



REPORT FROM THE CAPITAL

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NewsMakers

◆ Charles Colson, Watergate figure and founder of Prison Fellowship Ministries, is opposing a bill that would exempt prisons from having to comply with the requirements of the Religious Freedom Restoration Act. He said if religious liberty "is not secure for prisoners, it is not secure for anyone." He added that it is "easy to restrict the rights of unpopular and vulnerable people such as prisoners. But what group will be next?"

◆ Rep. Sheila Jackson Lee, D-Texas, predicted that the debate over a proposal to amend the religious protections of the Constitution will be as divisive as the McCarthy hearings. "My great and serious fear is that my God, my God, here we go again in the United States Congress where I'll be asking you, 'Are you a Christian?' I'll be asking you, 'Do you believe in Jesus Christ?' I'll be asking you, 'Are you truly an American?'"

◆ Bishop Vinton Anderson of the African Methodist Episcopal Church, said government is wrong to suggest churches should do more for the poor as welfare reform is enacted. Churches lack the means to deal with the problem, he said, "then the church will get a black eye. We will be seen as failing to do something when we are not equipped to do it." Δ

Lawmakers, religious groups spar over religion amendment

After weeks of negotiations and text revisions, Rep. Ernest Istook, R-Okla., introduced the "Religious Freedom Amendment," sparking debate among House members and religious groups over the need to change the Constitution's religious liberty protections.

Istook introduced the measure May 8 with 106 Republican and 10 Democratic co-sponsors. He wants a vote on the measure this fall following hearings this summer. To be ratified, the amendment would have to be approved by a two-thirds vote in each house of Congress and accepted by three-fourths of the states in the union.

The measure would allow school-sponsored prayer and religious symbols on government property. It would also enable religious groups to receive tax dollars, opening the door for school voucher proposals and funds for religious groups to provide social services.

Istook says the measure is needed to correct judicial misinterpretations of the First Amendment. He said religious speech should be treated the same as any other speech.

At a May 8 press conference, House opponents said that the fundamental purpose of the amendment is to eliminate the separation of church and state.

Rep. Robert Scott, D-Va., said that if the amendment were ratified, it "would represent the greatest retreat in religious liberties this country has ever experienced."

Rep. Chet Edwards, D-Texas, said it would mark the first time in history that the Bill of Rights has been amended. "If history has taught us nothing else, it has taught us that the best way to ruin religion is to politicize it. Our founding

fathers deleted the mentioning of God in our Constitution, not out of disrespect, but out of total reverence."

Rep. Jerrold Nadler, D-N.Y., said amendment supporters had misrepresented court decisions on religion in public schools.

"Today, right now, the right to engage in voluntary prayer in schools is most certainly protected by the Constitution," he said. "The courts have said so, the U.S. Department of Education has said so, and so have many of the organizations supporting the Istook amendment."

Rep. Stephen Horn, R-Calif., said that concerns raised by "alleged incidents of suppression of students' and others' religious speech are best dealt with through better education of the teachers and administrators ... and not with the radical step of amending our Constitution."

At the press conference, Bill Wilson, pastor of First Baptist Church in Waynesboro, Va., and a member of the Baptist Joint Committee board, said that he wanted "politicians to keep their hands out of my business. The religious education of children is my job and not theirs. And every time I have experienced the government trying to help me do my job ... it's been trouble." Δ



"The best way to ruin religion is to politicize it."

— Rep. Chet Edwards

Ohio court rejects use of vouchers at religious schools

An Ohio appeals court has struck down the nation's only active program that allows the use of tax-funded vouchers to attend religious schools.

Reversing a lower court ruling, Ohio's 10th District appeals court said the voucher program enacted by lawmakers in 1995 violates the First Amendment's requirement of church-state separation, as well as provisions of the Ohio Constitution.

The pilot voucher program was enacted after a federal court ordered the state to take over administration of the troubled Cleveland public schools.

The program provided "scholarships" of up to \$2,500 for students to attend "alternative" schools. During its first year of implementation, about 2,000 scholarships were awarded. About 80 percent of the 53 private schools signed up to participate were sectarian.

Two groups of taxpayers filed suit challenging the program. Franklin County Common Pleas Judge Lisa Sadler sided with state officials. But the appeals court said that the total lack of participation by public schools, coupled with the high percentage of sectarian schools in the program, leaves parents without a meaningful choice.

The appeals court concluded that the voucher program provides "direct and substantial, nonneutral government aid to private schools" and "has the primary effect of advancing religion." Δ

News & Comment ...

