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REPORT FROM THE CAPITAL



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NewsMakers

◆ **Michael Tanner**, director of health and welfare studies at the Cato Institute, believes that "Officials of faith-based charities may end up spending more time reading the *Federal Register* than the Bible." This sentiment is an excerpt from a briefing paper written by Tanner titled "Corrupting Charity: Why Government Should Not Fund Faith-Based Charities." The Washington-based Cato Institute is a conservative public policy research foundation.

◆ **President George W. Bush** praised **Pope John Paul II** as a "servant of God and a hero of history" during ceremonies on March 22 dedicating the Pope John Paul II Cultural Center. The \$65 million center, near the campus of the Catholic University of America, includes a museum and an interactive tribute to the pontiff.

◆ **Remains of Madalyn Murray O'Hair** and two relatives were buried March 23 at a secret site in central Texas. The burial occurred a week after human remains discovered in a shallow grave on a Texas ranch were identified as those of O'Hair, her son and granddaughter. Each had been missing since 1995. O'Hair, an atheist activist, gained fame in the 1960s for launching a lawsuit that helped lead to the Supreme Court's 1963 ruling banning state-sponsored prayer in public schools. Δ

Vouchers part of House bill; amendment expected in Senate

Even as the constitutionality of vouchers continues to be decided in the courts, discussion of the issue is heating up on Capitol Hill with both houses of Congress preparing to debate education bills.

Seventy-six Republican members of the House are co-sponsors of a bill containing a host of voucher proposals, including provisions for parents of children attending schools deemed "failing" or "unsafe."

The House legislation, called the No Child Left Behind Act, would allow students in persistently failing or unsafe schools to use public dollars to transfer to higher-performing schools — including religious ones. It also provides funding of "demonstration projects" to study the effectiveness of voucher programs and block grants that could be used for funding voucher programs.

Senate members are taking a different tack. To date, they have omitted voucher provisions from their education bill. In the Senate's bipartisan legislation, students enrolled in a school identified as needing improvement would have the option to transfer to another public school within the local school system.

The bill, called the Better Education for Students and Teachers Act, is part of an extension of the Elementary and Secondary Education Act of 1965. It would also provide grants to local school systems for magnet schools and increase accountability and assistance to charter schools.

But Joel Packer, senior professional

associate for the National Education Association, expects that a voucher amendment will be introduced when the Senate takes up the education bill.

Susan Nogan, a lobbyist for the National Parent Teacher Association, said the Senate legislation could be amended to give states flexibility in decisions about spending federal education funds. The amendment, called "Straight A's,"

was submitted while the bill was being discussed in the Committee on Health, Education, Labor and Pensions, but withdrawn without a vote. It would give each state the option of combining multiple federal programs into a single

block grant for any elementary and secondary educational purpose permitted under state law.

Both Nogan and Packer believe that opponents of education vouchers have a good chance of defeating the proposals.

Brent Walker, executive director of the Baptist Joint Committee, applauded the Senate's decision to proceed without the voucher provisions, but warned lawmakers that introducing voucher amendments would endanger church-state separation and be detrimental to the very schools they were trying to help.

In a statement, NEA President Bob Chase said the "voucher movement had gained political momentum, even though many key issues remain unresolved."

Chase said accountability to the public, the constitutionality of using public money for religious schools and regulation of the schools are among his concerns. Δ



House, Senate
take different
approaches
on
vouchers

Appeals court OKs reference to God in motto

An Ohio federal appeals court has upheld the constitutionality of the Ohio state motto, which states: "With God All Things Are Possible."

"The motto is merely a broadly worded expression of a religious/philosophical sentiment that happens to be widely shared by the citizens of Ohio," wrote Judge David A. Nelson in the majority opinion for the 6th U.S. Circuit Court of Appeals.

The 9-4 ruling handed down by the full appeals court March 16 overturned a 2-1 ruling last April by a panel of the appeals court. The panel found the motto expresses "a uniquely Christian thought," and its use by the state amounted to government endorsement of Christianity.

Nelson, who was the lone dissenter on that panel, said at the time that he found the 41-year-old state motto no more offensive than the phrase "In God We Trust" printed on U.S. coins.

The ruling stems from a lawsuit filed by the American Civil Liberties Union on behalf of Presbyterian minister Matthew Peterson. The civil rights organization had argued that the phrase is inseparable from its biblical context.

In 1998, a U.S. district judge had granted Ohio permission to use the motto with the stipulation that the phrase's biblical origins not be cited. Δ

House lawmakers introduce faith-based package

Pressing forward despite criticism of President George W. Bush's faith-based initiative, a bipartisan group of House lawmakers has unveiled the sweeping Community Solutions Act.

The bill, introduced March 28, would expand funding of religious organizations providing social services and allow non-itemizers to deduct charitable giving from their taxable income.

The effort by House lawmakers came just days after news that the more controversial "charitable choice" portion of the Bush initiative, which would fund religious ministries with tax dollars, would be postponed in the Senate.

Longtime critics of charitable choice programs say they violate the separation of church and state. They have been joined recently by voices from the religious right raising concerns about unpopular or minority faiths benefiting from tax dollars and the prospect of government regulations accompanying federal funding.

