Baptist Joint Committee
PROCLAIM LIBERTY

REPORT FROM THE CAPITAL

Volume 52, No. 13 July 8, 1997

NewsMakers

◆ **Daniel E. Weiss**, general secretary of the American Baptist Churches in the U.S.A., said it will be more difficult for people to worship "without a justifiable concern that their government may unduly seek to influence or restrict how they live out their faith," after the Supreme Court struck down the Religious Freedom Restoration Act.

◆ The Religious Liberty Council elected three new representatives to serve on the Baptist Joint Committee Board: **June H. McEwen**, assistant director of the University Honors Program at the University of Tennessee at Chattanooga; **Julie Pennington-Russell**, pastor of the 19th Avenue Baptist Church in San Francisco; and **Daniel Vestal**, coordinator of the Cooperative Baptist Fellowship. Δ

Inside ...

Supreme Court strikes down popular religious freedom law

Congress lacked the power to enact a 1993 law that made it harder for government to restrict religious practice, the U.S. Supreme Court ruled June 25.

The high court's 6-3 ruling dismayed lawmakers and religious groups who had worked to pass the Religious Freedom Restoration Act in response to a 1990 ruling by the high court that sharply curtailed protection for religious practice.

High Court: Congress exceeded its authority in passing RFRA

At a Capitol Hill news conference, lawmakers who helped enact RFRA called the court's decision "disastrous," "disappointing" and an "assault on religious liberty."

A Baptist church-state attorney who helps lead the Coalition for the Free Exercise of Religion predicted dire consequences for religious liberty.

"This decision opens the door to churches being zoned out of downtown areas, mission programs being terminated through onerous government regulations and other intrusive forms of government control of people of faith and houses of worship," said Melissa Rogers, associate general counsel at the Baptist Joint Committee.

Rogers said that the "least dangerous branch of government has turned out to be the most dangerous branch for those who value religious freedom."

Congress enacted RFRA after the high court ruled in *Employment Division v. Smith* that neutral, broadly applied laws that burden religious practice do not have to be justified by a compelling governmental interest.

Under RFRA, government can substantially burden the practice of religion only if it uses the least restrictive means available to achieve a compelling governmental interest.

RFRA reached the high court in a dispute involving a small Texas city and a local Catholic parish seeking to expand its facility. Noting that St. Peter Catholic Church was situated within a historic preservation district, Boerne officials rejected the church's request for a building permit. The church challenged the denial, citing RFRA's protections.

A federal district court sided with the city, concluding that RFRA exceeded Congress' authority. But the 5th U.S. Circuit Court of Appeals reversed that ruling, holding RFRA to be constitutional.

While Congress can enact laws enforcing the constitutional right to the free exercise of religion, it cannot expand that liberty in ways that usurp the role of the courts or the states, the court said.

"Congress does not enforce a constitutional right by changing what the right is," Justice Anthony Kennedy wrote for the majority.

In a dissenting opinion, Justice Sandra Day O'Connor said the nation's founders "conceived of a Republic receptive to voluntary religious expression, not a secular society in which religious expression is tolerated only when it does not conflict with a generally applicable law." Δ

Quoting

We do not see any perceptible (let alone dispositive) difference in the degree of symbolic union between a student receiving remedial instruction in a classroom on his sectarian school's campus and one receiving instruction in a van parked just at the school's curbside. To draw this line based solely on the location of the public employee is neither "sensible" nor "sound," ... and the court in *Zobrest* rejected it.

Nor under current law can we conclude that a program placing full-time public employees on parochial campuses to provide Title I instruction would impermissibly finance religious indoctrination.

Justice Sandra Day O'Connor
Majority Opinion in *Agostini v. Felton*
June 23, 1997

High court reverses stance on remedial instruction

Overturning its 1985 decision, the U.S. Supreme Court ruled that providing tax-funded remedial education at parochial school campuses is constitutional.

In a 5-4 decision, justices expanded their view of what type of government aid to religious institutions is permissible under the constitutional provisions separating church and state. The ruling stopped far short, however, of endorsing aid to religious schools that would include plans such as vouchers.

Writing for the majority June 23, Justice Sandra Day O'Connor said there was no "logical basis" to conclude that the Title I program is an impermissible subsidy of religion when provided on-campus, but not when offered off-campus.

