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Baptist Joint Committee PROCLAIM LIBERTY

REPORT FROM THE CAPITAL

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NewsMakers

◆ **Teshone Abate**, an Arizona inmate serving a 20-year sentence for murder, has died following a hunger strike. Abate, a member of the Ethiopian Orthodox Christian Church, stopped eating in August 1997. The church's leaders told prison officials that their faith requires adherence to Old Testament dietary laws. But prison officials said Abate refused to eat the prison's kosher meals and that no diet would satisfy him.

◆ President **Bill Clinton** has condemned the vandalism of an Islamic symbol displayed alongside other religious displays outside the White House. Vandals broke off the star from an Islamic star-and-crescent symbol and spray-painted a red Nazi swastika on the star. "The desecration of that symbol is the embodiment of intolerance that strikes at the heart of what it means to be an American," Clinton said.

◆ **Charles Haynes** and **Oliver Thomas** will serve as trainers for Alabama school officials learning about religious expression in public schools. Working on behalf of the Freedom Forum's First Amendment Center, Haynes and Thomas will also train monitors appointed to see that schools carry out an injunction against school-sponsored religious activities recently issued by Judge **Ira DeMent**. Δ

'Charitable choice' programs prompt church-state concerns

In a letter to U.S. governors released in December, several religious leaders called for states to combat poverty through "creative government-church partnerships."

Specifically, the leaders want governors to implement provisions in welfare reform legislation known as "charitable choice." The new law allows pervasively religious groups to use government funds to provide social services.

The leaders are members of the Christian Roundtable on Poverty and Welfare Reform, headed by Call to Renewal, a coalition of mainline and evangelical Christians.

The leaders asked for meetings with each governor to discuss the development of appropriate government-church solutions to poverty. "It is becoming clear that government works best with partners to find creative solutions to the issues of poverty," the letter states.

Signers of the letter include Joan Brown Campbell, general secretary of the National Council of the Churches of Christ in the U.S.A; Tony Campolo, professor of sociology at Eastern College in St. Davids, Pa.; Ron Sider, president of Evangelicals for Social Action; Bennett Smith, president of the Progressive National Baptist Convention; and Jim Wallis, convener of Call to Renewal.

Wallis said separation of church and state is foundational to American democracy. "But that essential doctrine must not be used to deprive Americans of the full contributions of the religious community to the current crisis of poverty and welfare reform."

The charitable choice law has sparked debate in the religious community over how church-state partnerships can be implemented without violating church-state separation. Some groups, including the Baptist Joint Committee, have criticized the charitable choice provision that allows tax dollars to flow to churches.

BJC General Counsel J. Brent Walker said, "There is room for cooperation with separately incorporated entities set up by religious groups to serve the poor, but it is wrong to give tax dollars to pervasively sectarian institutions like churches."

Oliver Thomas, special counsel for the NCC, said although the NCC did not support charitable choice in Congress, "now that it is the law, we will try to work with it to facilitate its implementation in a way that complies with the Establishment Clause."

A longstanding NCC policy approves church use of tax funds to provide social services if the funds are not used to promote religion; the services are offered on a nondiscriminatory basis; and workers delivering the services are hired on a nondiscriminatory basis, he said.

Barry Lynn, executive director of Americans United for Separation of Church and State and a critic of the law, said it "forces taxpayers to support houses of worship they may not believe in. It subjects needy families to the possibility of religious coercion when they seek help through government-funded programs. It allows churches to discriminate on religious grounds in hiring while using public funds." Δ

Quoting

I believe in a wall between church and state so high that no one can climb over it.

When religion controls government, political liberty dies; and when government controls religion, religious liberty perishes.

Every American has the constitutional right not to be taxed or have his tax money expended for the establishment of religion.

For too long the issue of government aid to church related organizations has been a divisive force in our society and in the Congress. It has erected communications barriers among our religions and fostered intolerance.

Former U.S. Sen. Sam Ervin Jr.
Quotations from Chairman Sam: The Wit and Wisdom of Sam Ervin 1973

Baptists in Cuba may receive direct aid

Baptists in the United States and elsewhere will be able to send humanitarian aid directly to Baptist conventions in Cuba rather than through an intermediary, reported an international Baptist official.

During a Dec. 18-22 visit to Cuba, Paul Montacute, director of Baptist World Aid, reportedly met with Ministry of Religions official Silverio Platero to discuss needs of Baptist churches and opportunities for help from BWAid, relief arm of the McLean, Va.,-based Baptist World Alliance.

According to a BWA report, Platero gave BWAid permission to send medicines and milk to the Baptist conventions and unions in Cuba. Medicine will still have to be distributed in conjunction with Cuba's Ministry of Health.

