

Nashville, Tennessee



# REPORT FROM THE CAPITAL

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May 18, 1999

## NewsMakers

♦ **C. J. Malloy Jr.**, pastor of First Baptist Church, Georgetown, in Washington, D.C., testified at a congressional hearing on the Religious Liberty Protection Act. He said, "Will you say once again that our first freedom, the freedom to seek the answer to life's most fundamental questions, should not be overridden by the need for conformity and bureaucratic efficiency?" He added, "I do not understand the legal jargon and sophisticated wrangling of bills, but I do know what it means to have the wall of separation and also the security of protection."

♦ **Le Quang Vinh**, head of Vietnam's Committee on Religion, presented a government report that says progress has been made in assuring religious freedom over the past year but acknowledged that problems remain, such as an increase in disagreements over ownership of religious buildings.

♦ **GOP presidential candidate Pat Buchanan** said "God and the Ten Commandments and all moral instruction have been removed" from schools. Discussing the recent school shootings in Littleton, Colo., he claimed that if "kids had walked in to school with Bibles headed for a class, they would have been called to the principal's office. But you come in talking about Adolph Hitler ... and that's acceptable." ▴

## House panel considers religious liberty measure

**R**eligious leaders want the U.S. Congress to strengthen religious liberty protections in the wake of Supreme Court rulings that have made it easier for state and local governments to interfere with religious practices.

The Religious Liberty Protection Act, introduced by Rep. Charles Canady, R-Fla., would bar state and local governments from interfering with religious practices without a compelling reason. He said it would put burdensome state and local regulations that harm religious practice to the "most rigorous legal test."

Witnesses at a May 12 House Constitution Subcommittee hearing disagreed about RLPA's likely effect on civil rights laws and its constitutionality.

Unlike its predecessor — the partially invalidated Religious Freedom Restoration Act — RLPA would rely on Congress' spending and commerce powers to protect religious liberty in the states. It also has a separate provision that would protect churches and other religious institutions from restrictive zoning laws.

Steven McFarland, director of Christian Legal Society's Center for Law and Religious Freedom, said, "Our first freedom is being steamrolled regularly."

But RLPA is meeting strong resistance from groups on the left and the right.

Canady, chairman of the subcommittee, said he is puzzled by those who supported RFRA but now find flaws in

RLPA, "which simply reflects the same policy objectives."

Opponents criticize the bill's use of the commerce powers of Congress and the bill's potential conflict with some civil rights laws. Critics of the commerce provisions include the Home School Legal

Defense Association, which claims the provisions would give Congress too much power over religion and may show preference to large churches over small ones. While the commerce provisions were stripped from the bill in the last Congress, Canady plans to keep them in the bill.

Other RLPA opponents, such as the American Civil Liberties Union, charge that the bill could threaten gay rights and other civil rights.

Answering RLPA critics, supporters said the bill is the best approach.

Oliver "Buzz" Thomas, special counsel for religious and civil liberties at the National Council of the Churches of Christ, warned against penalizing "the good because it's not the best."

J. Brent Walker, general counsel for the Baptist Joint Committee, said that "there should be no carve-outs to religious liberty, even for good causes such as non-discrimination." He said, "If a court finds a compelling interest in enforcing non-discrimination, including on the basis of sexual orientation, that claim will prevail; where the interest cannot be shown, the religious liberty claim will prevail." ▴



Rep. Charles  
Canady



J. Brent  
Walker

## Top Washington court upholds confidentiality of confession

Washington state's top court unanimously dismissed a contempt order against a minister who refused to reveal in a legal proceeding the content of a religious confession.

The Washington Supreme Court said a state law protects the confidentiality of a religious confession heard by Rich Hamlin, pastor of the Evangelical Reformed Church of Tacoma, Wash.

At a deposition, Hamlin refused to answer questions about the content of his conversations with Scott A. Martin, who has been charged with second-degree murder in the death of his infant son.

A trial court said the conversations were not privileged because the defendant had not shown that his religion required him to make a confession. The court issued a contempt order against Hamlin.

But a state appeals court and the state Supreme Court disagreed.

"It is not necessary for the penitent to be compelled by the penitent's religion to confess in order for the privilege to apply," said the state Supreme Court in an opinion written by Justice Charles Z. Smith.

The ruling said the term "confession" is "defined by the religion of the clergy member receiving the communication and not by the penitent." Δ

## Clinton appoints panelists to persecution commission

President Clinton announced that he will appoint a Muslim, a Baha'i and an American Baptist to fill three remaining seats on the U.S. Commission on International Religious Freedom.

He will appoint Muslim leader Laila Al-Marayati of Los Angeles, Baha'i spokesman Firuz Kazemzadeh of Alta Loma, Calif., and Washington State Supreme Court Justice Charles Z. Smith of Seattle.