The justices said that an excessive church-state entanglement need not occur under the New York program.

The high court's 1985 ruling in *Aguilar v. Felton* said that on-site remedial instruction by public school teachers was invalid because it created excessive entanglement between church and state.

Asking the court to reopen and reverse its holding in *Aguilar*, lawyers for the New York City Board of Education and a group of parents argued that providing off-campus instruction has cost the city over $100 million.

Five justices had openly criticized the *Aguilar* decision, leading its opponents to ask the court to use a procedure known as Rule 60(b) to reopen the case.

Rule 60(b) allows courts to relieve a party from a previous ruling if it is "no longer equitable that the judgment" should continue to be applied.

Agreeing with *Aguilar's* opponents, the high court used *Agostini v. Felton* to overturn the 1985 ruling.

O'Connor said recent decisions have signaled a shift in the court's understanding of the criteria used to assess whether aid to religion has the impermissible effect of advancing or inhibiting religion.

The majority said that the court has abandoned the presumption that "the placement of public employees on parochial school grounds inevitably results in the impermissible effect of state-sponsored indoctrination or constitutes a symbolic union between government and religion."

O'Connor, joined by Chief Justice William Rehnquist and Justices Antonin Scalia, Clarence Thomas and Anthony Kennedy, said that "we no longer assume that public employees will inculcate religion simply because they happen to be in a sectarian environment."

Since abandoning that assumption, the high court said that "we must also discard the assumption that pervasive monitoring of Title I teachers is required."

A dissenting opinion written by Justice David Souter and joined by Justices John Paul Stevens and Ruth Bader Ginsburg said the result of the majority's ruling is to "authorize direct state aid to religious institutions on an unparalleled scale, in violation of the Establishment Clause's central prohibition against religious subsidies by the government."

Souter said the line drawn in *Aguilar* to determine impermissible aid to religious schools was a sensible one.

He disagreed with the majority's interpretation of recent Establishment Clause precedents.

Souter said that the rule barring state funding of religion expresses the lesson repeatedly learned in the American past and from other countries that "religions supported by governments are compromised just as surely as the religious freedom of dissenters is burdened when the government supports religion."

A second dissent written by Ginsburg and joined by Stevens, Souter and Breyer disagreed with the majority that Rule 60 (b) was a proper vehicle to rehear the case.

The case was watched closely by both sides of the ongoing debate over the constitutionality of plans to use tax dollars for "vouchers" for students to pay tuition at private and parochial schools.

While the court seemed to be more open to permitting some aid to flow to religious schools, the opinion did not address the idea of vouchers.

Baptist Joint Committee General Counsel J. Brent Walker said the ruling does not establish a precedent for parochial school vouchers or other forms of public aid to religion.

He said the court correctly ruled that excessive entanglement may not inevitably result from an on-site program, but added that the court "never should have heard this case.

"Allowing the petitioners a second bite at the judicial apple establishes an unfortunate precedent which will open the flood gates for re-litigation of final judgments in other cases." Δ

Editors Note: Following are excerpts of the majority opinion in City of Boerne v. Flores *by Justice Anthony Kennedy and of a dissenting opinion by Justice Sandra Day O'Connor. Kennedy was joined by Chief Justice William Rehnquist and Justices John Paul Stevens, Clarence Thomas, Ruth Bader Ginsburg and, in most part, by Justice Antonin Scalia. O'Connor was joined in part by Justice Stephen Breyer. Justice David Souter filed a separate dissent.*

Majority Opinion

◆

Justice Anthony Kennedy

Under our Constitution, the Federal Government is one of enumerated powers. ... The judicial authority to determine the constitutionality of laws, in cases and controversies, is based on the premise that the "powers of the legislature are defined and limited;"...

Congress relied on its Fourteenth Amendment enforcement power in enacting the most far reaching and substantial of RFRA's provisions, those which impose its requirements on the States. ... The parties disagree over whether RFRA is a proper exercise of Congress' §5 power "to enforce" by "appropriate legislation" the constitutional guarantee that no State shall deprive any person of "life, liberty, or property, without due process of law" nor deny any person "equal protection of the laws."

