



REPORT FROM THE CAPITAL

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NewsMakers

◆ **Nathan Drory**, coach of a basketball team at the Hebrew Academy of Tidewater, Va., forfeited a game rather than abide by a referee's ruling that the players remove their yarmulkes. **Dick Bowie**, commissioner of the Southeastern Virginia Officials Association, defended the referee's decision, saying that if a clip from the head covering were to poke someone in the eye, their insurance would not cover it.

◆ **Gary Bauer** will not be considered for the presidency of the Family Research Council, an FRC spokeswoman said following Bauer's Feb. 4 withdrawal from the U.S. presidential campaign. Bauer served as FRC president from 1988 until 1999 when he decided to take a temporary leave to run for president. An online news report said that an FRC survey showed that more than 60 percent of the staff did not think the organization should be run by someone with a high profile in partisan politics.

◆ **Julia Nowicki**, Cook County (Ill.) circuit court judge, has dismissed an effort by the Illinois attorney general to challenge the tax-exempt status of the white supremacist World Church of the Creator. Nowicki said Attorney General **Jim Ryan's** attempt to challenge the charitable status of the church led by white supremacist **Matt Hale** would harm freedom of speech. Δ

Can government, religion partner for social justice?

Citing a growing gap between rich and poor Americans, lawmakers and religious leaders are grappling with appropriate ways of working together to combat poverty.

A provision that continues to surface in congressional legislation is "charitable choice." First enacted as part of the 1996 welfare reform law, the policy allows government funds to flow to church coffers to provide social services.

Churches have long been allowed to create separate nonprofit groups that are set up to provide secular social services with tax funds. Under charitable choice, churches — not just separate entities — can receive tax funds.

Tax funds typically bring regulations, such as a prohibition against religious discrimination in hiring. But charitable choice seeks to exempt religious groups that use tax funds from such regulations.

Progressive religious leaders in Call to Renewal, a movement of churches and individuals against poverty, have been considering the merits of proposals such as charitable choice.

At a four-day conference Feb. 13-16, Call to Renewal kicked off a 10-year campaign to overcome poverty. The conference ended with the signing of a "Covenant to Overcome Poverty," which seeks to make the issue a national priority.

While covenant signers — ranging from the National Association of Evangelicals to the National Council of

Churches — want to see a livable wage, affordable housing and better education, they do not outline specific policies to achieve these goals.

The covenant calls for a dialogue on how to "develop new cooperation between government and faith-based organizations that empowers or funds

the successful programs of both religious and secular nonprofit organizations in ways that do not violate the First Amendment."

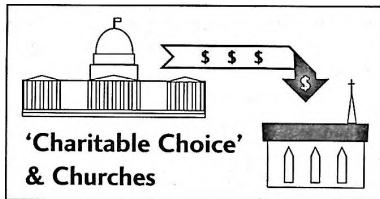
Wallace Charles Smith, representing the Progressive

National Baptist Convention in signing the covenant, believes charitable choice will continue to be on Congress' agenda.

"I don't think it is in and of itself an evil, but I do think unless it is carefully monitored by groups like the Baptist Joint Committee it could become constitutionally problematic," said Smith, senior minister at Shiloh Baptist Church in Washington, D.C.

In the House Education Committee Feb. 16, charitable choice was added to a major literacy program by Rep. Mark Souder, R-Ind.

Melissa Rogers, general counsel at the Baptist Joint Committee, said that "the question is not whether religion and government may partner to provide social services, but the question is how they may do so constitutionally. We aim to continue to help religious organizations identify constitutional ways for church and state to cooperate." Δ



Massachusetts court hears dispute over inmate's rosary

The Massachusetts Supreme Court heard arguments Jan. 8 in a case involving an inmate who claims his religious freedom was violated when guards confiscated his rosary.

Prison guards at the state prison confiscated a black-and-white beaded rosary belonging to Peter Kane in June 1997 because it could have signified connections to a gang, according to Department of Correction officials.

To combat gang activity, the department had restricted certain jewelry and clothing items — including rosaries — that inmates could keep, said Peter Pope Jr., superintendent of the state prison. The department does permit inmates to keep rosary beads as long as they are one color.

A lower court has affirmed the department's policy, saying that inmates' rights "may be curtailed in order to achieve legitimate correctional goals or to maintain prison security."

Kane has denied any gang affiliation, and his attorney, John Reinstein of the American Civil Liberties Union, said the rosary confiscation sent the wrong message to inmates, one that says, "If you want to pray, pray our way." Δ

Americans United asks IRS to probe Gore endorsement

Americans United for Separation of Church and State has asked the Internal Revenue Service to investigate whether a prominent New York City church violated tax law by supporting Democratic candidate Al Gore for president.

