

Aug. 4 1997

Nashville, Tennessee



REPORT FROM THE CAPITAL

Volume 52, No. 14

July 22, 1997

NewsMakers

◆ **Tung Chee-hwa**, leader of Hong Kong, said he will protect religious freedom in the former British colony now under China's control. He said the law stipulates that "government shall not restrict religious beliefs, interfere in internal affairs of religious organizations or restrict religious activities that do not contravene the laws of Hong Kong."

◆ **Rose Hamid** accused US Airways of violating her Islamic beliefs by prohibiting her from wearing a head scarf under the airline's policy prohibiting head coverings. The U.S. Equal Employment Opportunity Commission filed a discrimination lawsuit against the airline.

◆ **Barry Lynn**, executive director of Americans United for Separation of Church and State, has asked the Internal Revenue Service to investigate a "church-based partisan political campaign" by the Rev. Jerry Falwell and other pastors in a Virginia attorney general contest.

◆ **Han Wenzao**, president of the state-run Christian Council of China, confirmed that **Peter Xu Yongze**, head of the New Birth Church, was arrested for violating rules on social organizations. The arrest is not Christian persecution, Han said. "Xu's doings entirely ran counter to the teachings of the Bible and the true canons of Christ." Δ

House panel eyes alternatives to invalidated religious liberty law

Racing to amend the Constitution is not the answer to the Supreme Court's invalidation of the Religious Freedom Restoration Act, lawmakers and witnesses agreed at a congressional hearing.

The House Constitution subcommittee scheduled the hearing to evaluate responses to the high court's ruling that Congress exceeded its authority in passing RFRA.

The 1993 law required government to show a "compelling interest" before taking actions that infringed on religious practice.

While the high court ruled that Congress could not impose RFRA on the states, the law still applies to the federal government, witnesses told the panel.

They also agreed that legislative vehicles to protect religious liberty must first be exhausted before seeking a constitutional amendment.

Oliver Thomas, special counsel at the National Council of the Churches of Christ in the U.S.A., warned lawmakers against amending the First Amendment and creating a bigger problem. "There is a problem with all constitutional amendments. They are broad. They are general. They are risky," he said.

It would take decades for the courts to determine the meaning of a constitutional amendment, he said, noting that sometimes their interpretations are surprising. "For example, who would have thought that laws 'prohibiting the free exercise' of

religion did not include laws prohibiting the free exercise of religion," he said.

Watergate figure **Charles Colson**, founder of Prison Fellowship Ministries, said that if lawmakers answer with a constitutional amendment, they may be

admitting that the Congress does not have power to pass laws such as RFRA. "You will be ratifying one of the most preposterous decisions this court has ever rendered."

Panel Chairman **Charles Canady**, R-

Fla., agreed with participants, saying that "it would be ill-advised for us to amend the Constitution."

Hearing participants suggested ways in which Congress could expand protection for religious practice:

◆ attach RFRA's compelling interest standard to religious practices that affect commerce. Such a step would be based on the constitutional power given to Congress to regulate commerce;

◆ attach the protections of RFRA to congressional appropriations. Congress used this power to enact the Equal Access Act, which protects student speech including the right of religious clubs to meet as long as other non-curriculum-related clubs are allowed to meet;

◆ enact a law under Congress' treaty power to bring the United States into compliance with the International Covenant on Civil and Political Rights; and

◆ enact targeted exemptions to broadly applied laws based on specific congressional findings. Δ



"A constitutional amendment should be a matter of last resort."

— Oliver S. Thomas

New York church wins first round in battle with IRS

A Vestal, N.Y., church stripped of its tax-exempt status for declaring in 1992 that it was a "sin" to vote for Bill Clinton has won a key court victory in its fight with the Internal Revenue Service.

U.S. District Judge Paul L. Friedman ruled that the Church at Pierce Creek had established sufficient evidence that the IRS intentionally discriminated against the church for its legal claim to proceed.

Friedman — a Clinton appointee — said in his ruling that the IRS had treated the Church at Pierce Creek "in a significantly different fashion from the way it has treated other churches and/or religious organizations that have engaged in overt political campaign activity."

Just days prior to the 1992 presidential election, the church, pastor Dan Little and Branch Ministries Inc. jointly published full-page ads in *USA Today* and the *Washington Times* saying that to vote for Clinton was a sin because Clinton had supported homosexuality, abortion and the distribution of condoms to public school students.

Friedman appeared to agree with the church's claim that other churches engaged in political activity and were not stripped of their tax-exempt status.

He ruled that the IRS must now produce much of the records it used to deny the Church at Pierce Creek of its tax exemption.

Ohio religious liberty bill would not protect inmates

When Ohio Solicitor Jeffrey Sutton argued before the Supreme Court against the Religious Freedom Restoration Act, he said states were prepared to pass religious liberty protections of their own and "overprotect" religious exercise.