Sen. Rick Santorum, R-Pa., said recently that Senate backers of the Bush plan will proceed with the tax-incentive parts of the bill, but the charitable choice provision could be delayed for as long as a year.

Nevertheless, House Republican Conference Chairman J.C. Watts, R-Okla., joined by House Speaker Dennis Hastert, R-Ill., and Rep. Tony Hall, D-Ohio, announced March 21 they plan to move forward with legislation that includes the charitable choice initiative as well.

Hastert said the "best remedy" for drug addiction and other social ills is provided by faith-based organizations. Standing alongside religious and advocacy leaders from groups such as Call to Renewal, Hastert said faith-based programs are more effective than government programs because they "provide that little extra something that made the difference to help people change their lives."

In an interview with Associated Baptist Press, Hall urged churches to set up a separate nonprofit organization to take tax dollars but said the legislation would not require it.

"They're going to have to separate the money. They can't use this money for religious instruction, proselytizing," Hall said. "Anytime you get federal money, it's always looked at. They will be audited."

Religious liberty advocates say the type of regulations Hall cited would interfere with the religious nature of the social pro-

grams and excessively entangle church and state. And others, including Reps. Bobby Scott, D-Va., and Chet Edwards, D-Texas, say charitable choice will allow tax-funded employment discrimination based on religion.

Houses of worship are exempted from federal laws that bar religious discrimination in hiring. The intent of that exemption was so churches could limit hiring to people of their own faith. While the exemption remains in place in the new proposal, Hall acknowledged that lawsuits are likely once churches start accepting tax dollars and continue to discriminate in hiring.

House supporters are pressing on despite an expected battle in the Senate.

"Faith-based and community groups have been quietly feeding the hungry and clothing the poor for years," Watts said. "We ought to promote the good work they do and empower them with resources to reach out to those who need their help." Δ

Religious freedom panel urges action regarding Sudan

Reiterating its call for Washington to take action to end religious persecution in Sudan's long-running civil war, a federal panel on religious freedom wants the Bush administration to mount a "comprehensive, sustained campaign" to deal with the Sudanese government's abuses.

In a report released March 21, the U.S. Commission for International Religious Freedom said the Sudanese government's abuse of human rights has reached "genocidal proportions" and has worsened since the commission's annual report on religious freedom issued last May.

That report had urged Washington to help end the 18-year-old civil war in Sudan by tightening sanctions against the country, creating a "military no-fly zone" over Sudan and pressuring Sudanese officials to end human rights violations.

Since 1983, more than 2 million people have died in fighting and war-induced famines in Sudan in the struggle between the Islamic government in the north and autonomy-seeking groups in the predominantly animist and Christian south.

The panel urged the Bush administration to mount a comprehensive campaign to address the violations. Economic sanctions against Sudan should be strengthened, it said, and foreign companies doing business with Sudan should be required to disclose that information to investors in America when using markets in the United States to raise money. Δ

Anniversary a good time to recall Madison's contributions to liberty



J. Brent Walker
Executive Director

Last month we celebrated the 250th anniversary of the birth of James Madison — a good time to recall the invaluable contribution he made to the securing of religious liberty in this country.

Our diminutive, soft-spoken fourth

president is often eclipsed by his elegant and eloquent collaborator in freedom, Thomas Jefferson. To Jefferson's memory we built a monument on the Tidal Basin, put his visage on the nickel, attribute to him the "wall of separation" metaphor, and trek to his "little mountain" to pay homage. For Madison there are no monuments, no coins and few rhetorical nuggets, and his modest Montpelier is obscured by the shadow of the neighboring majestic Monticello.

Yet, arguably, Madison played a greater role in developing the uniquely American tradition of full-orbed religious freedom protected by the separation of church and state. Conventional wisdom suggests that this "revolution within the revolution" (to use the late Bill Estep's phrase) was accomplished by an alliance between two very different groups: (1) enlightenment rationalists/religious deists; and (2) dissenting evangelicals — like Baptists, Quakers and some Presbyterians. In a real sense, Madison stood in and understood both camps. He was uniquely able to express the passion and provide the political acumen necessary to hold together this unlikely alliance in the fight for religious freedom.

Madison certainly can be counted as a scion of the enlightenment. He studied the classics and the political philosophers of the 18th century. But, he also read the Bible and studied theology at the College of New Jersey (Princeton) — a bastion of Presbyterian dissent. He witnessed firsthand the dangers of "ecclesiastical establishments" when he happened upon the jailed Baptist preachers in Culpeper, Va. His anger piqued, he wrote to a friend, William Bradford, about "that diabolical hell conceived principle of persecution,"

asking him to "pray for liberty and Conscience to revive among us."

More than any other founder, Madison was equally committed to both disestablishment and the freedom of religion and conscience. This can be seen in his hard-hitting *Memorial and Remonstrance Against Religious Assessments*. Called by a biographer "the most powerful defense of religious liberty ever written in America," the *Memorial* challenged Patrick Henry's attempt to provide tax money to pay for the teaching of religion in Virginia. But, the *Memorial* also sounds a clarion call for robust free exercise — dubbing one's obligation to God "precedent, both in order of time and degree of obligation, to the claims of civil society."

