

Nashville, Tennessee

FEB 10 1999



REPORT FROM THE CAPITAL

Volume 54, No. 2

January 26, 1999

NewsMakers

◆ **Ashlee Ross** of Allen, Texas, a recent graduate of Baylor University in Waco, Texas, has begun an internship with the news office of the Baptist Joint Committee.

◆ President **Bill Clinton** said concern for religious freedom and tolerance "has saved us from much of the hatred and violence that have plagued so many other peoples around the world," in a statement recognizing Religious Freedom Day, Jan. 16. The day commemorates adoption of the 1786 Virginia religious freedom statute, which served as a model for the First Amendment. "Freedom of religion is a fundamental human right that must be upheld by every nation and guaranteed by every government," Clinton said.

◆ Addressing ambassadors from 169 countries with diplomatic ties to the Vatican, Pope **John Paul II** expressed a "painful concern about the all too numerous violations of religious freedom in today's world." He said in certain countries of Western Europe, "one notes an equally disturbing development which, under the influence of a false idea of the principle of separation between the state and the churches or as a result of a deep-seated agnosticism, tends to confine the churches within the religious sphere alone and finds it difficult to accept public statements from them." ▴

Education among priorities touted by Clinton, Republican lawmakers

President Bill Clinton's Jan. 19 State of the Union address, as well as the Republican response, touted proposals on a broad range of issues but offered little insight into religious liberty measures that may or may not confront the 106th Congress.

Clinton lauded "the longest peacetime economic expansion in our history" and declared the state of the union strong.

He pushed two bills that have split religious leaders. "Discrimination or violence because of race or religion, ancestry or gender, disability or sexual orientation, is wrong, and it ought to be illegal," he said, urging Congress to enact the Employment Non-Discrimination Act and the Hate Crimes Prevention Act.

Some conservative religious groups oppose ENDA, which is designed to shield homosexuals from employment discrimination. Others, including the National Council of the Churches of Christ in the U.S.A., support the bill. It includes an exemption favored by the Baptist Joint Committee that allows religious groups to refuse to employ gays and lesbians. The hate crimes bill is designed to curb violent crime against homosexuals and minority groups.

Clinton and Rep. **Steve Largent**, R-Okla., addressed education reform without mentioning "vouchers" for private and parochial school tuition, a regular source of dispute in Congress.

Clinton has supported public school choice and charter schools, but opposes

vouchers for private schools.

In the GOP response, Largent said education reform should incorporate "market principles like competition."

Rep. **J.C. Watts**, R-Okla., said the GOP would present vouchers if "the opportunity presents itself." But, he added, "the

Republicans' focus this time is going to be improving education, cutting people's taxes. ... I don't think it's a matter of backing off. It's just a matter of saying here's some things that we can work on."



Workplace religious freedom bill may be higher priority in new Congress.

— **Jerrold Nadler**
D-N.Y.

In an interview with Baptist News Service, Rep. **Jerrold Nadler**, D-N.Y., addressed the uphill battle that faces the Religious Liberty Protection Act, a bill sought by a broad coalition of religious groups. It would make it harder for government to interfere with religious practices but has been criticized by groups on the far left and extreme right.

Gay rights activists have opposed RLPA because of concerns it would be used to discriminate against homosexuals. Nadler said changes made by House lawmakers last year should have eliminated those concerns and that he had advised gay rights groups to "take another look at the bill."

He also predicted a bill to curb religious discrimination in the workplace may take priority over RLPA. The Workplace Religious Freedom Act would require employers to provide accommodation for employees' religious observances except in cases causing "significant difficulty or expense." ▴

Religious leaders offer mixed reviews on Cuba policy shift

The Clinton administration's easing of economic and travel restrictions on Cuba is drawing only qualified support from Protestants involved in ministry and policy advocacy there.

Approved on Jan. 5, the new policy encourages humanitarian aid to the Cuban people while continuing the embargo aimed at pressuring Fidel Castro.

The National Council of the Churches of Christ in the U.S.A. welcomed the shift but criticized President Clinton for not accepting the suggestion of Sen. John Warner, R-Va., calling for the creation of a bipartisan commission that would conduct a wholesale review of U.S. policy toward Cuba.

NCC General Secretary Joan Brown Campbell said the United States missed a "historic opportunity" to review a policy that has been "ineffective for the past 37 years."

Stan Hastey, executive director of the Alliance of Baptists, called the changes a "nominal liberalization" of U.S. policy. Hastey, whose agency maintains ties with a Cuban Baptist association, said the United States shows "more civility" to Vietnam and North Korea than to Cuba. Δ

Justices decline dispute over altered sentence

The U.S. Supreme Court declined Jan. 11 to disturb a lower court's decision to vacate a sex offender's prison sentence because the trial judge quoted Bible verses before announcing the sentence.