In defense of the Act respondent contends, with support from the United States as *amicus*, that RFRA is permissible enforcement legislation. Congress, it is said, is only protecting by legislation one of the liberties guaranteed by the Fourteenth Amendment's Due Process Clause, the free exercise of religion, beyond what is necessary under *Smith*. ...

Congress' power under §5, however, extends only to "enforc[ing]" the provisions of the Fourteenth Amendment. The Court has described this power as "remedial," ... . The design of the Amendment and the text of §5 are inconsistent with the suggestion that Congress has the power to decree the substance of the Fourteenth Amendment's restrictions on the States. Legislation which alters the meaning of the Free Exercise Clause cannot be said to be enforcing the Clause. Congress does not enforce a constitutional right by changing what the right is. ...

Any suggestion that Congress has a substantive, non-remedial power under the Fourteenth Amendment is not supported by our case law. ...

We now turn to consider whether RFRA can be considered enforcement legislation under §5 of the Fourteenth Amendment.

Respondent contends that RFRA is a proper exercise of Congress' remedial or preventive power. The Act, it is said, is a reasonable means of protecting the free exercise of religion as defined by *Smith*. It prevents and remedies laws which are enacted with the unconstitutional object of targeting religious beliefs and practices. ...

Regardless of the state of the legislative record, RFRA cannot be considered remedial, preventive legislation, if those terms are to have any meaning. RFRA is so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior. It appears, instead, to attempt a substantive change in constitutional protections. ... Remedial legislation under §5 "should be adapted to the mischief and wrong which the [Fourteenth] [A]mendment was intended to provide against."...

RFRA is not so confined. Sweeping coverage ensures its intrusion at every level of government, displacing laws and prohibiting official actions of almost every description and regardless of subject matter. RFRA's restrictions apply to every agency and official of the Federal, State, and local Governments. ... Any law is subject to challenge at any time by any individual who alleges a substantial burden on his or her free exercise of religion.

Justice Kennedy

The reach and scope of RFRA distinguish it from other measures passed under Congress' enforcement power, even in the area of voting rights. ...

The stringent test RFRA demands of state laws reflects a lack of proportionality or congruence between the means adopted and the legitimate end to be achieved. If an objector can show a substantial burden on his free exercise, the State must demonstrate a compelling governmental interest and show that the law is the least restrictive means of furthering its interest. Claims that a law substantially burdens someone's exercise of religion will often be difficult to contest. ... Laws valid under *Smith* would fall under RFRA without regard to whether they had the object of stifling or punishing free exercise. We make these observations not to reargue the position of the majority in *Smith* but to illustrate the substantive alteration of its holding attempted by RFRA. Even assuming RFRA would be interpreted in effect to mandate some lesser test, say one equivalent to intermediate scrutiny, the statute nevertheless would require searching judicial scrutiny of state law with the attendant likelihood of invalidation. This is a considerable congressional intrusion into the States' traditional prerogatives and general authority to regulate for the health and welfare of their citizens.

The substantial costs RFRA exacts, both in practical terms of imposing a heavy litigation burden on the States and in terms of curtailing their traditional general regulatory power, far exceed any pattern or practice of unconstitutional conduct under the Free Exercise Clause as interpreted in *Smith*. Simply put, RFRA is not designed to identify and counteract state laws likely to be unconstitutional because of their treatment of religion. In most cases, the state laws to which RFRA applies are not ones which will have been motivated

by religious bigotry. If a state law disproportionately burdened a particular class of religious observers, this circumstance might be evidence of an impermissible legislative motive. ... RFRA's substantial burden test, however, is not even a discriminatory effects or disparate impact test. It is a reality of the modern regulatory state that numerous state laws, such as the zoning regulations at issue here, impose a substantial burden on a large class of individuals. When the exercise of religion has been burdened in an incidental way by a law of general application, it does not follow that the persons affected have been burdened any more than other citizens, let alone burdened because of their religious beliefs. In addition, the Act imposes in every case a least restrictive means requirement — a requirement that was not used in the pre-*Smith* jurisprudence RFRA purported to codify — which also indicates that the legislation is broader than is appropriate if the goal is to prevent and remedy constitutional violations. ...