Clergy support Alabama 'Commandments' ruling

A group of Alabama Baptist ministers has asked the state's top court to uphold a ruling ordering Etowah County Circuit Judge Roy Moore to remove a courtroom display of the Ten Commandments and to halt his practice of opening court sessions with clergy-led prayers.

Nine Baptist ministers and one lay person joined 42 clergy from other faiths in a friend-of-the-court brief that asks the Alabama Supreme Court to uphold the ruling against Moore's practices.

Also joining the interfaith brief were the Baptist Joint Committee, the Presbyterian Church (U.S.A.), the Interfaith Alliance and the Union of American Hebrew Congregations.

"Church-state separation is not an anti-religious concept but instead protects religious diversity and equality by ensuring that government remain neutral on religious matters," the interfaith brief states.

The brief argues that the courtroom prayers and display of the Ten Commandments "indicate official preference for and favoritism of Christianity, if not Protestantism, over all other faiths."

The nation's high court has "conclusively held that the religious majority may never use the machinery of the state to practice its beliefs," the clergy argue in their brief, written by Americans United for Separation of Church and State attorney Steven K. Green, along with Birmingham, Ala., attorney Jerome A. Cooper and Baptist Joint Committee attorneys J. Brent Walker and Melissa Rogers.

Walker said the religious groups joined the brief because "we wanted the Supreme Court of Alabama to know that separation of church and state is good, not bad, for religion.

"We also wanted the court to be aware of the profound theological qualms that people of faith have about using the Ten Commandments as a civil icon," Walker added.

Baptist clergy signing the brief include the Rev. Gary P. Burton, moderator of the Cooperative Baptist Fellowship of Alabama; the Rev. Dale Chambliss, Southside Baptist Church, Birmingham; the Rev. Chris Hamlin, 16th Street Baptist Church, Birmingham; the Rev. Roger Lovette, Baptist

Church of the Covenant, Birmingham; the Rev. Howard Roberts and Phyllis Parish Smith, First Baptist Church, Auburn;

The Rev. Hugh Tobias and the Rev. Michael Wilson, Trinity Baptist Church, Madison; the Rev. James F. Walters, First Baptist Church, Mobile; and the Rev. L. Dudley Wilson, retired, Mobile.

Appeals court upholds Georgia 'reflection' law

A Georgia law that requires public school classrooms to open with a period of "quiet reflection" does not violate the constitutionally required separation of church and state, a federal appeals court ruled.

Affirming a lower court ruling, the 11th U.S. Circuit Court of Appeals rejected a challenge to the 1994 statute by a Gwinnett County teacher who refused to comply with the law.

Brian Gillespie Bown was dismissed from his teaching post at South Gwinnett High School after refusing to follow school officials' instructions to comply with the law. Bown filed suit, charging that the law violates the First Amendment's ban against governmental establishment of religion.

The law requires that teachers conduct "a brief period of quiet reflection for not more than 60 seconds" at the beginning of each school day. It states that the moment of silence "is not intended to be and shall not be conducted as a religious service" but is an opportunity for "silent reflection on the anticipated events of the day."

Rejecting Bown's claim, the appeals court applied a three-part test used by the U.S. Supreme Court to determine when government actions establish religion.

The appeals court concluded that the law has a secular purpose, that it neither advances nor inhibits religion and that it does not create an excessive governmental entanglement with religion.

Bown had argued that the law was infused with a religious purpose by a section stating that it does not "prevent student initiated voluntary school prayers at schools or school related events."

The appeals court disagreed, saying that section merely clarified that the law would not be used to prevent student-initiated prayers protected by the Constitution.

Church-State Intersection

Melissa Rogers

Associate General Counsel



A friend of this agency recently dropped a note opining that the Istook religious freedom amendment is a big "mistook." He's right.

The Istook amendment is unnecessary.

God has not been kicked out of public schools, and religion has not been zoned out of the public square. Under current law, students can pray silently at any time — even out loud and in groups as long as they are not disruptive. Student religious clubs, like non-religious clubs, can meet on school property to pray or read their Bibles. Religious speech in the public square abounds. For example, current law permits citizens to talk about their religious convictions in town hall meetings, and religious leaders can hold rallies in public parks.

The Istook amendment is dangerous.

◆ The Istook amendment, for example, would allow students to use the school intercom to lead captive classroom audiences in prayer, thus interfering with parents' rights to raise their children according to their religious faith. This would create a host of troubling questions: Whose prayer will be prayed? Which faith groups will get more days for their prayer? Who will assign prayer opportunities? What will the children who object to the prayer do during prayer time?