Previously all aid to Baptists was channeled through Cuba's Ecumenical Council, which is closely linked with the Castro government. Δ

School prayer ballot item ruled unconstitutional

A District of Columbia appellate court ruled unconstitutional a proposed ballot amendment that would have required all D.C. public schools to authorize "student-initiated" prayer at school events.

The D.C. Court of Appeals ruling, issued Dec. 30, was a defeat for the Coalition for Voluntary Prayer, which has tried to get the initiative on the ballot. The group's efforts were blocked when it was sued by the American Civil Liberties Union, People For the American Way and 22 district residents.

D.C. Superior Court Judge Geoffrey M. Alprin previously ruled that the initiative was "patently, obviously and unquestionably unconstitutional." The prayer coalition appealed that ruling, which was upheld by the appellate court.

The three judges of the appellate court said that "it would be an exercise in futility" to allow a vote on an unconstitutional measure.

If the initiative had become law, it would have required that prayer be permitted at any school activity, as long as it was initiated by a student and was nonsectarian and voluntary.

Carole Shields, president of PFAW, praised the ruling. "Once again, the courts have rejected the religious right's continued efforts to diminish religious liberty and freedom of conscience in the nation's public schools," she said. Δ

Court hears challenges to Boy Scout policies

Lawyers argued before the California Supreme Court Jan. 5 about whether the Boy Scouts of America should permit gays and atheists to be members of the nation's largest youth organization.

The two challenges to the organization hinge on whether it is a charity or a business. If the court decides it is a business, it could be forced to admit atheists, homosexuals and women.

Sixteen-year-old twins Michael and William Randall were kicked out of their Orange County Cub Scout pack in 1991 when they were caught mouthing or omitting words related to God in the Boy Scouts' oath and the Pledge of Allegiance. They were readmitted later in 1991 by an order of a Superior Court judge, who declared the Boy Scouts had violated a state anti-discrimination law.

George Davidson, the attorney for the Boy Scouts, said that permitting atheists and gays would be comparable to asking the NAACP to provide services for the Ku Klux Klan, according to news reports.

Also, Timothy Curran was prevented from becoming an assistant Scoutmaster 16 years ago. His lawyer, Jon Davidson, told the court Curran was fired from his Berkeley, Calif., troop when officials discovered that "in addition to being a perfect role model and leader, he was also gay." Δ

Prayer order in India sparks clash among faiths

Muslims and Hindus in the Indian state of Uttar Pradesh are at odds over an order requiring school children to pray to paintings, sculptures and other embodiments of "Mothers India."

Muslims say that amounts to idolatry, while Hindu officials say they only want to strengthen patriotic feelings.

Ravindra Shukla, a minister of education in the Indian state, said his recent order requiring the prayers was designed to "inculcate patriotism."

But a group representing Muslims was weighing a court challenge. "We don't need a certificate for our patriotism from any political party or person," said Zafaryab Jilani of the All India Muslim Personal Law Board. Δ

Courts must sometimes act to protect children

J. Brent Walker
General Counsel

What is it like to be raised in a household where the parents have different and sometimes antagonistic religious views? In an age of rampant pluralism, a lot of our nation's kids are finding out, and sometimes it's not pretty. This problem is exacerbated when the parents divorce and a civil court is called upon to fashion custody arrangements and visitation rights.

A recent case out of Massachusetts illustrates the problem. The case, *Kendall v. Kendall*, involves a marriage between a Reform Jewish mother and a Catholic father. Before they married, the couple agreed to raise their children in the Jewish faith. The mother later adopted Orthodox Jewish sentiments, and the father became a fundamentalist Protestant. The marriage ended in divorce, and the court awarded joint custody — although the mother was the primary custodian. The court permitted the mother to continue to raise the children in the Jewish tradition. However, the father firmly believed that if the children did not accept Christ, they would burn in hell. When he had custody of the children, he would often proselytize them. The Supreme Judicial Court of Massachusetts upheld the lower court's order limiting the father's attempts to convert the kids, finding that to do otherwise would visit substantial injury and harm on the children. The court ruled that the father was entitled to his own religious beliefs and to expose the children to those views, but he may not try to indoctrinate in a manner which would substantially alienate them from the mother. The father could take the children to religious services, but not where they would be told they would go to hell if they did not convert to Christianity.