Two other incidents — one early in his career and one late in life — demonstrate Madison's balanced approach to religious liberty. The original draft of the Virginia Declaration of Rights, written by George Mason, called for religious "toleration." The 25-year-old Madison insisted that the language be changed to the stronger "full and free exercise of religion" — a principle that eventually became enshrined in the First Amendment. And, after retiring from the presidency, the 65-year-old statesman lauded the happy result of disestablishment when he wrote: "the number, industry and morality of the priesthood and the devotion of the people have been manifestly increased by the total separation of church and state."

During his long public service, Madison penned the original draft of the First Amendment, fought and condemned religious bigotry, applauded a "multiplicity of sects," opposed using tax money to pay congressional chaplains, and regretted having issued Thanksgiving proclamations because he regarded them as an establishment of religion.

Yes, it is high time we give "Jemmy Madison" his due. He stands taller than any founder — even the towering Jefferson — in acknowledging the God-given rights of conscience of all its citizens and in crafting American governmental institutions to protect them.

Happy Birthday, Mr. Madison! Δ

Poll: Religious groups, states uninterested in charitable choice

Religious organizations have shown little interest in the 1996 "charitable choice" legislation that invited them to compete for government welfare funds, an Associated Press survey shows.

Five states have been aggressive users of the 1996 welfare law provision, which President Bush hopes to expand to other governmental programs. Thirty-one states and the District of Columbia say they have awarded no government welfare contracts to religious groups that would not have been eligible without charitable choice. Fourteen states reported sporadic use of charitable choice.

Former Wisconsin Gov. Tommy Thompson, Bush's Health and Human Services secretary, admits the notion has been hard to sell. Just one religious program in Wisconsin has received government money to help welfare recipients.

"We opened it up, and we didn't have as many applications as we thought there would be," he said. "We didn't pursue it anymore. We made it available."

The five states that have been the most involved with charitable choice — Arkansas, Indiana, Missouri, Ohio and Texas — have awarded hundreds of thousands or millions of dollars under the provision. Δ

Baptist Joint Committee

Supporting Bodies

- ◆ Alliance of Baptists
- ◆ American Baptist Churches in the U.S.A.
- ◆ Baptist General Association of Virginia
- ◆ Baptist General Conference
- ◆ Baptist General Convention of Texas
- ◆ Baptist State Convention of North Carolina
- ◆ 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

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Religious Freedom and Indian Rights:

The Case of Oregon vs. Smith

Carolyn N. Long; Eds: Peter Charles Hoffer and N. E. H. Hull; University Press of Kansas: Lawrence, Kan., 2000, 317 pp.



Carolyn Long tells a fascinating story about Native Americans, religious freedom, drugs and interest group politics. Two counselors at an alcohol and drug abuse treatment facility participated in a Native American Church religious ceremony in which they ingested peyote. Because their employer had a strict abstinence policy, they were fired from their jobs and denied unemployment benefits by the state of Oregon. Both employees claimed that their freedom to worship was infringed when they were fired and denied unemployment benefits.

Eventually, the U.S. Supreme Court considered the case in *Oregon vs. Smith*. In the April 17, 1990, ruling written by Justice Antonin Scalia, the court's 5-4 majority repudiated the stringent standard protecting religious liberty that was embodied in the landmark case of *Sherbert vs. Verner* in 1963. Under the *Sherbert* standard, if the state was unable to prove that the regulation served "a compelling state interest, achieved in the least restrictive manner, the religious adherent should be granted an exemption to the law." Justice Scalia wrote, "generally applicable laws had never been limited by the free exercise clause of the First Amendment" and "challenges to these laws should not be subject to the high level of scrutiny articulated in *Sherbert*."

As a result of the *Smith* decision, dozens

of religious and civil rights organizations quickly responded. The Coalition for the Free Exercise of Religion (the Baptist Joint Committee, the National Association of Evangelicals, the American Civil Liberties Union and many others) spearheaded support for the Religious Freedom Restoration Act (RFRA). This landmark legislation passed in the Senate (97-3) and by voice vote in the House. It was signed into law Nov. 16, 1993. Subsequently RFRA was challenged in the U.S. Supreme Court in *Boerne vs. Flores*. On June 25, 1997, the high court struck down RFRA as applied to state and local governments.

Throughout this book, Long gives the story life with details she learned from interviews with the persons involved in the events. The reader has a window into the thinking and inner workings of institutions that are concerned with the free exercise of religion. Two key leaders in the coalition advocating RFRA were the BJC's Oliver Thomas and Brent Walker.

In the final chapter, "An Endlessly Renewed Educational Conversation," the author describes the efforts to enact state Religious Freedom Acts and their success to date. The discussion about the meaning of the Free Exercise Clause "is best looked at as an interactive perpetual debate" and "there seems to be a consensus among Americans about the need to protect religious liberty, even though some may disagree with the means."

A detailed list of relevant events in the chronology is very helpful for serious students, and sources for further study are cited in the bibliographical essay.

— Marjorie Tuck
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