Our national experience teaches that the Constitution is preserved best when each part of the government respects both the Constitution and the proper actions and determinations of the other branches. When the Court has interpreted the Constitution, it has acted within the province of the Judicial Branch, which embraces the duty to say what the law is. ... When the political branches of the Government act against the background of a judicial interpretation of the Constitution already issued, it must be understood that in later cases and controversies the Court will treat its precedents with the respect due them under settled principles, including *stare decisis*, and contrary expectations must be disappointed. RFRA was designed to control cases ... such as the one before us; but as the provisions of the federal statute here invoked are beyond congressional authority, it is this Court's precedent, not RFRA, which must control.

It is for Congress in the first instance to "determin[e] whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment," and its conclusions are entitled to much deference. ... Congress' discretion is not unlimited, however, and the courts retain the power, as they have since *Marbury v. Madison*, to determine if Congress has exceeded its authority under the Constitution. Broad as the power of Congress is under the Enforcement Clause of the Fourteenth Amendment, RFRA contradicts vital principles necessary to maintain separation of powers and the federal balance. The judgment of the Court of Appeals sustaining the Act's constitutionality is reversed.

Dissenting Opinion

◆

Justice Sandra Day O'Connor

I dissent from the Court's disposition of this case. I agree with the Court that the issue before us is whether the Religious Freedom Restoration Act (RFRA) is a proper exercise of Congress' power to enforce §5 of the Fourteenth Amendment. But as a yardstick for measuring the constitutionality of RFRA, the Court uses its holding in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, ... the decision that prompted Congress to enact RFRA as a means of more rigorously enforcing the Free Exercise Clause. I remain of the view that *Smith* was wrongly decided, and I would use this case to reexamine the Court's holding there. Therefore, I would direct the parties to brief the question whether *Smith* represents the correct understanding of the Free Exercise Clause and set the case for reargument. If the Court were to correct the misinterpretation of the Free Exercise Clause set forth in *Smith*, it would simultaneously put our First Amendment jurisprudence back on course and allay the legitimate concerns of a majority in Congress who believed that *Smith* improperly restricted religious liberty. We would then be in a position to review RFRA in light of a proper interpretation of the Free Exercise Clause.

I agree with much of the reasoning set forth in ... the Court's opinion. Indeed, if I agreed with the Court's standard in *Smith*, I would join the opinion. As the Court's careful and thorough historical analysis shows, Congress lacks the "power to decree the *substance* of the Fourteenth Amendment's restrictions on the States." ... Rather, its power under §5 of the Fourteenth Amendment extends only to *enforcing* the Amendment's provisions. In short, Congress lacks the ability independently to define or expand the scope of constitutional rights by statute. Accordingly, whether Congress has exceeded its §5 powers turns on whether there is a "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." ... This recognition does

Lawmakers' Views

Rep. Jerrold Nadler, *D-N.Y.*:
"In the *Smith* case, in 1990, the court said that it was not the job of the courts to protect religious freedom. Today, the court tells us that Congress lacks the power to protect religious freedom. According to the Supreme Court, the Constitution protects religious freedom, but no one has the authority to enforce that protection."

Rep. Charles Canady, *R-Fla.*:
"Today's decision has left men and women of faith without meaningful recourse against laws that prevent them from exercising their religion."

Rep. Charles Schumer, *D-N.Y.*:
"Sadly, with this ruling, citizens will be forced to choose between their government and their God. That's a choice no American should face. Just as we put aside our many political and religious differences to pass RFRA, now we will join together again."

Rep. Ernest Istook, *R-Okla.*:
"This ruling proves that a constitutional amendment is the only way possible to ensure protection of our rights to religious freedom."

not, of course, in any way diminish Congress' obligation to draw its own conclusions regarding the Constitution's meaning. Congress, no less than this Court, is called upon to consider the requirements of the Constitution and to act in accordance with its dictates. But when it enacts legislation in furtherance of its delegated powers, Congress must make its judgments consistent with this Court's exposition of the Constitution and with the limits placed on its legislative authority by provisions such as the Fourteenth Amendment.

