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REPORT FROM THE CAPITAL

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NewsMakers

◆ **Charles Haynes** and **Oliver Thomas** discussed ways to find consensus on religion's proper role in public schools during a "town hall" public forum with Texas school administrators and parents. Haynes is senior scholar for religious freedom programs at the Freedom Forum First Amendment Center in Nashville, Tenn., and Thomas is director of Knoxville (Tenn.) Legal Aid Society.

◆ **Robert M. Bell**, Maryland chief judge, has ruled that a Prince George's County, Md., church that severed ties with the African Methodist Episcopal Zion Church can keep about \$38 million in assets while litigation is pending. The Rev. **John Cherry Sr.** and about 24,000 members of From the Heart Church Ministries broke ties with the AME Zion denomination in July but are seeking to maintain two sanctuaries, a school, a Lear jet and other assets.

◆ **Eric Shakir**, civil rights coordinator for the Council on American Islamic Relations, commented on the group's report detailing rising anti-Arab discrimination. It was released on the fifth anniversary of the Oklahoma City bombing. "The types of incidents change, but the trend remains the same," Shakir said. The report said religious attire or appearance accounted for 34 percent of the cases. Δ

Discrimination lawsuit tests tax-funded social ministries

In a dispute over the use of tax dollars for religious social ministries, two civil liberties groups filed a lawsuit against a children's home facility for employment discrimination and against the state of Kentucky for funding it.

The American Civil Liberties Union and Americans United for Separation of Church and State filed the suit in a federal district court April 17 on behalf of Alicia Pedreira, a lesbian fired from her position as a family specialist at the Kentucky Baptist Homes for Children.

KBHC currently assists about 350 children who have suffered physical and sexual abuse, neglect or emotional or other problems. The organization was established in 1869 by a group of Baptist laymen in Louisville, Ky.

"If this were a church, we would have no complaint," said Michael Adams, the ACLU attorney in the case. "Our concern is that this is an institution receiving large sums of tax dollars and still imposing its religious beliefs on its employees."

Adams said KBHC received \$13 million of its \$19 million budget last year from the state. News reports indicated that the state may not renew the organization's funding. But KBHC President Bill Smithwick said if the state halts the contract, then it "will be giving tacit approval to the homosexual lifestyle."

He said the dispute "is a child advocacy issue" and promised to "vigorously defend" the policy barring employment of homosexuals. "Having counselors who assert homosexual behavior is not, we believe, the best way to care for trou-

bled and abused children," he said.

The ACLU said anonymous plaintiffs Jane and James Doe were "devastated" when Pedreira was fired "because she was the first counselor to make a difference in their son's life."

Among plaintiffs in the case is Paul Simmons, who taught Christian ethics

for 23 years at Southern Baptist Theological Seminary in Louisville.

"If you're going to be a state agency, you've got to live by state rules," said Simmons, now a professor

"If you're going to be a state agency, you've got to live by state rules."

— Paul Simmons

in the Department of Family and Community Medicine at the University of Louisville and a trustee at Americans United.

The ACLU charges that in 1998, the Kentucky Baptist Homes fired family specialist Pedreira because she is a lesbian and, on the same day, issued an across-the-board policy against employment of homosexuals.

Kentucky law prohibits employment discrimination based on religion, but not on sexual orientation. However, the ACLU said the lawsuit "opens a new front" in the battle against employment discrimination by contending that Pedreira was fired because she did not share her employer's religious beliefs about homosexuality.

"If Kentucky Baptist Homes for Children believes that its religion teaches it to discriminate, that's its right. But to pay for it with taxpayer money violates the separation of church and state required by the Establishment Clause," said Adams. Δ

Safety devices help reduce buggy mishaps

Traffic accidents in parts of Ohio are down since Amish drivers have added safety devices such as lights and reflective tape to their horse-drawn buggies, a state report said.

Statistics from the Ohio Department of Public Safety showed a 20 percent decline in the average number of buggy accidents in Geauga County, east of Cleveland. That decrease is partly attributed to the success of safety guidelines established in 1996. A recent report showed that about 80 percent of Amish people in the county adopted the recommendations.

Ninety-two buggy accidents occurred in Geauga County in the four years before the safety guidelines were issued, but that number dropped to 72 in the succeeding four years — even though the Amish population rose 10 percent.

Officials say the number of accidents has remained the same or increased south of Cleveland in Ashland, Holmes and Wayne counties. In the latter two counties, some Amish people have opted to hang oil lamps in their buggies at night rather than run battery-powered lights.

Ohio began examining safety issues regarding horse-drawn buggies in 1994 at the request of Amish residents. Twelve Amish people died and more than 600 were injured between 1992 and 1999 in car and buggy accidents in Ohio. **A**

Supreme Court allows school to ban Ten Commandments ad

The Supreme Court refused April 17 to hear a challenge to a California school district's rejection of an ad containing the Ten Commandments on a high school baseball field.

