

Nashville, Tennessee



# REPORT FROM THE CAPITAL

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## NewsMakers

◆ **Holly Shaver**, a Baptist Joint Committee intern, has been named assistant to the general counsel at the BJC. She is a 1997 Phi Beta Kappa graduate of the College of William and Mary. The post was recently vacated by **Charline Berry**, who has been named interim minister of education at First Baptist Church in Rockville, Md.

◆ **Bill Bond**, principal of Heath High School in Paducah, Ky., said the law allows students to pray in school but does not allow school-sponsored prayer. Following a student-led prayer session before classes Dec. 1, gunshots — allegedly fired by a 14-year-old student — erupted in the school's hallway, leaving three students dead and five others wounded. Bond, a member of First Baptist Church in Paducah, said he believes in the law — "that we should not promote any religion in public school ... But it also says we should not suppress."

◆ **Lisa Versaci**, Florida director of People For the American Way, said a lawsuit filed by the civil liberties organization is intended to stop the Lee County School Board in Fort Myers, Fla., from teaching a "Bible history" course that uses the Bible as a "history textbook." She said it "would be perfectly appropriate for Sunday school, but not for public school." Δ

## Vote on Istook proposal expected early next year

Supporters of a constitutional amendment offered by Rep. Ernest Istook, R-Okla., expect U.S. lawmakers to vote on the proposal early in the 105th Congress' second session.

In October, the House Constitution subcommittee approved a modified version of Istook's Religious Freedom Amendment.

Supporters say the measure is needed to correct church-state judicial rulings. Opponents say the

amendment would redraw the boundary separating church and state by permitting government-sponsored prayer and government-funded religious activities.

Subcommittee Chairman Charles Canady, R-Fla., sent a letter Dec. 4 to House Judiciary Committee Chairman Henry Hyde, R-Ill., urging that the full committee vote on the measure before a mid-February recess.

The letter from Canady said, "I believe it would be desirable for the full committee to conduct a markup as soon as possible next year so that the amendment will be available for floor action early in the session."

Forest Montgomery, counsel for the National Association of Evangelicals, expects a full House vote "sooner rather than later," but said it appears the House lacks the two-thirds' vote required to approve an amendment.

The NAE supports passage of the Istook amendment, but Montgomery said that "the votes just aren't there."

Opponents say changes have not made the Istook measure palatable.

"Despite repeated attempts to modify the proposal, it continues to be a disaster waiting to happen," said J. Brent Walker, general counsel at the Baptist Joint Committee. "This misguided proposal would gut the First Amendment, which has served religion well."

Other church-state issues that may surface early in the second session in-

clude education vouchers and bills to fund faith-based social service programs.

Late in the first session, the Senate broke an impasse on a funding bill for the District of Columbia by removing a controversial voucher experiment. In return, lawmakers approved the D.C. voucher proposal in a separate bill on a voice vote. The House is expected to take action on the free-standing voucher plan in the upcoming session. The measure faces a likely veto if approved.

Sen. Spencer Abraham, R-Mich., has introduced a bill that would allow all faith-based drug rehabilitation programs to receive federal funds on the same footing as other private providers. The faith-based programs could require that beneficiaries "actively participate in religious practice, worship and instruction."

Also, Sen. John Ashcroft, R-Mo., is expected to introduce a broad measure that would allow pervasively sectarian enterprises to participate in federally funded projects. Δ



## Lower court ordered to reconsider ruling on gift annuities

The U.S. Supreme Court has ordered a lower court to consider whether a new law passed by Congress requires the dismissal of a class-action lawsuit that threatened the ability of religious and other charitable organizations to raise funds.

The lawsuit, pending in a federal district court in Texas, accuses the charitable groups of "price-fixing" in setting rates on charitable gift annuities and remainder trusts.

The high court vacated a federal appeals court's refusal to dismiss the lawsuit and ordered the case to be reconsidered in light of the Charitable Donation Antitrust Immunity Act of 1997. The law makes clear Congress' intent to exempt charitable gift annuities from antitrust laws.

Charitable groups use gift annuities to raise funds. Under these plans, donors who make substantial gifts to institutions receive a fixed income for life and are allowed a tax deduction for the difference between the value of their donation and the income received.

In setting rates for gift annuities, many charitable groups follow the recommendations of the American Council of Gift Annuities.

The lawsuit contends that the widespread use of the council's rates resulted in price-fixing.