Justice O'Connor

The Court's analysis of whether RFRA is a constitutional exercise of Congress' §5 power ... is premised on the assumption that *Smith* correctly interprets the Free Exercise Clause. This is an assumption that I do not accept. I continue to believe that *Smith* adopted an improper standard for deciding free exercise claims. In *Smith*, five Members of this Court — without briefing or argument on the issue — interpreted the Free Exercise Clause to permit the government to prohibit, without justification, conduct mandated by an individual's religious beliefs, so long as the prohibition is generally applicable. Contrary to the Court's holding in that case, however, the Free Exercise Clause is not simply an antidiscrimination principle that protects only against those laws that single out religious practice for unfavorable treatment. ... Rather, the Clause is best understood as an affirmative guarantee of the right to participate in religious practices and conduct without impermissible governmental interference, even when such conduct conflicts with a neutral, generally applicable law. Before *Smith*, our free exercise cases were generally in keeping with this idea: where a law substantially burdened religiously motivated conduct — regardless whether it was specifically targeted at religion or applied generally — we required government to justify that law with a compelling state interest and to use means narrowly tailored to achieve that interest. ...

The Court's rejection of this principle in *Smith* is supported neither by precedent nor ... by history. The decision has harmed religious liberty. ...

The Religion Clauses of the Constitution represent a profound commitment to religious liberty. Our Nation's Founders conceived of a Republic receptive to voluntary religious expression, not of a secular society in which religious expression is tolerated only when it does not conflict with a generally applicable law. As the historical sources discussed above show, the Free Exercise Clause is properly understood as an affirmative guarantee of the right to participate in religious activities without impermissible governmental interference, even where a believer's conduct is in tension with a law of general application. Certainly, it is in no way anomalous to accord heightened protection to a right identified in the text of the First Amendment. For example, it has long been the Court's position that freedom of speech — a right enumerated only a few words after the right to free exercise — has special constitutional status. Given the centrality of freedom of speech and religion to the American concept of personal liberty, it is altogether reasonable to conclude that both should be treated with the highest degree of respect.

Although it may provide a bright line, the rule the Court declared in *Smith* does not faithfully serve the purpose of the Constitution. Accordingly, I believe that it is essential for the Court to reconsider its holding in *Smith* — and to do so in this very case. I would therefore direct the parties to brief this issue and set the case for reargument. Δ

Religious Groups React

American Baptist Churches in the U.S.A. *Statement adopted at biennial meeting in Indianapolis, Ind.:*
"We call upon the Congress to reject any reaction to this decision which would amend or alter the integrity of the First Amendment. Further, we call upon American Baptists and all other advocates of the free exercise of religion to make this appeal."

Cathy Cleaver, *Family Research Council*:
"Congress must not stand silent in the face of this judicial power grab."

Richard Land, *Southern Baptist Ethics and Religious Liberty Commission:*
"Our free exercise rights as American citizens are in peril."

Oliver Thomas, *National Council of the Churches of Christ in the U.S.A.*:
"Every religious person in the United States will be hurt by this decision. It will simply take time for them to realize it."

Richard Foltin, *American Jewish Committee*:
"It leaves minority religions vulnerable to legislators and government officials who may sometime be oblivious to the impact of their actions on religious observance."

Steven McFarland, *Christian Legal Society's Center for Law and Religious Freedom*:
"The real loser today was our First Freedom, religious liberty."

What's next?

Melissa Rogers
Associate General Counsel

How do we fix the problem caused by the U.S. Supreme Court's decision in *City of Boerne v. Flores*? For the moment, this is the $64 million question among church-state activists and scholars. In *Flores*, the Supreme Court found that in passing RFRA Congress exceeded its power under the 14th Amendment to the U.S. Constitution.

It appears that the Act continues to apply to the federal government, but no longer applies to the actions of state and local governments. Thus, we must find a way to ensure that state and local governments provide a high level of protection for free exercise rights.

Following are brief descriptions of some of the potential solutions to the problem. Although we do not rule out amending the Constitution to fix the problem, other legislative and judicial remedies should be exhausted before resorting to such a drastic solution.

1) Recodify RFRA and base it on Congress' power to spend or to regulate commerce.

Under the Constitution, Congress can require state and local governments receiving federal money to abide by certain laws and policies. This is known as Congress' spending power. It may be possible for Congress to condition the receipt of federal funds upon a state or local government's agreement to abide by the RFRA standard (refrain from burdening citizens' religious practice without a compelling interest).