Left standing was a ruling by the 9th U.S. Circuit Court of Appeals that the Southern California school district did not infringe on religious freedom by not allowing a local businessman to post the Ten Commandments on a baseball field sign.

Because the court dismissed the case without hearing it or issuing a formal decision, no legal precedent was set.

Edward DiLoreto, who owns a local engineering firm, wanted to buy the ad from the Downey High School baseball booster club for \$400. The ad would have posted the Ten Commandments and said, "Meditate on these principles to live by."

The school district rejected the ad, along with one proposed by Planned Parenthood, and DiLoreto sued for "impermissible viewpoint-based discrimination." DiLoreto and his lawyers claimed the school board was using "misguided ideas about their responsibilities with respect to the separation of church and state."

State and federal courts ruled against DiLoreto, and the 9th Circuit Court of Appeals upheld those rulings. The appeals court ruled that the baseball field fence was "a forum limited to certain subjects and not open for indiscriminate use by the general public." In addition, it ruled that the district was free to exclude subjects "that would be disruptive to the educational purposes of the school." **A**

Federal court strikes down Ohio's religious state motto

Deciding that the state motto of Ohio expresses "a uniquely Christian thought" and is a government endorsement of Christianity, a federal appeals court declared the motto unconstitutional in a 2-1 vote.

In prohibiting Ohio's use of the motto "With God, all things are possible," the appellate court decided that U.S. District Judge James Graham should not have granted Ohio permission to use the motto with the stipulation that the phrase's biblical origins could not be cited.

"When Jesus spoke to his disciples, he was explaining to them what was needed of them to enter heaven and achieve salva-

tion, a uniquely Christian thought not shared by Jews and (Muslims)," wrote Circuit Judge Avern Cohn.

In its lawsuit filed on behalf of Presbyterian minister Matthew Peterson, the American Civil Liberties Union argued that the phrase is inseparable from its biblical context.

"Remarkably, advocates of the state motto attempted to drain the passage of its theological significance in their effort to avoid the First Amendment implications of its meaning," said the ACLU's Ohio Legal Director Raymond Vasvari. "It is just another example of how state sponsorship ultimately does no favors to religion."

The appellate court's lone dissenter, Circuit Judge David Nelson, said he found Ohio's state motto no more upsetting than the phrase "In God We Trust" printed on U.S. currency.

But Cohn, citing two federal appeals courts rulings since 1970, said "In God We Trust" is not the equivalent of a state endorsement of religion and noted that the U.S. Supreme Court has never ruled on a direct challenge to the phrase.

Ohio Gov. Bob Taft, a Republican, has vowed to do "everything within my power to uphold and defend the motto." The state has said it intends to challenge the appeals court's ruling. **A**

Florida judge allows voucher program to continue for now

The Florida judge who ruled in March that the state's voucher program is unconstitutional is allowing the program to continue until an appeal is considered.

Circuit Judge L. Ralph Smith Jr. previously decided that the voucher law violates the state constitution because it provides state money that will be spent on private schools.

On April 25 he presided over a hearing in which opponents of the voucher plan sought a reinstatement of his order preventing implementation of the law in the next school year. That order was suspended when the state appealed Smith's previous ruling.

Attorneys for the state told the judge that the First District Court of Appeal could make a decision on the appeal by September, the time when public money would be put in the voucher account.

Smith encouraged the state's attorneys to file their appeals briefs quickly so the appeal can be settled. "There are a lot of people that need to have this resolved expeditiously," he said. **A**

Tax funding has consequences for religious social service providers



Those who have been singing the siren song of government shekels for religious social service providers without government shackles should stop and consider the filing of a recent lawsuit in a Kentucky court.

The case concerns Kentucky Baptist Homes for Children (KBHC), which received \$13 million of its total \$19 million budget last year from the state in the form of government contracts, according to the plaintiffs. In 1998, KBHC fired a tax-funded employee when it learned that she was a lesbian. The plaintiffs say KBHC learned that the employee was a lesbian because a photograph of the employee and her "life partner" was displayed at the Kentucky state fair. According to the plaintiffs, the president of KBHC explained the termination by stating that "The purpose of our agency is to help hurting children and families through Christ-centered ministries. Having staff whose lifestyles demonstrate the opposite of the Judeo-Christian values we build our mission upon working with our kids is a contradiction of who we are."

The plaintiffs in this case do not challenge the proposition that a religious organization that does not accept tax funds can discriminate on the basis of religious beliefs in hiring. A Baptist church, for example, can insist that its tithes and offerings not be used to hire a pastor whose beliefs conflict with their religious convictions. The plaintiffs do not challenge the proposition that religious organizations that receive tax money for some positions may discriminate on the basis of religion in privately funded jobs. Catholic Charities, for example, may receive government grants for their secular work and yet continue to insist that its president, whose salary is privately funded, is a Catholic. The plaintiffs do claim, however, that religious organizations that receive tax money may not use that money to discriminate in employment on the basis of religion.

