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REPORT FROM THE CAPITAL

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NewsMakers

◆ Gov. Fob James of Alabama told a group of Southern Baptists that federal courts would have to "run over the state troopers and the National Guard" before removing a replica of the Ten Commandments from a state courtroom. Circuit Judge Charles Price of Montgomery County had ordered Etowah County Circuit Judge Roy Moore to stop opening court sessions with prayer but had allowed the display to stay in the courtroom. After viewing the display, however, Price said it is "purely religious" and ordered it to be removed or modified.

◆ H. Russel Holland, a federal district court judge in Alaska, has ruled that landlords who have religion-based opposition to pre-marital sex may refuse to rent property to unmarried couples. Three Christian landlords used the Religious Freedom Restoration Act to argue that they should be exempted from a law banning rental discrimination based on marital status.

◆ Jonathan Gallagher of the South England Conference of Seventh-day Adventists said a European Parliament resolution urging member states to respect Sunday as a day of rest would discriminate against many minority religions. "To try to legislate religion is dangerous," he said. Δ

High court hears challenge to key religious freedom law

In what may prove to be a landmark church-state case, U.S. Supreme Court justices sparred with lawyers Feb. 19 over whether Congress went too far when it passed a 1993 law making it harder for government to restrict religious practice.

At issue is the constitutionality of the Religious Freedom Restoration Act, a law Congress enacted after the high court's 1990 ruling in *Employment Division v. Smith* made it easier for government to justify burdens on religion caused by neutral laws. Under RFRA, government can substantially burden religious practice only when it can show it has a compelling reason to do so.

The Supreme Court is examining RFRA in a dispute involving St. Peter Catholic Church's attempt to expand a sanctuary located in a historic preservation district of Boerne, Texas. After Boerne officials rejected the church's expansion request, Archbishop P.F. Flores of San Antonio filed a claim under RFRA against the city.

"This case is not about religious liberty. This case is about federal power," Boerne's attorney Marci Hamilton told the justices.

She called Congress' enactment of RFRA a "brazen attempt to reinterpret the Free Exercise Clause" and the "worst of legislative overreaching."

Defending RFRA was University of Texas law professor Doug Laycock, who told justices that Congress acted within

its constitutional authority in passing RFRA.

Laycock and other RFRA supporters argue that Congress is authorized under Section 5 of the 14th Amendment to expand enforcement of constitutional

rights, including the First Amendment's religious liberty protections, as long as it does so in a manner consistent with the Constitution.

In the past, the high court has upheld other laws enacted under Section 5, including a

law barring literacy tests for voters.

Laycock told the justices that RFRA was not an effort by Congress to usurp judicial authority. The power to determine what constitutes a "compelling interest still resides with this court," Laycock said, pointing out that "this is not a power grab" by Congress.

Arguing that RFRA is less intrusive on states than some laws previously upheld by the high court, Laycock said, "RFRA is a mile wide and an inch deep."

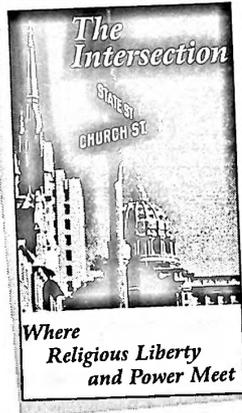
In addition to arguments against RFRA raised by Hamilton on behalf of Boerne, justices heard Ohio's objections to the law from state Solicitor Jeffrey Sutton.

Sutton told justices that states want to "overprotect" religious exercise but do not want Congress telling them how. He predicted states would pass religious liberty protection of their own if RFRA is struck down by the Supreme Court.



"This is not a power grab."

— Doug Laycock



It's not just for churches

Religious liberty is not just a church issue. Ask Lanny Voss. The Plainview, Texas, attorney recently made that point when he showed *The Intersection* at a Rotary Club meeting in his hometown. In that 13-minute video, Bill Moyers and James Dunn discuss the implications of religious liberty and separation of church and state — implications that go beyond the walls of Baptist churches.

"It peaked curiosity about things people had not thought about," said Voss, who now plans to show *The Intersection* at another Plainview service club.

For your copy of this video and a packet of discussion materials send \$10 plus \$3 shipping to:

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Albright addresses panel on religious freedom abroad

At the first meeting of the U.S. State Department's Advisory Committee on Religious Freedom Abroad, Secretary of State Madeleine Albright said religious freedom issues belong in any comprehensive discussions about U.S. foreign policy.

Albright said that "the right to profess and practice one's religion is recognized in the Universal Declaration of Human Rights, and to ignore or dismiss violations of that right would degrade respect for human rights generally."