The council and other defendants have been seeking to get the lawsuit dismissed. The 1997 law was the second attempt by Congress to exempt gift annuities from antitrust laws. Lower courts had refused to halt the lawsuit on the basis of a more narrowly drafted 1995 law. Δ

## High court rejects minister's appeal

The U.S. Supreme Court refused to revive a Baptist minister's complaint that San Francisco officials violated his First Amendment rights by removing him from the city's Human Rights Commission because of his public condemnation of homosexuality.

Without comment, the high court let stand lower courts' dismissal of the Rev. Eugene Lumpkin's complaint against the city and its mayor.

In removing him from the panel in 1993, city officials cited Lumpkin's anti-homosexual public statements. He sued the city and the mayor, claiming his removal violated the First Amendment and the Religious Freedom Restoration Act.

A federal district court said the city's action was justified because Lumpkin's public statements were inconsistent with his "broad responsibilities for formulating, implementing and explaining" the policies of the commission.

The 9th U.S. Circuit Court of Appeals agreed, finding that neither the First Amendment nor RFRA "requires San Francisco to tolerate members of its Human Rights Commission who make public statements that are antithetical to the Commission's official charge."

As a private citizen, Lumpkin has every right to preach that homosexuality is a sin, the appeals court said. "But the First Amendment does not assure him job security when he preaches homophobia while serving as a City official charged with the responsibility of 'eliminat(ing) prejudice and discrimination,'" the appeals court added. Δ

## Americans want inclusive religion, Moyers says

America is searching for the power and authority of religion that is inclusive and not sectarian, broadcaster Bill Moyers said recently at Wake Forest University, Winston-Salem, N.C.

The nation's religious discourse is no longer dominated by "male, white Protestants of a culturally conservative heritage," he said.

He pointed to rapid growth among Muslims, Pentecostals and Mormons.

"We are recreating our nation right before our eyes," he said. "We are living in a new religious reality so that the most interesting story of our time, to me, as a

journalist, is emerging in the intersection between the secular and the spiritual. We're searching in America for a new vision of our country that has the authority and power of a religious vision but is inclusive and nonsectarian."

Among American Protestants, liberals and conservatives in many cases have grown estranged, Moyers said. He cited Baptists, which are diverse enough to include people on one side like Moyers, Bill Clinton, Al Gore, Richard Gephardt and Jesse Jackson and those like Pat Robertson, Newt Gingrich and Jesse Helms on the other.

Moyers finds particularly "baffling" the attitude of Baptists of "the other stripe" toward the separation of church and state. "They invoke it to protect themselves against encroachment from others but denounce it when it protects others from encroachment from them," he said.

"They use it to shelter their own revenues and assets from taxation but then insist taxes be paid by others to support private sectarian instruction in pervasively religious schools."

He said, "They stand foursquare behind the First Amendment when they exercise their own right to criticize others — sometimes with a vengeance and often with vitriol, as when Jerry Falwell circulates videos implicating the president of the United States in murder — but when they are challenged or criticized, they whine and complain that they are being attacked as 'people of faith.'"

Moyers said, "I couldn't believe my eyes" when he saw House Speaker Newt Gingrich on television telling Christian Coalition members they were victims of "Christian phobia."

Moyers said, "This is the crowd that acts as if the Bible belongs to them. ... They would have us concede that they speak for God when they bring their opinions to bear on all kinds of secular issues — from abortion to the environment to the public funding of the arts. ..."

"For too many years now the religious discourse in America has been dominated by the religious right, and the media have cooperated, giving fundamentalists most of the coverage when the subject of religion and society comes up," he said.

"I'd like to see us take the scriptures back from the grip of those who think they have an exclusive right to their meaning," Moyers said. "So let everyone join the conversation of democracy, but let no one monopolize it." Δ

# Church-State Intersection

*Melissa Rogers*

Associate General Counsel



Two words can make almost any pastor see red: zoning board.

Why? Zoning boards across the nation frequently frustrate churches' missions in many ways. Sometimes zoning power is used to designate houses of worship as historic landmarks. The designation itself isn't the problem — it's the regulations that go with the designation. These regulations often effectively prevent churches from expanding or remodeling their structures. Also, zoning power is regularly used to deny churches the special permission they need to locate in many parts of town. Furthermore, churches' homeless feeding programs are frequently threatened by the local zoning board or city council.

To make matters worse, the Religious Freedom Restoration Act, designed to protect the religious practices of individuals and institutions from governmental interference, no longer applies to the actions of state and local governments. Thus, local authorities currently have much more latitude to restrict the activities of houses of worship.