The case has just begun, and we can

expect to hear much more about it as briefs and motions are filed, arguments and appeals are heard. Regardless of who prevails in the end, one thing the case clearly demonstrates is that religious organizations that accept tax money face some serious consequences. The public officials who have been practically inviting churches to set up new pipelines between their coffers and federal and state treasuries ought to take heed. Money isn't the only thing that will pour into churches and other religious institutions — lawsuits will, too.

Of course, some will argue that even religious organizations that don't take tax money are sued and regulated these days. Unfortunately, that is true in some cases. But taking tax funds creates whole new legal concerns. What restrictions come with tax subsidies and how might they conflict with religious beliefs? What kinds of audits will be required? The politicians who call for the extension of "charitable choice" — which purports to protect religious autonomy while allowing houses of worship to use tax money for social services — need to grapple with these and other questions. It is astounding that while charitable choice is part of two laws and pending on at least eight pieces of legislation, not one Congressional hearing has considered the profound constitutional concerns it raises.

If we truly value religious liberty, we ought to be very cautious about financial partnerships between religious organizations and government. Instead of racing to tack charitable choice to every stream of federal social service funding, we should study how it is being implemented. Instead of assuming that religion and religious liberty will be strengthened by subsidizing houses of worship with tax money, we ought to explore the dangers and the many ways in which religious organizations and government can cooperate to provide social services without creating funding ties that bind.

And, instead of pretending that government shekels can miraculously come without government shackles, we should emphasize that, even for religious organizations, accepting tax funding has consequences. Δ

Quoting

"KBHC has provided care for Kentucky's children and teens for more than 130 years, the vast majority of that time with no state reimbursements. Our work will go on, with or without state funds.

... We never discriminate against the children we serve for any reason. The only time we refuse to serve a child is when we do not have the resources available to meet that child's needs."

— **Bill Smithwick**
President
Kentucky Baptist Home
for Children

"For me, this lawsuit should be a call for Southern Baptists to recapture their tradition of separation of church and state, which they have badly compromised in the past two decades. ... Churches cannot and should not do social work simply as a secular enterprise. They will and should incorporate religious commitments into whatever they do. For government to ask them do otherwise distorts the very purpose of their being. The separation of church and state is a tradition rooted in wisdom this nation will forget at its own peril."

— **Paul Simmons**
Clinical professor
University of Louisville
and plaintiff in lawsuit
against KBHC

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Heifner to head development for Baptist Joint Committee

A Baptist university development officer has been named director of development for the Baptist Joint Committee.

Todd Heifner, director of endowment and capital funds at Samford University, Birmingham, Ala., since 1995, will begin his new duties May 1.

BJC Executive Director Brent Walker said the agency's Executive Committee unanimously approved Heifner's selection to fill the newly created position.

"He's a consummate development professional who is passionate about religious liberty," Walker said. "That's a win-win formula."

Walker said the agency moved to hire a development professional to be able to expand educational and other religious liberty programs.

Heifner said his move to the BJC is "an opportunity to raise money for an organization that traditionally has not had a development shop."

"What's exciting about it," he said, "is you have a cutting edge issue in church-state separation and religious liberty, and it's cutting edge for the generations that have come before and for the generations that are coming in the future."

He said the Baptist Joint Committee "is really shaping the dialogue on this issue. An opportunity to work with such a well-recognized Washington group is the chance of a lifetime in my mind."

Walker predicted Heifner "will be instrumental in taking our annual giving to a new level."

Heifner also will be working with BJC Endowment President James M. Dunn to

"build an endowment that will ensure the BJC's financial viability into the next century," Walker added.

Heifner, who will maintain an office in Birmingham, earned a bachelor of science degree in public administration from Samford in 1991. In 1998, he earned a master of business administration degree from Samford and a master of education in higher education administration with a concentration in fund-raising management from Vanderbilt University in Nashville, Tenn.

Heifner expects to complete work on a doctorate in political science at the University of Alabama in Tuscaloosa, Ala., in

August 2001.

Before joining Samford's development staff, Heifner served as an account executive for BellSouth Business Systems in Birmingham and as a specialist in corporate and external affairs for BellSouth in Montgomery, Ala.

Heifner, a BJC intern in 1989, was named to the agency's board of directors last year.

In Alabama, he chairs the Governmental Action Committee and serves as a trustee of the Birmingham Area Chamber of Commerce.

He has also filled various roles for the United Way of Central Alabama and is a member of the board of directors of the Downtown Jimmie Hale Mission, an inner-city homeless shelter.

He is a member and deacon at Riverchase Baptist Church, Birmingham. His wife, Catherine "Kit" Heifner, is a systems analyst with Blue Cross/Blue Shield of Alabama. They are the parents of a 2-year-old son, Graham. Δ



Todd Heifner



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