



REPORT FROM THE CAPITAL

Volume 54, No. 23

November 23, 1999

NewsMakers

◆ **Sarah Frances Anders** received the 1999 T.B. Maston Christian Ethics Award at an awards dinner Nov. 5 sponsored by the T.B. Maston Foundation. Anders, who recently retired as professor of sociology at Louisiana College, is a former Baptist Joint Committee chair. She is now moderator of the Cooperative Baptist Fellowship.

◆ **Robert Warner** lost his bid for the Supreme Court to review a symbolic \$1 award he received for wrongly being forced to participate in religious exercises at Alcoholics Anonymous meetings. After his third alcohol-related driving offense in one year, Warner was sentenced to probation by a New York court on the condition that he attend AA meetings. A federal appeals court sided with Warner but said the \$1 award was "just about right."

◆ **Edward DiLoreto**, chief executive of a California engineering firm, lost a bid to post the Ten Commandments in an advertisement on a public high school baseball field. The Downey Unified School District opted to end its practice of selling advertisement space rather than accept DiLoreto's ad. He claimed that his rights to freedom of religion and free speech were violated. But the 9th U.S. Circuit Court of Appeals disagreed and upheld the school district's decision. Δ

Supreme Court to review ruling against prayers at football games

The U.S. Supreme Court announced Nov. 15 it will review a lower court decision striking down a Texas school district's policy that permitted student-led prayer at football games.

The dispute over the Santa Fe Independent School District's football game policy is the first school prayer case the high court has agreed to decide since it invalidated clergy-led prayers at commencement exercises in 1992.

In 1995, the Santa Fe district decided to permit students selected by their colleagues to deliver invocations and benedictions at commencement exercises and to deliver a "brief invocation and/or message" during pregame ceremonies at home varsity football games.

Both policies contained "fallback" positions requiring such prayers to be "nonsectarian" and "nonproselytizing" in the event courts determined that those restrictions were necessary.

The school district partially modeled its policies after a 1992 ruling by the 5th U.S. Circuit Court of Appeals that upheld student-selected, student-given, nonsectarian, nonproselytizing prayers at high school graduations.

A federal district court rejected the Santa Fe district's preferred policy of permitting sectarian, proselytizing prayers. Instead, it ruled that the fallback versions that required such prayers to be nonsectarian and nonproselytizing were necessary to pass constitutional muster.

In a 2-1 ruling, a 5th Circuit panel

agreed that graduation prayers are permissible only if they are nonsectarian and nonproselytizing.

But even with the nonsectarian, nonproselytizing restrictions, the policy cannot be extended to football games, the appeals court said.

The court noted that its approval of graduation prayers "hinged on the singular context and singularly serious nature of a graduation ceremony."

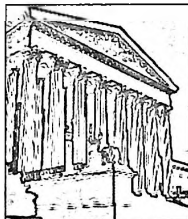
Frequently recurring football games are "hardly the sober type of annual event that

can be appropriately solemnized with prayer," the court said.

The high court's review of the case is limited to the question of whether "student-led, student-initiated prayer at football games" is constitutional.

Baptist Joint Committee General Counsel Melissa Rogers said the high court "should use this opportunity to say that when the school turns over the public address system in a school stadium during a school event for an invocation, the prayer is sponsored by the school and thus violates the Constitution." She also noted that the policy calls for school involvement in directing an election to determine whether the school will include a pregame invocation.

"A school-organized vote on prayer doesn't produce student-initiated religious expression," she said. "It also flies in the face of the Bill of Rights, which protects the minority from the will of the majority." Δ



How much school sponsorship is involved in pregame prayers?

Supreme Court reopens Cleveland voucher program to new students

The U.S. Supreme Court has temporarily reopened Cleveland's voucher program to new students.

In a 5-4 vote, justices granted Ohio Attorney General Betty Montgomery's request to set aside an order by federal District Judge Solomon Oliver Jr. that barred new students from participation in the voucher program until he rules on its constitutionality.

Oliver is overseeing a lawsuit brought by civil liberties and other groups who contend that the voucher program violates the separation of church and state by providing taxpayer-funded tuition for parochial schools. Oliver has set a trial date of Dec. 13 for the lawsuit.

On Aug. 24, Oliver ruled that voucher foes had a "substantial chance" of winning their arguments that the program violates the U.S. Constitution and temporarily halted the program until the case is decided. Three days later, however, he amended his order to keep the program in place for past voucher participants while closing it to new enrollees.

The program provides up to \$2,500 in tuition for about 4,000 students attending private schools in Cleveland, most of which are affiliated with religious organizations. Δ

House approves funding for church-run programs

The U.S. House of Representatives has approved a new grant initiative that would allow federal tax dollars to flow directly to thoroughly religious organizations such as churches, synagogues and other houses of worship.