The Nebraska Supreme Court said a reasonable person "could have questioned the judge's impartiality" after hearing the judge read scripture before imposing a sentence of 20 months to five years.

Arron Pattno was arrested and charged with sexual assault of a child for having sexual contact with a 13-year-old boy. Pattno and the youth became acquainted through an Internet chat room in 1996.

Pattno pleaded guilty but later claimed the sentence was excessive "because the judge read a passage from the Bible during sentencing which disparaged homosexuality," showing bias against Pattno because of his sexual orientation.

The state Supreme Court sided with Pattno, stating that his crime was sexual contact with a minor, not sexual contact with another male. The scripture read by the judge was not relevant to the crime "and it should not have been considered by the judge in determining an appropriate sentence," the court said.

The Nebraska court also said the judge's use of scripture undermines separation of church and state.

"Allowing a court to recite scripture, and thereby proclaim its interpretation of that scripture, implies that the court is advancing its own religious views from the bench," the Nebraska court said.

After Pattno's sentence was vacated, he was resentenced to four years' probation by another judge.

In his petition to the high court, state Attorney General Don Stenberg argued that the Nebraska ruling could "lead to an extensive inquiry into the religious beliefs and practices of each judge in Nebraska."

The fact that the sentence was less than the maximum allowable "mitigates against any inference that the judge had some religiously based bias against Pattno which resulted in the imposition of a questionable prison term," Stenberg argued. Δ

Justices reject challenges to pornography restrictions

The U.S. Supreme Court refused to hear challenges to a New York City law that bars adult businesses from operating near churches and residential areas.

Left intact were lower court rulings that upheld a 1995 statute that require the relocation and disbursement of sexually oriented businesses located within 500 feet of any school, day care center, house of worship or other adult shops. The businesses were also limited to non-residential districts.

A state trial court said the law "was motivated by concerns other than those related to speech, and, in particular by a reasonable belief that adult establishments produce undesirable secondary effects such as neighborhood deterioration, crime and decreased property values."

Nearly 85 percent of the estimated 177 adult businesses could have been forced to relocate, close or change the nature of their business since the ordinance was passed.

New York courts rejected challenges to the law. The state trial court concluded that the zoning law "does not violate plaintiffs' rights of freedom of expression guaranteed under the State Constitution."

Petitioners then turned to the federal courts to challenge the law under the U.S. Constitution, but a federal district court and the 2nd U.S. Circuit Court of Appeals stated that the standards applied by state courts in rejecting the state constitutional claims "are the same that would be applicable to [Petitioners'] First Amendment claim." Δ

Court says landlords may use religion to refuse to rent

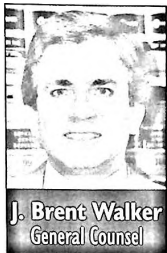
Landlords may refuse on religious grounds to rent to unmarried couples, a federal appeals court in San Francisco ruled Jan. 14.

The 2-1 decision upheld a lower court ruling in favor of two Anchorage, Alaska, landlords who said their Christian faith forbade them to rent to unmarried people living together.

Circuit Judge Diarmuid O'Scannlain said an Alaska law barring housing discrimination based on marital status interfered with property owners' free exercise of religion, as well as their property rights and freedom of speech.

"This is an important decision in the era after the Religious Freedom Restoration Act was struck down because it is the beginning of rebuilding in the courts the rights of citizens to freely exercise their religion without governmental interference," said Nathan Diamant, director of the Union of Orthodox Jewish Congregations of America's Institute for Public Affairs. Δ

Free exercise rights often pitted against other legitimate claims



J. Brent Walker
General Counsel

What do you do when the rights of two citizens collide? A choice between two goods, not a good and a bad, presents one of the toughest tasks involved in judging. Recently decided were two of these cases, one from

Michigan and the other from Alaska, that have national ramifications extending well beyond the rights of the parties involved.

In both cases, a landlord refused on religious grounds to rent to cohabiting unmarried tenants. The landlords sincerely believed that to do so would constitute a sinful use of their property. This ran headlong into fair housing laws, which banned discrimination on the basis of marital status. So, the free exercise rights of one citizen collided with the rights of another not to be discriminated against.

The Michigan Supreme Court, in *McCready vs. Hoffius*, ruled that, even assuming that renting to the unmarried couple burdened the landlord's exercise of religion, the state had a sufficiently compelling interest in insuring against marital status discrimination in housing to override that claim. Accordingly, the court ruled in favor of the tenants under Michigan state law.

In the Alaska case, *Thomas vs. Anchorage Equal Rights Commission*, the 9th U.S. Circuit Court of Appeals came out with a contrary result. (See *News & Comment*, Page 2) It ruled that there was a substantial burden on the landlord's exercise of religion and the governmental interest in preventing marital status discrimination was insufficient to vitiate the claim of the landlord.

