, and thus it was not bound by the act.

The only issue presented to the Supreme Court for review is whether RFRA is constitutional. After it rules on this issue, the court will send the case back to the Texas trial court. The trial court will then decide whether the church can expand its building.

RFRA's opponents incorrectly argue that the act violates the separation of powers, federalism and the Establishment Clause.

**CLAIM:** RFRA violates the separation of powers doctrine, the constitutional principle requiring the three branches of government to refrain from trespassing on each other's functions. By enacting RFRA, the legislative branch of government, Congress, usurped the power of the judicial branch, the Supreme Court. In other words, only the Supreme Court can alter the level of protection for free exercise rights.

**RESPONSE:** The Constitution gives Congress as well as the Supreme Court

power to protect our liberties. And while Congress cannot weaken constitutional rights, it can strengthen them through legislation. Congress' passage of the act did not "overrule" the Supreme Court or otherwise displace the court from its rightful station as ultimate interpreter of the Constitution. RFRA simply creates a right by law where the Supreme Court declined to recognize a right under the Constitution. This is not the first time Congress has exercised this power. For example, when Congress passed the Voting Rights Act of 1965, it raised the level of protection for certain voting rights despite the fact that the Supreme Court had previously declined to do so. The Supreme Court subsequently upheld this exercise of congressional power.

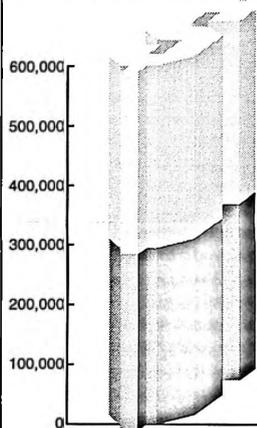
**CLAIM:** The act contradicts federalism, the constitutional principle requiring the federal government to respect the sovereignty of state governments. Because RFRA may sometimes require states to exempt religious adherents from their laws, Congress has improperly interfered with state affairs.

**RESPONSE:** The Constitution gives Congress broad latitude under the 14th Amendment to prevent states from restricting certain individual liberties, including the right to religious liberty. RFRA is well within this power.

**CLAIM:** RFRA violates the Establishment Clause. In other words, RFRA improperly enlists the government in advancing religion.

**RESPONSE:** The Supreme Court has recognized that legislatures may shield religious exercise from governmental interference. When the legislature does this, it is not itself advancing religion; it is accommodating religion by lifting burdens on religious people and institutions so that they can advance their religion. Moreover, RFRA specifically states that it has no effect whatever on the Establishment Clause. Δ

## Endowing the Baptist Joint Committee



### Nearly half way

Through the first week of January, **\$295,000** has been given or pledged toward the Baptist Joint Committee's \$600,000 endowment goal.

Free and faithful Baptists are giving in many ways. Sending \$1,000 and pledging \$1,000 in each of the next two years, the president of a Baptist university writes:

"Obviously, we get lots of chances to make contributions ..., but the cause is just and meritorious. Thanks for all your efforts."

**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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# Book Review

## Religion in Public Life: A Dilemma for Democracy

Robert F. Thiemann, *Georgetown University Press, Washington, D.C., 186 pp., \$17.95.*



The author, dean of the Harvard Divinity School, joins the current debate regarding the meaning and implications of the First Amendment to the Constitution by attempting to delineate the proper role of religion in our theologically pluralistic democracy. What consideration, he asks, should be given to religiously based moral opinions and beliefs in U.S. public life? The question is legitimate, but Thiemann's response is dubious and troubling. It is dubious because he asserts that legal proscriptions of state-sponsored religion are widely seen as government hostility toward religion. His response is troubling because he contends that the traditional understanding of separation of church and state is outmoded and should be discarded in favor of a policy whereby government would openly encourage religious activity or at least accommodate religious practices and symbols in tax-supported venues.

Those who know something about history and are committed to protecting religious freedom for everyone will be dismayed by Thiemann's repudiation of the historic understanding of separation of church and state on the basis that it no longer accurately describes or reflects our social and religious reality. It never has. "Church" in this context has always encompassed the total spectrum of religious communities and institutions in this country, and most Americans understand this. Likewise, the reason our

republic's founders established "a wall" of separation was to assure freedom and avoid the enmity, persecution, prolonged wars and suffering that religious conflict had provoked for centuries. They believed that guaranteeing freedom of conscience and separation of church and state was the most viable way to achieve this.

Thiemann appropriately laments the deep divisions in our society that have arisen over such questions as affirmative action, equal rights, military expenditures, prayer in the public school, welfare and abortion. Also he is on the right track in calling for civility when discussing these issues. He appears, however, to idealize our pre-1950s "consensus." There was much more consensus then than now, and that kind of consensus could be achieved again if women, Blacks, Hispanics, Asians, Native Americans, gays and others would cease insisting that the United States live up to the ideals spelled out in the Constitution. Consensus would come easily if everybody were willing to return to the *status quo ante*. But herein lies the nub of our dilemma. Our country is more heterogeneous than it has even been, and minorities are no longer willing to walk or ride in the back of the bus. Our problem therefore is not the result of an outdated understanding of the proper relation of church and state, as Thiemann repeatedly insists, nor does it stem from a misapplication of the "wall of separation" metaphor. The "wall" has always been exceedingly porous.

The religious and moral issues we all face today are more complicated and difficult to resolve than in the past. This is

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