On a 328 to 93 vote, House lawmakers approved the Fathers Count Act Nov. 10. The measure would in part make religious groups eligible to receive tax dollars to provide secular social services to fathers.

Lawmakers rejected an amendment that would have required houses of worship to set up a separate organization for secular social services in order to qualify for federal funds.

"There is nothing wrong, given some basic safeguards, with faith-based organizations such as the Salvation Army or Catholic Charities receiving federal money to run social programs," said Chet Edwards, D-Texas. "There is something terribly wrong about federal tax dollars going directly to churches, synagogues and houses of worship."

Edwards offered the amendment to add restrictions to what type of religious organizations could receive funds. The amendment failed 184 to 238.

Since houses of worship are allowed to hire people from their own religion, the law would allow federal dollars to be used to discriminate against citizens in job hiring and firing based on their religious faith, Edwards said.

"Signs in one church using federal dollars may say, 'no Jews need apply here,' and another church say, 'no Christians' or 'no Protestants need apply here.' I find that offensive," said Edwards.

But Rep. Mark Souder, R-Ind., said: "We can get into all kinds of legal technicalities here about whether we should have types of separate organizations and how it should be structured. But the plain fact of the matter is that at the grass-roots level, ... the organizations that are by far the most effective are faith-based."

Souder said churches receiving money "still have to make a proposal to whatever entity ... and then the government audits that."

Edwards said that Souder's statement shows that regulations will follow federal money to houses of worship. The federal government "is going to have to audit every dime raised and spent by that church," he said.

A leading proponent of "charitable

choice" acknowledged that churches would be subject to regulations. Rep. Nancy Johnson, R-Conn., said, "Yes, there will be red tape. The churches who choose to receive federal money will be regulated. If they don't like it, I can't help it. If it's federal dollars, you are accountable."

Church-state separation advocates criticized the plan.

"Congress should have recognized that religious liberty and church-state separation count, too," said Baptist Joint Committee General Counsel Melissa Rogers.

She said it is "the wrong way to do right," and noted that such funding "will inevitably lead to government control and oversight of religion." She said, "How is the government going to define 'sectarian worship' or 'proselytization,' much less ensure a church isn't going to use public funds to do it?" Δ

High court hears dispute over use of student fees

The U.S. Supreme Court heard oral arguments in a First Amendment dispute that arose at a public university. Students there objected to activity fees being used to fund student groups with which they disagree.

The University of Wisconsin-Madison asked the justices Nov. 9 to overturn a lower court's ruling favoring conservative Christian students who objected to their mandatory fees funding environmental and gay-rights organizations.

The 7th U.S. Circuit Court of Appeals ruled that using mandatory activity fees to fund such groups burdened the free-speech rights of students who object. University officials argued that pooling funds for various student groups promotes free speech by encouraging a forum for all kinds of ideas.

After the hearing, the lawyer for the conservative students, Jordan Lorence, told reporters, "We're not asking to censor any groups or any speech on campus." He said his clients were "simply asking that these groups be funded by volunteers."

But the president of the university said the policy is intended "to provide a forum for all kinds of ideas." She said students cannot opt out of mandatory fees for the same reason she is not allowed to opt out of paying taxes because she dislikes certain government programs.

A decision in the dispute, *Board of Regents of the University of Wisconsin System vs. Southworth*, is expected before next summer. Δ

Arguments to give churches tax funds don't hold water



All that glitters is not gold. Some arguments for allowing tax funds to flow to churches and parochial schools sound appealing but don't hold water.

1) Refusing to allow churches and parochial schools to

receive tax funds discriminates against religion — why not treat religion like everything else?

Religion is not like everything else. It is different. Our Constitution says so by prohibiting the government from advancing religion (the "no establishment" principle) and interfering with religion (the free exercise principle).

These principles are the yin and yang of religious liberty. Together they create separation between church and state, yielding maximum freedom for these institutions to pursue their distinct goals. So at times there are special limitations on religion (e.g., a church cannot receive government grants as its secular counterparts can), and at times religion is granted special accommodation (e.g., a church may prefer people of the same religion in hiring as its secular counterparts cannot).

This is not discrimination against religion. It is giving religion the breathing room it requires.

2) The government should fund the "secular functions" of churches and parochial schools.

Churches and most parochial schools are pervasively sectarian. Because religion pervades these entities, public funding for any part of them becomes funding for religion itself. And, to the extent the government attempts to separate sacred from secular in a church or like institution, it becomes excessively entangled with religion, which is also unconstitutional and unwise.

3) Religious institutions can get the shekels (tax funds) without the shackles (government regulation).