But religious liberty advocates say a proposal supported by Sutton and the Ohio attorney general falls short of the promise to "overprotect" religious exercise.

Ohio's proposed Religious Liberty Act would invoke "intermediate scrutiny," requiring the government to show an "important" governmental interest before substantially burdening an individual's religious practice. RFRA called for "strict scrutiny," requiring a "compelling" interest.

The Ohio proposal would also bar prisoners from the protections.

"If this bill is his idea of overprotecting, I say don't do us any favors," said J. Brent Walker, general counsel at the Baptist Joint Committee. "We cannot afford to water down the level of protection or deny religious liberty to prisoners."

The U.S. House of Representatives Subcommittee on the Constitution held a July 14 hearing to evaluate responses to the invalidation of RFRA.

In testimony at the hearing, Sutton said there was a proliferation of inmate lawsuits under the law, including "bizarre" claims such as the right to burn Bibles and to distribute racist literature.

Douglas Laycock, law professor at the University of Texas Law School, said that "everyone knows that prisoners file phony and frivolous claims." He added that prison authorities "sometimes make frivolous rules."

Religious liberty riders added to foreign aid bill

The U. S. Senate approved an amendment to cut off aid to Russia if it implements a law that discriminates against religious minorities.

The Senate voted 95-4 to include the amendment in a \$13.2 billion foreign aid bill, which includes nearly \$200 million for Russia.

Driving the push for such a measure is a pending bill passed overwhelmingly by

the Russian Duma, Russia's legislative body. It would require "new" religious groups to operate for 15 years before they receive legal status.

The measure, awaiting action from Russian President Boris Yeltsin, would grant legal status to the Russian Orthodox Church, Buddhism, Islam, Judaism and other religions traditionally existing in Russia. It would require religious groups to list members' names and addresses of all members.

The White House confirmed to Baptist News Service that President Clinton urged Yeltsin to veto the measure at a recent gathering of the leaders of leading industrial nations. The spokesman said that Clinton stressed to Yeltsin the United States' view that "freedom of religion should not be restricted."

The spokesman said that Clinton believes freedom of religion is essential to democracy and said that the White House "will keep pushing" the issue with Russia.

Sen. Gordon Smith, R-Ore., offered the amendment to the foreign aid bill, saying that religious freedom is the "cornerstone" of democracy.

The Senate measure prohibits any funds in the Foreign Operations Appropriations unless the president certifies that the Russian Federation has not enacted a statute that discriminates against religious minorities.

James Dunn, executive director of the Baptist Joint Committee, said that it is "appropriate that the United States link religious freedom to our overall involvement with other nations."

Another Senate amendment to the foreign aid bill addresses religious freedom in Asia. It requires:

- ◆ a religious persecution report modeled after the State Department human rights report;

- ◆ the establishment of a country-by-country prison information registry;

- ◆ the president to devote greater intelligence resources to gathering information regarding human rights abuses and acts of religious persecution; and

- ◆ an encouragement for the administration to work with the government of the People's Republic of China and other nations to establish a Commission on Security and Cooperation in Asia modeled after the Commission on Security and Cooperation in Europe, also known as the Helsinki Commission.

Church-State Intersection

J. Brent Walker

General Counsel



Alexander Hamilton once called the judiciary the “least dangerous” branch of government. He was wrong.

The judiciary has turned out to be the most dangerous branch for those who value religious freedom.

The wise architects of our republic fashioned twin pillars — no establishment and free exercise — to uphold our God-given religious freedom. In recent years, the Supreme Court has interpreted these clauses in a way that weaken protections for religious freedom.

The Court continues to chip away at the mortar of the Establishment Clause. Yes, the Court invalidated clergy-led graduation prayers and special school districts for Orthodox Jews. But it has approved state-employed sign language interpreters and public school teachers providing remedial education on parochial school campuses.

More striking is the Court’s demolition project on the pillar of free exercise. After the Court gutted the Free Exercise Clause of any meaningful protection in *Employment Division v. Smith*, Congress passed the Religious Freedom Restoration Act to restore the previously high level of protection to our free exercise of religion. But, this summer the Court nullified this Act as an unconstitutional exercise of congressional power in *City of Boerne v. Flores*. For the time being, we are forced to rely on the good graces of legislatures, the benevolence of bureaucrats and a patchwork of state constitutional provisions to protect our religious freedom. This is not the robust vision of religious freedom that our founders fought for and built into the First Amendment. The religious liberty of every American is now in peril.

What’s going on? Why is the Court so ready to knock down constitutional protections for religious liberty? Three things.

First, is *majoritarianism*. Several on the Court believe that most public policy issues should be decided by the political branches of government — legislative and executive — not in the judicial branch. Majority vote should prevail most of the time. The courts will grant relief only in cases in which religion is targeted for discriminatory treatment. This is effectively what the Court said in *Smith*: “Don’t come to the Court for exemptions from otherwise neutral laws. Go to the Congress.”