She also said freedom of religion is central to America's history. Of three achievements Thomas Jefferson wanted inscribed on his tombstone, one identified him as the originator of a law ensuring religious freedom in Virginia, she said.

"Jefferson understood ... that the struggle for religious liberty could not end when one's own freedom was assured," Albright said.

The advisory committee, which will offer reports and recommendations to the administration, includes 20 religious leaders. Some members will deal with religious persecution abroad and others will focus on conflict resolution in areas where religious enmity is a threat to peace.

A statement adopted by the committee at the Feb. 13 meeting encouraged the government "to ensure that support for religious freedom worldwide is a paramount factor in this policy-making process."

The scope of the committee's work has prompted much debate.

Joan Brown Campbell, general secretary of the National Council of the Churches of Christ in the U.S.A., said she was concerned earlier that the committee would focus only on Christian persecution, but is now "very comfortable at the broad commission of the committee."

Former Southern Baptist Convention President Jim Henry said that he was more encouraged after the meeting that Christian persecution would be a major focus. "I think that the Christians are the most widely persecuted," he said.

John Shattuck, chair of the advisory committee and assistant secretary of the Bureau of Democracy, Human Rights and Labor at the State Department, said that when a person of a particular faith defends someone from another faith, the "power of those statements is much

greater than when someone from within the religion is calling attention to the persecution of that religion."

Clinton continues call to 'repair breach'

Addressing the annual National Prayer Breakfast, President Clinton called on Americans to be "repairers of the breach" by working for the poor and ridding politics of its "toxic atmosphere of cynicism."

Sticking with a theme from his recent Inaugural and State of the Union addresses, Clinton cited Isaiah 58:12 as a reminder "that we should all be repairers of the breach."

He urged listeners to help repair the breach by providing jobs for as many as 4 million adults who will lose benefits under welfare reform legislation enacted last year.

Clinton called on private employers, churches and community nonprofit groups to hire people off welfare. "If you don't, this whole thing will be a fraud, and we will not have repaired the breach," he said.

Politicians are in the breach, Clinton said, noting that the nation's capital "is gripped with people who are self-righteous, sanctimonious and hypocritical.

"All of us are that way sometimes. I plead guilty from time to time," Clinton said, adding that too much effort is spent by politicians "trying to get even."

Amendment would exclude inmates from RFRA's scope

A bill introduced in the U.S. Senate would exempt prisoners from protections offered by a 1993 law Congress passed to limit government's ability to restrict religious practice.

Saying that prisoners have abused "these special protections," Sen. Harry Reid, D-Nev., introduced an amendment to the Religious Freedom Restoration Act to prohibit its application to any prisoner.

The bill faces an uphill battle because Sen. Orrin Hatch, R-Utah, chairman of the Judiciary Committee, opposes removing prisoners from the scope of RFRA.

Reid introduced the same bill last Congress, but accepted a less-stringent measure that restricts prisoners' ability to file frivolous claims, a Reid spokeswoman said.

Reflections

James M. Dunn

Executive Director



... As I was saying, like ole Fergus, Brooks Hays' dog, we are all sometimes liberal, sometimes conservative.

Some issues, however, cannot be neatly pegged on the conservative-liberal clothesline. They are neither or both. Some mighty good folks with noble motives and great track records of caring for "the least of these" have gotten all tangled up with labels.

It's so silly it's sad to see fellow sojourners snookered by flimsy arguments to get tax money to advance "faith-based" programs. It hurts to see evangelicals who care about social action, and who ought to know better, ready to sell their souls for a mess of voucher pottage.

There are a batch of basic beliefs, conservative concepts, that should inoculate us against voucher fever.

What conservative doesn't want to conserve the U.S. Constitution? Voucher schemes are against the law. Justice Hugo Black said the phrase "no law respecting an establishment of religion" meant two things: "no" and "law." How can any solid citizen be for taxes that advance religious teaching? How can any half-awake citizen believe that any windfalls for a religious institution would not be shuffled from one pocket to another? "No law" means "no tax law," at least.

Then, true conservatives may be slow to change but they support racial justice and civil rights. The fuel that drives much of the choice craze is a regularly denied but pervasive push for segregated academies. Oh, I know, the charters say otherwise and there will be scholarships for poor kids (especially athletes) of all races, but housing patterns, transportation challenges and economics make many, maybe most, little church-based schools almost white. If you spent your life in the South you know it's so. *De facto* discrimination is a fact of life. I don't know a Yankee yet who understands that.