The nine-member commission was established under a bill signed into law last year, the International Religious Freedom Act. Members of the commission will evaluate religious persecution abroad annually and will recommend penalties against countries that permit persecution.

Under the law, the president has broad power to determine what penalties, if any, to impose. Penalties may be waived by the president for reasons such as a determination that penalties would undermine the intent of the act.

In a related action, Robert Seiple was sworn in May 5 as ambassador-at-large of international religious freedom at a State Department ceremony. In that role, he will act as a nonvoting, 10th member of the commission and will also head the department's Office on International Religious Freedom.

Seiple said, "At the end of the day there is really only one constituency that we serve — and that's a constituency composed of folks on this day who are being marginalized, discriminated against, persecuted because of their faith or their beliefs. They will not be forgotten."

Smith served from 1965 to 1985 on the General Board of the American Baptist Churches in the U.S.A. and was president of ABC from 1975 to 1977.

He said, "I am honored to be asked by the president to serve on this significant commission. I am especially honored that I can represent the Protestant faiths given my background as an American Baptist."

Smith was a member of the Baptist Joint Committee in the 1970s and again during the 1980s.

Al-Marayati was a founding member and past president of the Muslim Women's League. Kazemzadeh is secretary for external affairs of the National Spiritual Assembly of the Baha'is of the United States.

Five of the nine voting members of the commission are appointed by the president's party and the remaining four are appointed by the other party.

Democratic congressional leaders selected Archbishop Theodore McCarrick of Newark, N.J., and Rabbi David Saperstein, director of the Religious Action Center of Reform Judaism.

Republican congressional leaders previously appointed former U.S. Sen. Bill Armstrong of Colorado; John Bolton, former assistant secretary of state; Nina Shea, director of Freedom House's Program of Religious Freedom; and Elliot Abrams, former assistant secretary of state.

However, a spokeswoman for Senate Majority Leader Trent Lott, R-Miss., said Armstrong, an evangelical Christian, declined to serve on the commission. In his place, GOP lawmakers selected Michael K. Young, a Mormon and dean at George Washington University Law School.

The change disappointed Rich Cizick, Washington director of the National Association of Evangelicals. "Considering that evangelicals are the most represented victims of religious persecution around the world, it's ironic that we're not represented on the commission." Δ

## Court again rules against Kiryas Joel school district

New York state's highest court ruled May 11 that the creation of a special school district for disabled Jewish children is unconstitutional.

In its 4-3 decision, the Court of Appeals found that the 1997 law created by Gov. George Pataki and the state legislature establishing the Kiryas Joel school district "has the primary effect of advancing one religion over others and constitutes an impermissible religious accommodation."

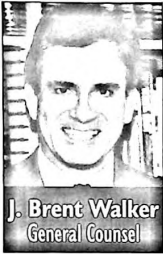
The decision was the latest in a series of judicial defeats for Kiryas Joel, an ultra-Orthodox and politically powerful community 45 miles north of New York City.

It first asked the legislature for a special school district in the late 1980s, but the U.S. Supreme Court struck it down. A 1994 law re-establishing the district was thrown out by the Court of Appeals, again citing church-state separation.

Advocates of the district said the 1997 law removed the constitutional problems, but the appeals court majority disagreed.

The American Jewish Congress, which has long opposed the school district, hailed the ruling for sending an "unambiguous message to legislative supporters of the district: Stop defying the Constitution." Phil Baum, AJC executive director, said legislation to re-establish the district is "nothing more than a sham." Δ

# Protecting religious liberty should unite, not divide, religious groups



J. Brent Walker  
General Counsel

**F**or more than 60 years, the Baptist Joint Committee has followed a well-balanced, sensibly centrist approach to church-state issues. We take seriously both religion clauses in the First Amendment — No Establishment and Free

Exercise — as essential guarantors of God-given religious liberty. Accordingly, we stand against attempts to return state-sponsored prayers to the public schools and vouchers for parochial education. On the other hand, we support a robust version of Free Exercise, too! The BJC has had the privilege of directing traffic for the 75-member Coalition for the Free Exercise of Religion for nearly a decade. This diverse coalition led the charge to support the passage of the Religious Freedom Restoration Act in 1993 (RFRA) and over the past two years has worked hard for the passage of RLPA.

This button I wear today — “Religious Freedom for All” — bears witness to our common commitment to provide increased protection for religious liberty, without advancing or carving out any particular sectarian interest. This button highlights the fundamental notion that if anyone’s religious liberty is left unprotected, everyone’s rights — both religious and civil — are threatened.

These same principles inspire our support for RLPA, a narrowly crafted vehicle for the Congress to restore increased protection for religious liberty consistent with constitutional strictures as interpreted by the Supreme Court.