◆ The Istook amendment would appear to permit a judge or jurors to lead the courtroom in prayer, government to erect permanent crosses in front of all government buildings, legislators to declare Mississippi a "Baptist state," Utah a "Mormon state" and the United States a "Christian nation." Allowing government to endorse religion in this way turns religion into a political tool

and sends the message that those who don't hold a certain faith are outsiders, not full members of the political community. There are many divisions in our country today. Although government cannot heal all of these divisions, it should not be in the business of driving us farther apart.

◆ The Istook amendment would permit — and sometimes require — government to fund thoroughly religious groups in the same way it funds secular groups. Current law allows religiously affiliated groups (those that have ties to a religious body but are not thoroughly religious, such as Lutheran Social Ministries, Catholic Charities) to receive tax money to provide secular services. However, current law prohibits pervasively sectarian groups (those in which religion pervades the institution, such as churches, temples, mosques, parochial schools) from receiving tax money because, by definition, the government would then be funding and advancing religion itself.

The Istook amendment would obliterate this distinction and allow tax money to go to whatever religious institution(s) the government chose. When the government uses tax money to subsidize religion it not only violates taxpayers' consciences, it also creates excessive entanglement between church and state (with government money comes government restrictions, monitoring and accounting). Further, government-subsidized religion weakens religion's autonomy and triggers divisive battles among legislators and religious groups about who gets a cut of the limited money in the public purse.

In short, people of faith don't need or want government-endorsed or government-subsidized religion. The Istook amendment should be rejected by Congress and the American people. Δ

Religious Freedom Amendment

H.J. Res. 78

To secure the people's right to acknowledge God according to the dictates of conscience: The people's right to pray and to recognize their religious beliefs, heritage or traditions on public property, including schools, shall not be infringed. The government shall not require any person to join in prayer or other religious activity, initiate or designate school prayers, discriminate against religion, or deny equal access to a benefit on account of religion.

Introduced by
Rep. Ernest Istook, R-Okla.
May 8, 1997

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

REPORT FROM THE CAPITAL

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Book Reviews

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Dean Kelley, religious liberty advocate, dies

Dean M. Kelley, one of America's pre-eminent religious liberty advocates, died May 11, 1997.

For 30 years (1960-1990), Kelley served as Executive for Religious Liberty for the National Council of the Churches of Christ. In retirement, he served as NCC Counselor on Religious Liberty.

Kelley's 1977 book, *Why Churches Should Not Pay Taxes* is the "textbook" on that issue, said Oliver S. Thomas of Maryville, Tenn., the NCC's Special Counsel for Civil and Religious Liberties.

"Dean, more than any one person in the United States, is responsible for religious organizations retaining their tax-exempt status," Thomas said.

When he died, Kelley was nearing completion of a five-volume treatise, *The Law of Church and State in America*, to be published by Greenwood Press. Colleagues have pledged to complete the work, begun more than 20 years ago.

Joan Brown Campbell, NCC general secretary, praised Kelley's "outstanding leadership in the area of church-state relations. His scholarship and diligence on behalf of the unique American treasure of free exercise of religion rendered a distinguished career in service to the church."

Campbell said Kelley's "love for the church" also "led him to ponder the loss of membership in mainline churches." His 1972 volume, *Why Conservative Churches Are Growing*, "remains a classic in the field," she said.

Kelley's contributions to religious liberty drew praise from colleagues.

"Dean Kelley was a towering figure in American religion," said Baptist Joint Committee Executive Director James M. Dunn. "He was passionately committed

to real religious freedom for everyone. As a good Methodist, he knew that religion of the heart was all that counted with God and he fought and thought with all his might to guarantee that every individual had freedom of conscience."

National Association of Evangelicals Counsel Forest Montgomery called Kelley "a Christian with a gentle spirit, a willingness to listen and readiness to act. He had the ability to seek consensus without sacrificing principle, a talent exceeded only by his gift of total recall."

Earl Trent, house counsel for National Ministries of American Baptist Churches in the U.S.A., credited Kelley with influencing his own commitment to religious liberty issues.

"I found him to be scholarly, prophetic and honest. ... he had an appreciation of how restrictions on unconventional religious groups would affect us all. He was a principled person," Trent said.

Thomas, former general counsel at the BJC, said Kelley was responsible for mentoring more religious liberty advocates than anyone else in the nation.

"We can take comfort in the fact that Dean Kelley's vision of full religious liberty is taking hold," he said. "We are a genuinely pluralistic society in which we try to respect others' viewpoints. He was a man of principle who understood that each of us has a stake in each other's religious liberty. What applies to you will eventually apply to me."

Memorial contributions may be made to the NCC and designated for the NCC's Committee on Religious Liberty. Gifts should be mailed to the NCC General Secretary, Room 880, 475 Riverside Drive, New York, NY 10115. Δ



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