The second factor is *federalism*. Just as the Court prefers political to judicial decisions, it emphasizes the importance of states’ rights over federal power. This is the driving consideration behind the Court’s decision in *Flores*. Just as the will of the majority is thought to be more important than the rights of the minority, so, too, are the sovereign rights of the state considered superior to federally protected freedom of conscience. Religious claimants will now seek relief, either in the form of little-RFRAs or specific exemptions at the state level.

Finally, there is the matter of *judicial activism*. The Court’s majority today decries the supposed activism of the Warren and Burger courts. However, this Court has been just as activist, proving the maxim that a judicial activist is simply defined as a Justice with five votes. The Court was activist in its decision in *Smith*, because neither party even asked the Court to radically change the law. And it was activist in *Flores*, when it strained to find constitutional justification to overrule a near unanimous act of Congress that was widely supported by the American people. The alleged liberal activism of former days has been replaced by activism on the right.

What is in store for the Court in the future? More of the same until a justice or two retires. The two justices thought to be closest to retirement are Chief Justice Rehnquist and Justice Stevens — a conservative and a liberal,

respectively. Both Rehnquist and Stevens have an attenuated view of the Free Exercise Clause. If they are replaced by Free Exercise-friendly justices, there would probably be sufficient votes to overturn the *Smith* case and restore a constitutional standard that protects religious freedom in a way that is consistent with the vision of our founders.

In the meantime, beware of the “least dangerous” branch. The Court’s slavish adherence to knee-jerk majority rule and its deference to states’ rights have relegated what used to be our “first freedom” to the rear of the constitutional bus. Δ

The Court’s slavish adherence to knee-jerk majority rule and its deference to states’ rights have relegated what used to be our “first freedom” to the rear of the constitutional bus.

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 Fellowship
- ◆ 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

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.

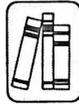


200 Maryland Ave. N.E.
Washington, D.C. 20002
202-544-4226
Fax: 202-544-2094
CompuServe: 70420,54
Internet E-mail:
BJCPA@erols.com
World Wide Web site:
www.erols.com/bjcpa

Book Review

Proclaiming the Baptist Vision: Religious Liberty

Walter B. Shurden, editor, 1997: Smyth & Helwys Publishing Inc., Macon, Ga., 165 pp.



The most significant hindrance to religious liberty is ignorance. What? you exclaim. It's the Supreme Court! Or maybe all those civil liberties groups. Or how about those ... ? Anyway, you get the point. But by now you've missed it. Religious liberty is hindered when ordinary people like you and me act and speak in ignorance. So how do I get educated, you ask.

Proclaiming the Baptist Vision: Religious Liberty is just the place to start. It is an excellent source book meant to provide a definitive foundation of information to many of the questions faced today within the arena of religious liberty and church-state separation. Walter Shurden has compiled a number of sermons, both historic and contemporary, by leading Baptist thinkers and speakers. The effect is to make obsolete the excuse of ignorance.

The collection of 16 sermons is divided into five parts. The layout allows for non-sequential reading, giving the reader the choice of topic or reference. The first section is Shurden's essay on Baptist history — the early church leaders and their reasons for fighting for a separation of church and state. This is an excellent overview of the development of Baptist thought and action.

The second section is titled "Baptist Foundations and Religious Liberty." It contains four sermons on the biblical bases for religious liberty and, even more specifically, church-state separation. The

writers, including James Dunn, William H. Brackney, Carolyn Blevins and Roger Hayden, point to everything from God's creation of free souls to Jesus' appearance as a savior through faith and not a savior through government.

Great Baptist messages proclaiming religious liberty are the focus of the third part. Two pivotal speeches by pre-eminent early-20th century Southern Baptist leaders, George Truett and E.Y. Mullins, are included, as is the American Baptist Bill of Rights adopted in 1939.

History is useful only when it doesn't sit on the bookshelf. One must learn from it and then act upon it. The next five sermons — which deal with current religious liberty — seek to do just that. The sermons by J. Brent Walker, Michael Bledsoe, Stan Hastey, Derek Davis and J. Alfred Smith Sr. tackle issues such as public-sponsored prayer, civil religion and 'what Jesus might say' to contemporary Baptists.

Finally, Shurden ends the collection with a series of sermons on famous and influential early Baptist personalities — Thomas Helwys, John Leland and John Clarke. Each is presented in story form, focusing on their lives and witnesses.

This collection is worthy of a spot on your bookshelf, especially if you do not have access to some of the historical documents presented here.

Do you want to be guilty of ignorance? Just say no, and read this book.

— Ginger L. Elliott
BJC Intern

Non-profit Org.
U.S. Postage
PAID
Riverdale, MD
Permit No. 5061

*****3-DIGIT 372

BILL SUMMERS
SOUTHERN BAPTIST HIST LIBRARY & A
901 COMMERCE ST STE 400
NASHVILLE TN 37203-3628

AUTO