Similarly, Congress has the power to regulate commerce among the states, and there may be a way to use this power to bind the states to RFRA.

PRO: If either of these options were successful, Congress could re-enact a law that would apply uniformly to federal, state and local governments. Such a recodification of RFRA might apply to state prisons.
CON: Tying RFRA to spending may afford less than complete coverage, and the court has substantially cut back on Congress' power under the Commerce Clause.

2) Encourage the states to pass "mini-RFRAs."

In *Flores* the court did not appear to say that the states cannot pass their own RFRAs. Rhode Island has already passed its own "mini-RFRA," and Ohio, Michigan and Florida are currently working to develop similar laws.

PRO: If each state were to adopt a mini-RFRA, citizens would have robust protection from governmental interference with free exercise.
CON: Each state might pass a unique mini-RFRA — some might exclude prisons, schools or zoning matters from RFRA's application. This would result in an uneven patchwork of protection for free exercise rights. This strategy also would require a substantial amount of work by activists with contacts in each state's legislature.

3) Ask the Supreme Court to accept a case to reconsider the *Smith* standard.

Three justices on the Supreme Court have expressed an enthusiasm, or at least a willingness, to reconsider the legal test set forth in the *Employment Division v. Smith* decision. The decision basically stated that the Constitution only requires that the compelling interest test be applied when the government targets religion for discriminatory treatment. Under this strategy, we would make every attempt to get the court to accept a free exercise case in the hope that it would overrule the *Smith* standard and restore a high level of protection to free exercise as a matter of constitutional law.

PRO: This would restore strong protection for free exercise under the Constitution. Our rights would be protected from shifting majorities in Congress or state legislatures.
CON: For the present, it appears there are not enough votes on the Supreme Court to overturn the *Smith* decision. Also, any reversal of *Smith* would be unlikely to apply the compelling interest test to prisoners.

4) Pass an amendment to the U.S. Constitution restoring a high level of protection for free exercise rights.

This speaks for itself — it's as serious as it sounds.

PRO: This would ensure that our right to religious exercise was given strong protection under the Constitution. It would provide uniform protection across the United States.
CON: Amending the First Amendment once may smooth the path for later amendments that we would oppose (such as the Istook amendment effort). Also, some lawmakers are anxious to amend the Establishment Clause, as well as fix the Free Exercise Clause. The concern is that the RFRA amendment might be combined with other language that would undermine the Establishment Clause.

Because constitutional amendments must be ratified by three-fourths of the states, this strategy also would require substantial work by activists in state legislatures. Such an amendment might not protect prisoners.

Obviously, none of these options is perfect.

What we can promise is this: We will do everything in our power to ensure that this is only a temporary disruption, rather than a permanent loss, of much of our right to religious liberty. Δ

Reflections

James M. Dunn

Executive Director

Until then . . .

"Sooner or later the Court will have to heed the message that Congress was trying to send by passing the Religious Freedom Restoration Act: To restore religion to its rightful place as the first of freedoms." — Mary Ann Glendon, a law professor at Harvard, said it in a *New York Times* op-ed piece June 30, 1997. She's right. We faith it.

But in the meantime, and it will be a *mean* time, what shall we do?

We shall do our homework. Jefferson's maxim is timely: "If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be." We beg. We plead. We work at it full time. What will it take to get you to read, study, share your enthusiasm for the "free exercise" of religion?

Must we lose it little by little, nibbled away by little goats of apathy? First, work restrictions on Seventh Day Baptists; then onerous zoning laws on small churches and minority religions. Because, after all, Justice Scalia sees full-throated freedom as a "luxury" we can no longer afford.

Order the video, *The Intersection*. Buy *On Guard*. Subscribe to *Report from the Capital* for friends. "Study to show yourself approved unto God, rightly dividing the word of truth."

We shall write, call, fax, e-mail. Cards and letters, especially individual, personal ones, do still make a difference. Contact members of Congress, House and Senate. Ask us if you don't know how. Keep it simple: "We call on you to find a way to restore the free exercise of religion." "Don't tamper with the First Amendment." "Just give us back the standard that prevailed for 30 years: a compelling interest is needed before government restricts religion." "We don't need a school prayer amendment. We simply need religious freedom restored." But say it in your own words to every member of Congress who is yours.