Political common sense says "get government off our backs." Yet, Barry Goldwater says he "is convinced that the religious right threatens to betray an essential principle of conservatism — the notion that government should stay out of citizen's private lives." Watch out for repressive regulations! Here they come riding piggyback on any voucher pig.

Hey! I thought fiscal responsables fought entitlements. Economic subsidies, whether for medical care, housing or education, typically lead to higher prices. Timothy Lamer suggests that school choice would become a sacred-cow program that grows every year: another inflationary, escalatory entitlement. Who needs it?

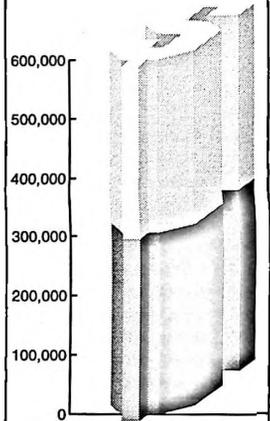
Social policy with voucherized support for sectarian schools would either non-discriminatorily provide funds fairly for all religions (and that would include seminal, sorta, semi, pseudo and someday religious outfits) or it would be necessary for government to determine the deserving and the undeserving "faith-based" programs. Both alternatives are bad. It was the Roman Empire that had *religio licita* and *religio illicita*.

The common school has become a "custom once solemnly established," to use a Lincoln phrase. Do we want a nation in which children grow up knowing others unlike themselves, sharing a civilizing culture, learning to be citizens of a community? Or do we want to break apart and Balkanize the nation's most treasured natural resource — her children? Surely we do not want to try to escape the social responsibility we share for public education.

Abraham Lincoln said, "What is conservatism? Is it not adherence to the old and tried, against the new and untried?"

Let's stick with the conservative course that avoids experiments like voucher schemes. We cannot gamble with children. Δ

Endowing the Baptist Joint Committee



Churches giving, too

Free and faithful Baptist individuals are giving to the Baptist Joint Committee's endowment drive. So are free and faithful Baptist churches.

An American Baptist Churches congregation in Florida recently voted to make an endowment gift of \$2,000.

"We salute the work of the Committee over many years and want to support your endowment fund initiative," the pastor wrote.

Gifts and pledges now total \$306,000.

**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 Conference
- ◆ Progressive National Baptist Convention Inc.
- ◆ Religious Liberty Council
- ◆ Seventh Day Baptist General Conference
- ◆ Southern Baptist state conventions/churches

REPORT FROM THE CAPITAL

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Book Reviews

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Court weighs RFRA

(Continued from Page 1)

Arguing for RFRA on behalf of the Clinton administration was acting Solicitor General Walter Dellinger, who told justices that the case does not require the high court "to break any new ground."



"The court was red hot."

— J. Brent Walker

RFRA bars government from treating religions differently, Dellinger said.

Justice Sandra Day O'Connor asked Dellinger if RFRA would require government to show a compelling reason for a law that taxed the outside business income of churches if the record showed that only two major churches had such income.

Dellinger said the answer is no because taxing the outside business income of a church would not create a "substantial burden" on religion.

Dellinger also responded to suggestions that religious liberty claims should be handled on a case-by-case basis rather than in the sweeping, preventive manner employed by RFRA. Congress was concerned, he said, that resolving free exercise violations on a case-by-case basis would favor large, established religions.

At a press conference following the argument session, Hamilton said RFRA "shifts the balance of power over to the churches' side in a dramatic way," and would always give churches a leg up in disputes with governmental bodies.

Baptist Joint Committee General Counsel J. Brent Walker told reporters Hamilton was taking it too far when she claimed churches would always have a

leg up. Churches do not always win, he said. But without RFRA, they will almost always lose, he added.

Walker said RFRA merely "tipped the playing field back to the way it was before Smith."

Throughout the 70-minute session, comments and questions raised by justices reflected a degree of skepticism about the arguments made by both sides.

Walker said he was surprised by many of the court's questions.

"The court was red hot," he said. "Not only were the questions rapid and many, but some of them were clearly irrelevant to the issues."

He said that although he is still "optimistic that at least five justices will come together to uphold" RFRA's constitutionality, "the lack of focus in the questioning makes it more difficult to predict how the justices will vote."

Walker added, "Declaring RFRA unconstitutional for lack of power under Section 5 would call into question most of the civil-rights legislation passed since Reconstruction."

The case drew friend-of-the-court briefs supporting RFRA from many religious groups, including the Baptist Joint Committee; members of Congress; the American Bar Association; the NAACP Legal Defense Fund; and attorneys general from Connecticut, Maryland, Massachusetts, New York and Texas.

A decision is expected by the end of the current court term in June. Δ



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