A recent abuse of zoning power was reported by the *Los Angeles Times*. The Congregation Etz Chaim, an Orthodox Jewish congregation, was meeting in a rented house in a residential zone, with 10 to 15 men visiting the house, called a "shul," for weekday prayers, and 50 or 60 for Sabbath and holiday services. Orthodox Jews must walk to services on the Sabbath and most holidays because their religion does not permit them to use cars. Neighborhoods where no shuls are allowed, therefore, are effectively off-limits to Orthodox Jews.

When members of the residential homeowners' association began to complain that the arrangement hurt property values, the congregation requested a special permit from the Los Angeles City

Council to remain in the residential zone. According to the *Los Angeles Times*, one homeowner stated: "If you permit this illegal use, how can you rationally prevent Muslims from setting up their things, Buddhists from having their temples?" Another neighborhood resident expressed grave concern about the religious liberty interest at stake and noted that the shul had "no discernable impact" on the neighborhood.

The City Council unanimously rejected the congregation's request for the special permit. The president of the council claimed that "[t]his is strictly a land-use item."

When the Los Angeles City Council later narrowly approved the application of a "gay sex club" for special permission to locate within 500 feet of another residential area, a "City Hall insider" stated: "How does the council basically knock down the right of 13 or 14 people to pray together [in a residential zone] and allow a sex club to exist near a residential neighborhood? ... What am I missing here? Praying is a bad thing and a sex club is a good thing?"

Congregation Etz Chaim's story highlights the need for passage of state Religious Freedom Restoration Acts and new federal legislation that will curb state and local interference with religious exercise. In such situations, where a substantial burden on religion can clearly be shown, state RFRAs, federal legislation, or both, would require the government to show that it has a compelling reason (i.e., public health or safety) for burdening religion and that it is advancing its compelling reason in a way that places only the most minimal burden on religion.

Zoning laws are generally sound policy and churches should be good neighbors. But zoning boards shouldn't be allowed to run roughshod over religious freedom. Δ

## Quoting

Religious liberty is the nursing mother of all liberty. Without it all other forms of liberty must soon wither and die. The Baptists grasped this conception of liberty in its full-orbed glory, from the very beginning. Their contention has been, is now, and must ever be, that it is the God-given and indefeasible right of every human being, to worship God or not, according to the dictates of his conscience; and, as long as he does not infringe upon the rights of others, he is to be held accountable to God alone for all his religious beliefs and practices.

— George W. Truett  
July 1939

## 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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## Upcoming Events

March 2-3

### *Pitfalls to Avoid as Seen from the Pulpit: Church-State Issues and the Ministry*

What if a member of your church wants to host a political rally for a candidate on the church's front steps? What do you do when you are invited to pray before the local high school's football game? What if the local zoning board tries to shut down your church's homeless feeding program? What do you say when a church member asks if the United States is a Christian nation?

Explore these and other vexing questions at this Religious Liberty Council workshop, scheduled March 2-3, 1998, at Central Baptist Theological Seminary, Kansas City, Kan. The workshop will address the theological and legal underpinnings of religious liberty and church-state separation and provide practical advice on church-state issues that regularly confront the clergy. Although the workshop is targeted primarily at ministers and seminarians, all are welcome to attend.

Speakers will include Molly Marshall, professor of theology and spiritual formation, Central Baptist Theological Seminary, and members of the Baptist Joint Committee board and staff. Other speakers to be announced.

**Registration: \$40.** A limited number of scholarships of up to \$200 (to help pay for registration, travel and lodging) are available for seminarians and ministers. Contact Karen McGuire at the BJC for registration information and scholarship applications.

April 20-21

### *A Shared Vision: The Challenge of Pluralism for America's Religious and Political Communities*

America is a boiling pot of ethnic, religious and cultural diversity. Jews, Christians and Muslims must learn to live together. Roger Williams envisioned America as a "haven for the cause of conscience." Do we still share this vision for our country, or will we allow hostility toward pluralism to tear us apart? Explore these issues at a conference scheduled April 20-21, 1998, at George Washington University in Washington, D.C., sponsored by the Baptist Joint Committee, the American Jewish Committee and GWU.

The conference will celebrate the free exercise of religion guaranteed by the First Amendment to the U.S. Constitution and the pluralism spawned by that freedom. It will also develop strategies for affirming and strengthening the free exercise of religion as a fundamental right in a free and democratic society.

Contact Karen McGuire at the Baptist Joint Committee for more information.

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