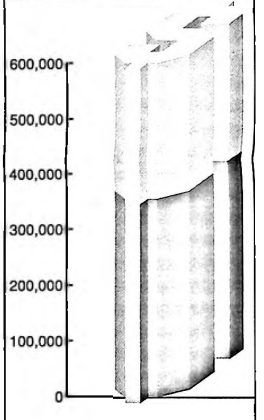
Happy situation? Obviously not. It's really a no-win situation, and the court does well simply to minimize the harm. The problem is that the courts have to balance three terribly important values: (1) the religious liberty of each of the parents, (2) the related but separate constitutional right of parents to provide for the religious upbringing of their children and (3) the well-being of the children. To enforce one often disparages the others.

Faced with this situation, courts should try to do several things. First, if at all possible, they should avoid making these kinds of decisions altogether and leave them up to the parents, perhaps with the help of a guardian for the child or some other mediator. No one who believes in separation of church and state relishes the notion of the secular courts deciding these very religious and personal issues. The court always runs the risk of becoming enmeshed in micro-managing the religious atmosphere of the broken relationship, and, thereby, excessively entangling itself with religious choices.

However, sometimes the courts have no choice. When confronted with the actuality or the likely prospect of substantial harm to the child, the courts must act. Stated in constitutional jargon, the state always has a compelling interest in preventing harm to the child to justify burdening the constitutional rights of the parents. But when it does, it should do so carefully. Courts must narrowly tailor the order to minimize the impact on the parent's religious liberty whose exercise allegedly is adversely affecting the child. This is not always easy to do. Often, the more narrowly-tailored and focused the order is, the more likely the court is to engage in entangling activity. The more it tries to avoid entanglement, the more likely it is to run roughshod over the religious freedom of the parent.

This case from Massachusetts is simply the latest of a myriad of difficult, heart-wrenching, fact-specific cases which represent an attempt on the part of our courts to protect kids caught in the cross fire of a domestic religious jihad. The Supreme Court may well be asked to settle this terribly tragic and difficult issue. Δ

Endowing the Baptist Joint Committee



New Year's Resolution

Gifts to the Baptist Joint Committee's endowment during 1997 totaled more than $116,000.

Gifts and pledges in recent weeks pushed the endowment total to $354,600.

Make 1998 the year you help secure religious liberty for future generations by endowing the Baptist Joint Committee.

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 C...
- North American Baptist Conference
- Progressive National Baptist Convention Inc.
- Religious Liberty Council
- Seventh Day Baptist General Conference
- Baptist state conventions/churches

REPORT FROM THE CAPITAL

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News Extra

Religious freedom law still applies to federal government, coalition says

Religious bodies want a federal appeals court to rule that a popular 1993 religious liberty law still applies at the federal level.

Last year in *Boerne v. Flores*, the U.S. Supreme Court ruled that Congress lacked the authority to impose on states and localities heightened protections for religious practice provided by the Religious Freedom Restoration Act.

Since then, attorneys for religious groups and the Clinton administration have argued that the high court's ruling invalidated RFRA's application to the states but not to the federal government.

In a major test case for that argument, the 8th U.S. Circuit Court of Appeals is deciding whether the RFRA still prevents the confiscation of tithes to pay the debts of donors who later go bankrupt.

In 1996, the appeals court ruled that RFRA protected a Minnesota church from being forced to turn over $13,450 donated by a couple during the year before they filed for bankruptcy. But the Supreme Court vacated that ruling and ordered the appeals court to reconsider the case in light of its ruling against RFRA.

After reargument of the case last month, a church-state lawyer was hopeful the appeals court would rule that RFRA still applies to the federal government.

"I am optimistic that *Flores* will be confined to what it is, a state case about the limits of congressional authority over states," said Steven T. McFarland, director of the Christian Legal Society's Center for Law and Religious Freedom.

"I hope this court buries once and for all the idea that church offering plates are new reservoirs for creditors," he added.

A brief filed at the appeals court on behalf of a coalition of religious and civil liberties groups argues that "RFRA unquestionably remains valid as applied to federal law."

"This case does not involve Congress imposing a rule of religious freedom on the States," the brief argues. "It concerns Congress' power to amend the federal laws that it enacts itself — here the Bankruptcy Code ... — to e... ...ose laws will not be applied s... ...rden religious freedom without a compelling reason in the first place."

In another brief, the U.S. Justice Department argues that the Constitution gives Congress broad authority to enact legislation governing the federal government.

"Just as it has done with respect to debtors' medical and education needs, Congress has the power under the Bankruptcy Clause to mandate that the trustee, in marshaling and liquidating the debtor's assets, act in a manor that does not substantially burden the debtor's religious exercise," the Justice Department brief states.

The brief denies that RFRA violates the "Separation of Powers" doctrine by giving religion more protection than do current Supreme Court interpretations of the First Amendment.

"As long as federal legislation falls within Congress' enumerated powers, it may hold the federal government and federal law to a higher standard than the Constitution requires," the brief states. Δ

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