The Rev. Floyd Flake, pastor of Allen African Methodist Episcopal Church in Jamaica, in the borough of Queens, welcomed the vice president at a Feb. 13 worship service.

"I don't do endorsements from across the pulpit because I never know who's out there watching the types of laws that govern separation of church and state," said Flake, a former Democratic congressman, according to news reports. "But I will say to you this morning and you read it well: This should be the next president of the United States."

The Rev. Barry Lynn, executive director of Washington-based Americans United, wrote to the IRS about what he called "improper partisan political activity." In the letter, Lynn said, "This statement indicates that Flake is aware of the provisions in the Internal Revenue Code that bar houses of worship from endorsing or opposing candidates for public office but chose to ignore them."

An aide at the AME church said that Flake did not endorse Gore and that the media misrepresented his statements.

In a separate matter, the U.S. Justice Department has decided not to investigate Americans United, which was accused by several U.S. senators of intimidating voters through its efforts to warn churches against distribution of Christian Coalition voter guides.

Deputy Assistant Attorney General John C. Keeney, in a Feb. 4 letter to AU, said the two criminal statutes that would relate to such a complaint "reach only threats of physical or economic harm" to deter voters from voting.

"They do not reach the mere expression of opinions concerning the possible tax ramifications to organizations that engage in such activities," Keeney said.

Lynn welcomed the decision and called on the senators to apologize.

The six Republican senators who wrote to Attorney General Janet Reno were Jesse Helms, R-N.C.; Jeff Sessions, R-Ala.; Paul Coverdell, R-Ga.; Sam Brownback, R-Kan.; Don Nickles, R-Okla.; and Strom Thurmond, R-S.C.

An aide to Nickles said it "would be a

cold day in Belize" before the senator apologized to Lynn, according to a Tulsa, Okla., newspaper. Δ

Indiana legislators approve posting Ten Commandments

Indiana legislators overwhelmingly approved a bill Feb. 7 permitting schools and other government entities to post the Ten Commandments in their buildings.

The House passed the bill by a vote of 92-7 and sent it to the Senate, which already has approved a similar measure. One of the bills is expected to reach Gov. Frank O'Bannon for final approval.

O'Bannon has said he would sign such a bill if it is constitutional.

The bill permits the Ten Commandments to be posted in schools, courthouses and other government property if they are displayed with other documents of historical significance that have helped create or influenced the U.S. legal system.

The legislation is part of a nationwide debate over the display of the Ten Commandments in public places. Opponents said that such a law would violate the separation of church and state guaranteed by the U.S. Constitution.

Rep. Dean Young, R-Hartford City, said he expects to someday meet God face to face. "Am I going to say to him or her, 'Well, God, I thought it was unconstitutional'?" asked Young, who voted for the bill. Δ

French government call U.S. 'soft' on religious 'cults'

In a recent report, the French government called on nations worldwide to stop the growth of religious sects and criticized the United States for offering too much religious freedom to "cults."

"The confusion maintained across the Atlantic between religious freedom ... and prevention, even repression, of punishable sectarian excesses does not make dialogue any easier," said the report, issued by the Interministerial Mission for the Fight Against Sects.

The government report said U.S. criticism of the status of religious freedom in France was unfair. A U.S. State Department report last year questioned freedom of religion in several European countries, including France.

"We're aware of the French government's views on religion and it's clear that we view issues of religious freedom differently," said a State Department official. Δ

'Equality principle' is dangerous yardstick for church-state relations



Melissa Rogers
General Counsel

2000), Jeffrey Rosen writes:

"The Supreme Court is on the verge of replacing the principle of strict separation with a very different constitutional principle that demands equal treatment for religion. And far from threatening public life, or for that matter religious liberty, the revived cooperation between church and state may be an inevitable and perhaps even healthy result of treating religion as just another aspect of identity politics in a multicultural age."

Maybe the article should have been titled, "How I Learned to Stop Worrying About Church-State Separation and Love Equal Treatment." It is a dangerous piece reflecting an insidious trend — the uncritical acceptance of the equality principle as the touchstone for church-state relations.

Of course, sometimes religion should be treated equally by the state. For example, the Equal Access Act properly allows student religious clubs to meet on campus just as any other non-curriculum related club may do.

But making equality the *sine qua non* of church-state relations is unquestionably bad for religion. True equality means, for example, that churches could not discriminate based on religion in hiring, and the government could not provide special accommodation for employees who wish to wear religious garb.

Many religious supporters of the "equality" principle retort — oh, we don't mean *that* kind of equality. We mean the kind of equality where religious entities are eligible for benefits like government grants and contracts, for example, while still maintaining a host of special exemptions that no other government grantee enjoys.