Some people have claimed that increased protection for religious liberty through RLPA threatens other rights and constitutional values. In the current political milieu, those who lack a sense of the pre-eminence of religious liberty come from both ends of the ideological spectrum.

From the far right, for example, the Home School Legal Defense Association and others object because they oppose Congress exercising its Commerce Clause

powers in enforcing RLPA’s protections. They are wrong.

RLPA helps, rather than hurts, even those who do not like the Commerce Clause. The commerce provisions do no harm, but will benefit thousands of religious organizations. We must use every tool available to protect religious liberty.

Then there are opponents on the left. Some in the civil rights community — particularly many who advance gay and lesbian rights — seek an exemption so that in cases where religious liberty and civil rights are seen to conflict, their claims will always prevail over the religious claim. They are wrong, too.

RLPA does not threaten civil rights laws in general or those banning sexual-orientation discrimination in particular. The courts will balance religious and civil rights when they conflict. In any case, everyone — even those particularly concerned about civil rights — needs increased protection for religious liberty.

Until the Supreme Court begins once again to interpret the Free Exercise Clause in a way that provides full protection for religious liberty, Congress must do its part by passing RLPA. I urge you to lay aside political differences in order to seek something transcendent — religious liberty for everyone.

RLPA is the unusual church-state issue that should unite us. This isn’t a debate about whether a public school teacher can lead a classroom in prayer; this is a debate about whether a Jewish student should be able to wear a yarmulke in public school. This isn’t a debate about vouchers for parochial schools; this is a debate about whether privately funded parochial schools should be free from unnecessary governmental regulation. Surely we can agree that these students and schools, along with many other religious persons and institutions across this nation, deserve protection for their “first freedom.” Δ

*Excerpts of testimony by J. Brent Walker during a May 12, 1999, hearing by the House Subcommittee on the Constitution on the Religious Liberty Protection Act (H.R. 1691).*

## Events

### June 1999

S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

June 25, 1999

*Annual Religious Liberty Council Luncheon*

11:30 a.m. to 1:30 p.m.

Birmingham Ballroom  
Sheraton Convention Center

Birmingham, Alabama  
Tickets: \$20

### July 1999

S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

July 8-10, 1999

*Beyond Mere Toleration:  
Religious Liberty as a  
Basic Human Right*

A symposium on religious freedom and human rights

Bloomsbury Central  
Baptist Church  
London, England



**Religious Liberty  
Day 1999**

Contact Karen McGuire  
for additional information  
about these events or to  
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Day materials:

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- ◆ 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

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## Guest View: School prayer & theological pluralism

Decades have passed since the landmark Supreme Court decisions that resulted in the removal of government-led religious exercises from the public schools. Still today, however, many Baptists are working actively to restore institutionalized prayer to public schools, as evidenced by the recent support by some Baptist groups for the "Istook" amendment.

On at least one level it is easy to identify with the logic that would lead to a return to earlier practices. Prayer is a good thing! And people who pray are typically the same people who embrace the kinds of values that make for a virtuous and stable society. Wouldn't a required exercise in daily prayer at school help to produce the kind of young people we want to see taking their places as productive citizens in society? Who can argue with this position, particularly in view of the moral decline in our nation over the past 40 years?

One objection to this position is especially compelling since it carries us to the very heart of all Christian theology. Christian supporters of official school prayer seem strangely unaware of how their support aligns philosophically with the rather dubious movement known as theological pluralism. Theological pluralism as a school of thought is far more than simply the recognition that North America today is home to a variety of different religions and different ways of thinking about God. That, of course, is a simple fact and powerful testimony to the success of the great American experiment in religious liberty. Advocates of theological pluralism, however, further claim that all religions are but different roads leading to the same destination. It matters not

whether one prays to Allah, God or Krishna. In each case one prays to the same transcendent ultimate reality Christians call God.

Supporters of school prayer recognize that official prayers must be generic to accommodate the diverse religious traditions represented in our communities. These "to-whom-it-may-concern" kind of prayers fit nicely into the agenda of theological pluralism. Christian children join Hindu, Muslim, Buddhist and even nonreligious children and school staff in offering a one-size-fits-all religious

exercise that everyone can participate in no matter what their religious orientation. This makes good civil religion. But it makes for poor Christian theology.

The Christian Gospel entails the recognition that the one true God has been definitively revealed in the person of Jesus Christ. Christians historically have taken the position that salvation comes to a person through Christ. This is the meaning behind the traditional ending of Christian prayers "in the name of Jesus." It marks prayers as distinctively Christian. Christianity does not embrace generic prayers, anymore than the Apostle Paul embraced the Near Eastern cults and religions in the first century.

Prayer is a religious exercise that belongs in the context of gathered believers and their individual private lives. For Christians to work for organized school prayer may put them at odds with atheists; but paradoxically, it also puts them at odds with the Gospel message itself. Δ



Ben Leslie

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