Some argue that new and improved legal protections will largely shield the

religious organizations that receive tax money from being regulated. Don't count on it. As Rep. Nancy Johnson, a defender of tax-subsidized church ministries, admitted: "Yes, there will be red tape. The churches who choose to receive federal money will be regulated. If they don't like it, I can't help it. If it's federal dollars, you are accountable."

4) The government should be permitted to fund churches and parochial schools, and then each religious institution should be allowed to choose whether to take tax money.

The risk of tax-subsidized church ministries isn't limited to individual recipients. Allowing tax funds to flow to churches creates a dangerous, far-reaching precedent. Asking government to treat religion like everything else in one area will come back to haunt us in others. It ultimately will undercut a wide range of protections for religion from government.

5) We must tinker with church-state separation to tackle serious social problems.

Battling social problems does not necessitate a war on religious liberty and church-state separation. It seems that there are several alternatives worth considering other than vouchers for parochial schools, including educational reform, choice within the public school system and enhanced private sponsorship for private schools.

Also, we don't have to resort to tax-funding for churches to tackle social problems. In addition to maintaining a strong governmental safety net, churches may spin off separate affiliates that use public money for secular social services and expand privately subsidized ministries with additional funds from denominational appeals, enhanced tax incentives for charitable giving, charitable foundation grants or even corporate sponsorships. The government also may publicize the good work religious and other groups do and make referrals when appropriate.

In short, religion and tax funds still don't mix. **A**

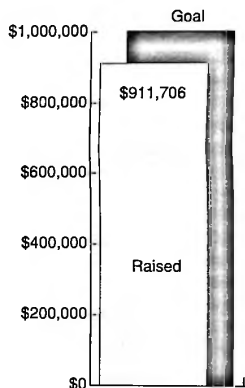
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REPORT FROM THE CAPITAL

J. Brent Walker
Executive Director
Larry Chesser
Editor
Kenny Byrd
Associate Editor

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

Guide seeks to quell conflict over Bible in public schools

Religious, education and civil liberties groups recently endorsed new guidelines designed to end confusion and conflict about the role of the Bible in public schools.

The Bible & Public Schools: A First Amendment Guide was released Nov. 11 in New York City by the National Bible Association and the First Amendment Center at Vanderbilt University in Nashville, Tenn.

The publication carried endorsements from 18 organizations, including the American Federation of Teachers, the Baptist Joint Committee, the Christian Legal Society, the National Association of Evangelicals, the National Council of the Churches of Christ in the U.S.A., the National School Boards Association and People For the American Way.

The guide notes that conflict over the role of the Bible in public schools has been ignited by those who want religion imposed in public schools as well as those who want it ignored.

"The sponsors of this guide reject both of these models and offer another approach — one in which public schools neither inculcate nor inhibit religion but become places where religion and religious conviction are treated with fairness and respect," the guide states.

It notes that Supreme Court rulings on prayer and Bible reading have been misinterpreted as barring students from expressing their faith in public schools.

"Actually, the Court did not eliminate prayer or the Bible from public schools; it barred state-sponsored religious practices, including devotional use of the Bible by public-school officials," the guide states.

The publication emphasizes that while public schools cannot provide religious

instruction, they may teach about religion and the Bible.

"In keeping with the First Amendment's mandate of governmental neutrality toward religion, any study of religion in a public school must be *educational*, not *devotional*," the guide states.

Among guidelines offered to public schools:

◆ Bible classes must be taught in an objective, academic manner, neither promoting nor disparaging religion.

◆ Teachers for a Bible class should be selected in the same manner as other teachers are selected, based on academic qualifications rather than religious beliefs or lack of beliefs.

◆ The Bible may be used as a primary text but should not be the only text for a course.

◆ Parents should be assured that course goals are academic and that academic teaching about the Bible is not intended to undermine or reinforce personal beliefs about the Bible.

The guide stresses that public school teachers "must understand the important distinction between advocacy, indoctrination, proselytizing, and the practice of religion — which is unconstitutional — and teaching about religion that is objective, nonjudgmental, academic, neutral, balanced, and fair — which is constitutional."

The guide underscores religious expression rights enjoyed by students and their right to form student-led, student-initiated religious clubs on the same basis as other extracurricular clubs.

Baptist Joint Committee General Counsel Melissa Rogers said the guide "finds common ground by keeping the study academic in the classroom, while at the same time allowing students the right to express their religious convictions in all places, including the public schools." Δ



**BAPTIST
JOINT
COMMITTEE**

200 Maryland Ave. N.E.
Washington, D.C. 20002-5797
202-544-4226
Fax: 202-544-2094
E-mail: bjcpa@bjcpa.org
Web site: www.bjcpa.org

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