This isn't an equality principle — it's

trying to have your cake and eat it too. It is politically unsustainable. Those whose battle cry is "level the playing field," shouldn't be surprised when the field actually gets leveled. The equality principle logically leads to no special limits or special accommodations for religion.

The Constitution contains not only an equality principle (the Equal Protection Clause), but also free exercise and establishment principles, and they ought to mean something. Through the Free Exercise and Establishment clauses, the Constitution recognizes that religion is different. Religion should not be considered "just another aspect of identity politics in a multicultural age." A religious conviction is a belief unlike any other.

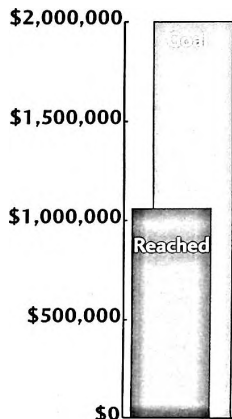
Through these clauses, the Constitution also recognizes that religion must be treated differently when doing otherwise would amount to governmental advancement of religion or governmental interference with religion. Baptist churches should not be eligible for government grants or contracts, for example, but they should be able to hire Baptist preachers rather than Jewish rabbis. At times there are special limits on religion, and at times religion is granted special accommodation. Together the free exercise and establishment principles create a healthy separation between church and state, yielding maximum freedom for these institutions to pursue their distinct goals.

This vision is constitutionally sound, politically sustainable and good for religion and religious liberty. It has been a uniquely American contribution to the world.

The *New York Times Magazine* article suggests, however, that this rule can be casually tossed on the garbage heap of history. Instead, we should rededicate ourselves to this vision of religious liberty and use it to capture and recapture the imaginations of our fellow Americans. A



BAPTIST
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ENDOWMENT



It's a long way from the \$12,000 cash reserve held by the Baptist Joint Committee in 1981 to **\$1.06 million** in the BJC endowment in February 2000.

You, the readers of *Report from the Capital*, have done it. Without consultants or experts, dinners or drives, campaigns or fancy plans, you have guaranteed that there will always be a BJC.

Now let us thank God for all those who believe that God wants free worshipers and no other kind. What do you think about \$2 million in endowment by the end of 2000?

— James M. Dunn
President
BJC Endowment

Baptist Joint Committee

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- ◆ 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

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Book Review

Religion in the Workplace

A Comprehensive Guide

to Legal Rights and Responsibilities

Michael Wolf, Bruce Friedman and Daniel Sutherland. (Chicago: American Bar Association, 1998) 267 pp.



In 1995, an employee of U.S. West Communications vowed to wear at all times an anti-abortion button depicting an 18- 20-week-old fetus.

She claimed that "the Virgin Mary would have chosen this very same button to wear as a protest against abortion." Her button deeply disturbed some of her colleagues, and some threatened to quit if she continued to wear the button. Her supervisor requested that she remove the button. When she refused, she was fired. Is this religious discrimination? Should the employer be held liable, or did U.S. West act in accordance with the law when firing this employee?

Michael Wolf, Bruce Friedman and Daniel Sutherland answer these and many more questions about religious discrimination in their book, *Religion in the Workplace*. Although many books outlining discrimination law are available, this book is unique in that it specifically looks at religious discrimination. The examples and cases used to clarify the laws are useful and practical and make this book an excellent reference for employers dealing with religious discrimination.

The first chapter begins with a description of each of the relevant laws. The remaining chapters clearly show how these laws have been interpreted by the courts. The authors answer questions such as which employers are covered under the law, how religion and discrimination are

defined, and what constitutes reasonable accommodation of religious practices by the employer. The book also addresses religious expression by public and federal employees, as well as individuals objecting to union dues because of a religious belief.

The definitions of religion and discrimination are fundamental to what constitutes religious discrimination. The authors note that religion is defined in Title VII as including "all aspects of religious observance and practice, as well as belief." Practically, however, the courts have been reluctant to evaluate theology and will generally accept a person's claim of acting out of religious conviction. Defining discrimination may be easier, but the burden of proof is on the plaintiff.

Under the current religious discrimination laws, the employer is required to provide reasonable accommodation for employees whose religious beliefs conflict with their work requirements. The authors outline what constitutes "reasonable accommodation" and note that the employer is only required to present one reasonable accommodation to the employee. If the employee refuses the employer's offer, the employer is not held liable.

While the field of religious discrimination is a complex one, Wolf, Friedman and Sutherland have masterfully made it comprehensible in their book. They illustrate their points with an abundance of cases, but have managed to keep the book readable. The summaries at the end of the chapters further simplify guidelines and practical applications of the law. For employers who are facing ever-increasing religious diversity in their workforce, this book is a necessity. Δ

— Susanna Pearce
BJC Intern

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