This disagreement was not entirely surprising. It mirrors splits in earlier cases from Alaska, California, Minnesota and Massachusetts. In its case, the California Supreme Court ruled for the tenant, holding that when the landlord voluntarily entered the commercial marketplace, there was no longer a burden on her religious liberty. Most of the other decisions

recognized a burden on religion, but disagreed on whether there was a sufficiently compelling governmental interest to override it.

Thomas is an extremely important case. It, or one like it, may well be the next religious liberty case to be decided by the U.S. Supreme Court. The rampant conflict in decisions cries out for resolution. The issue also carries important political implications. Some in the civil rights community fear that either a federal Religious Liberty Protection Act or state Religious Freedom Acts would strengthen the free exercise claims of landlords and result in a diminution of civil rights protection beyond marital status, such as race, gender and sexual orientation.

Space does not permit a thorough analysis of this issue. The quick and dirty answer is that the 9th Circuit got it about right. Where the landlord is an individual — especially if the rental is a part of his or her residence — the courts should usually find a substantial burden on free exercise. Where the landlord is a large, for-profit corporation, it's much more difficult to show a burden. Moreover, the government is usually hard-pressed to demonstrate a compelling state interest in eliminating marital status discrimination. Many states do not have statutes banning such discrimination in housing, nor does the federal government. Most states, as well as the federal government, *themselves* discriminate in some ways against unmarried couples and generally have a public policy *in favor* of marriage.

Attempts to discriminate on the basis of race or gender, however, would present a different issue altogether. The Supreme Court has clearly recognized a "firm national policy" in eradicating racial discrimination and also in eliminating gender discrimination. Protection against sexual orientation discrimination is less clear.

As the 9th Circuit observed, "not all discrimination is created equal." Courts must continue to balance these conflicting rights. What's unacceptable is for civil rights laws to be excluded from a religious freedom bill and thereby allowed to trump religious liberty automatically.

Stay tuned as this drama develops. Δ

Quoting

There is simply no support from any quarter for recognizing a compelling government interest in eradicating marital-status discrimination that would excuse what would otherwise be a violation of the Free Exercise Clause. Not all discrimination is created equal.

— Judge

Diarmuid O'Scannlain

9th U.S. Circuit Court of Appeals

Thomas vs. Anchorage ERC

Jan. 14, 1999

Calendar

Join us in London on July 8-10, 1999, for an international conference titled:

Beyond Mere

Toleration:

Religious Liberty as a Basic Human Right.

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REPORT FROM THE CAPITAL

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



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Book Review

Religious Schools v. Children's Rights

Dwyer, James G., Ithaca, N.Y., Cornell University Press, 1998, 204 pp.



James G. Dwyer provides a legal and practical look into the public vs. religious school debate, and argues that the rights of children in the entire matter have been ignored. Unfettered rights of religious parents favored by courts and some state legislatures have led to unregulated religious schools. Furthermore, the author demonstrates that pedagogical practices in some fundamentalist Christian and Catholic schools may be damaging to children.

Dwyer proposes that state policy regarding religious schooling and other child-rearing practices be focused always on what is best, from a secular view, for the affected children. Dwyer finds no reason for child-rearing issues to depart from the well-established legal and moral principle that rights appropriately protect only a right holder's own self-determination and personal integrity and that no one is entitled to control the life of another person. Child-rearing, he argues, should be seen as more of a privilege than a right of parents, with the state still having responsibility for the temporal welfare of children. The book argues that children who attend religious schools have a right to adequate state regulation and oversight of their education.

As an educator, I found the chapter on Catholic and fundamentalist Christian schooling alarming. The curriculum and pedagogy of many religious schools promote sexist education and deny equal opportunity based on gender. Furthermore, evidence exists that such practices are harmful to female students. Equally

disturbing is the fact that racism is promoted in some schools and goes unchecked by states in the interest of rights of religious parents.

In contrast to public schools, religious schools are generally not required to employ teachers who possess a state-issued credential. The author points out that in fundamentalist Christian schools, most of which use the Accelerated Christian Education self-paced program, there is usually no teacher involved with student learning. Therefore, the right to quality instruction seems to be ignored.

Educators and parents should be alarmed that children's right to become problem solvers and critical thinkers is being thwarted in many religious schools where those skills are not taught. A curriculum that indoctrinates and a pedagogy that stifles inquiry seem to be characteristic of Catholic and fundamentalist Christian schools, according to Dwyer.

The thesis of the book is controversial, given the prominence of parental and family rights. If one reads the book with an open mind, many of the arguments for the shift to children's rights and away from parental rights make sense. Proponents of fundamentalist Christian, Catholic and other private schools will not appreciate the call for the state guaranteeing educational rights of children as opposed to parental choice. Given the present debate over school voucher plans and other schemes that would funnel state funds to religious schools, the book is "must" reading for persons on both sides of that debate. Δ

— James L. Williamson, Ed.D.
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