We shall write "Letters to the Editor." Not just to get it off your chest, not just to ventilate, not just to see your name in print but to educate. Your elected representatives read the "Letters page." Your neighbors need to know you care. You may be surprised at how universal your fears for freedom are. Brent Walker suggests that there is "good news and bad news." The good news is that "only six people in America oppose the Religious Freedom Restoration Act. The bad news is that all six are on the Supreme Court." Well, nearly. Ask us if we can help with talking points, history, terminology, updates, legal solutions *etc.* and so forth.

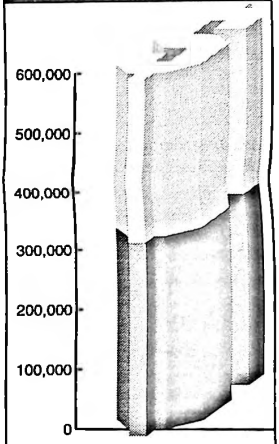
We shall talk importunately about free exercise of faith for all. Make noise in your neighborhood. Call on your classes, clubs, churches, communities and cousins. We can no longer be passive. What does it take to cause us to throw a fit? Silence implies agreement with this outrageous denial of religious freedom.

We shall join the Religious Liberty Council. Who knows? Perhaps we have begun a membership organization at this particular time for just such a purpose. Sign up. Fill out the membership form on Page 8. Pay the modest dues. Receive *Report from the Capital* and *First Freedom*. Become a member of the team to return this country to a doable standard for free exercise of religion.

We cannot tolerate ignorance, apathy or cynicism, the three-headed dog that threatens liberty.

We must know. We do care. It does matter, perhaps eternally. So, pray. Δ

Endowing the Baptist Joint Committee



Eternal vigilance is the price of liberty

This well-known observation is a lesson of history and of today. It is a reminder that neither religious liberty nor vigilance come cheaply.

Invest today in a religious liberty agency that has a 60-year track record of achievement and vigilance at the intersection of church and state. Endowing the Baptist Joint Committee will help secure religious freedom tomorrow.

REPORT FROM THE CAPITAL

James M. Dunn
Executive Director
Larry Chesser
Editor
Kenny Byrd
Associate Editor
J. Brent Walker
Book Reviews

REPORT (ISSN-0346-0661) is published 24 times each year by the Baptist Joint Committee. Single subscriptions, $10 per year. Bulk subscriptions available.

RFRA ruling impacts other cases

It didn't take long for the U.S. Supreme Court's invalidation of a 1993 religious liberty law to impact other cases. Two days after striking down the Religious Freedom Restoration Act, the high court:

◆ vacated a federal appeals court's decision that tithes given to a church cannot be seized to pay the debts of a couple who later declared bankruptcy. The high court ordered the lower court to reconsider the case in light of its RFRA ruling. The appeals court had ruled that ordering a Minnesota church to turn over $13,450 given by Bruce and Nancy Young during the year before they filed for bankruptcy substantially burdened their free exercise of religion and violated RFRA.

◆ annulled another appeals court ruling that RFRA protected the rights of inmates to wear religious jewelry that is too small or light to pose a threat to prison security. The high court ordered the lower court to reconsider the ruling in light of RFRA's demise.

◆ let stand a ruling by California's top court that RFRA did not shield a landlord from complying with a fair housing law. Evelyn Smith had refused to rent to unmarried couples because of her belief that sex outside of marriage is sinful.

Congress enacted RFRA after the high court's *Employment Division v. Smith* ruling made it easier for government to restrict religious exercise.

BJC General Counsel J. Brent Walker noted that during the three years between the *Smith* ruling and the passage of RFRA, "religious claimants [illegible] usually all cases" except when state constitutions offered more protection for religious liberty than that provided by the high court's *Smith* standard. Δ

200 Maryland Ave. N.E.
Washington, D.C. 20002
202-544-4226
Fax: 202-544-2094
CompuServe: 70420,54
Internet E-mail:
BJCPA@erols.com
World Wide Web site:
www.erols.com/bjcpa