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NewsMakers

◆ **Brent Walker**, executive director of the Baptist Joint Committee, testified against "charitable choice" provisions in President George W. Bush's faith-based initiatives June 14. He appeared before a joint hearing of two subcommittees of the House Ways and Means Committee. "We believe religion will be harmed, not helped, by directing government money to fund pervasively religious enterprises," Walker told lawmakers.

◆ **Samantha Smoot**, executive director of the Texas Freedom Network Education Fund, testified before a joint hearing of two subcommittees of the House Ways and Means Committee about the implementation of a "charitable choice" program in Texas. "Problems with the faith-based initiative in Texas have ranged widely from the inherent difficulties that come with commingling government and church funds to dangers incurred by relaxing basic health and safety standards," Smoot said.

◆ **Sen. Rick Santorum**, former Sen. Harris Wofford, and Search for Common Ground have assembled a bipartisan working group to discuss President George W. Bush's faith-based and community initiatives. The group aims to define the terms of the current debate on expanding the role of faith-based organizations in providing social services. Δ

Supreme Court says Bible club can hold meetings after school

The U.S. Supreme Court ruled 6-3 that an elementary school in New York violated the free speech rights of a Christian organization when it barred the group from holding after-school Bible and religion classes for children.

The high court majority based its decision on the First Amendment's free speech guarantee. It ruled that the school discriminated against the club "because of its religious viewpoint in violation" of the Constitution.

In the opinion written by Justice Clarence Thomas, the majority said the issues in the case were similar to those the court addressed in *Lamb's Chapel vs. Center Moriches Union Free School District*. In that 1993 ruling, the court said a school district wrongly precluded a private group from presenting films at a school facility based solely on the religious perspective of the films.

Chief Justice William Rehnquist and Justices Sandra Day O'Connor, Antonin Scalia and Anthony Kennedy joined the opinion. Justice Stephen Breyer joined only part of the majority opinion and Scalia wrote a separate concurring opinion.

Justice John Paul Stevens filed a dissenting opinion. Justice David Souter, joined by Justice Ruth Bader Ginsburg, issued a separate dissent.

"This case is undoubtedly close," Stevens wrote. "Distinguishing speech from a religious viewpoint, on the one hand, from religious proselytizing on the other, is comparable to distinguishing meetings to discuss political issues from

meetings whose principal purpose is to recruit new members to join a political organization."

Stevens said if a school were to allow an after-school discussion of current events, it may not exclude people simply because it dislikes their opinions. "But must it therefore allow organized political groups — for example, the Democratic Party, the Libertarian Party, or the Ku Klux Klan — to hold meetings, the principal purpose of which is not to discuss the current-events topic from their own unique view but rather to recruit others to join their respective groups? I think not," he continued.

Souter's dissent detailed the evangelistic effort of the club. "During the invitation, the teacher 'invited' the 'unsaved' children 'to trust the Lord Jesus to be your Savior from sin' and 'receive him as your Savior from sin.'"

"It is beyond question that Good News intends to use the public-school premises not for the mere discussion of a subject from a particular Christian point of view, but for an evangelical service of worship calling children to commit themselves in an act of Christian conversion," Souter said.

Since 1992, Milford Central School has had a policy allowing district residents to use school facilities "for social, civic and recreational meetings and entertainment events, provided that such uses shall be nonexclusive and shall be open to the



"This is clearly a free speech case."

— Holly Hollman

Panel awaits appointments from Bush, Gephardt

With only four of the nine voting members now appointed to the U.S. Commission on International Religious Freedom, the panel is unable to do its work because President George W. Bush and House Democratic Leader Dick Gephardt, D-Mo., have yet to make their appointments.

The commission must have at least six members to carry on its work and make policy recommendations and issue reports on religious freedom. Bush has yet to make three appointments and Gephardt two. The terms of the previous commission expired May 14. Since then, the few members on the commission and its staff have had their hands tied.

On June 11, Senate Majority Leader Tom Daschle made his two appointments - Firuz Kazemzadeh of Alta Loma, Calif., and Charles Stith of Boston, Mass.

Kazemzadeh is a senior adviser for the National Spiritual Assembly of the Baha'is of the United States, and Stith is a former U.S. ambassador to Tanzania and a United Methodist minister.

Other appointed commission members are Dean Michael Young, who was appointed by Sen. Trent Lott, R-Miss., and Nina Shea, who was appointed by Speaker of the House Dennis Hastert, R-Ill. Δ

Panel addresses likely impact from 'Good News' ruling

A panel of religious and civil liberties advocates said some school districts may re-evaluate their after-hours building use policies in light of a recent Supreme Court ruling that recognized the right of a religious club to meet at a New York elementary school.

Participants in a panel discussion sponsored by the Pew Forum on Religion and Public Life examined the implications of the court's 6-3 decision in *Good News Club vs. Milford Central School*.

Panelists included Thomas Marcelle, who represented the Good News Club, along with representatives of organizations who filed amicus briefs on both sides of the dispute.

The decision reversed a lower court ruling that barred a Bible club from using school facilities after hours, even though the local Boy Scouts, Girl Scouts and 4-H Club were allowed to use them.

"I argued that ... the school district had broad discretion," Marcelle said. "And I think now, in light of this, they're going to have to think about how they exercise their discretion."

The court ruled that by denying the club the right to hold its meetings in the school, the school violated the free speech rights of the Christian organization.

"I think the key to winning this case in the Supreme Court was really having the court accept the basic proposition that this was about free speech," Marcelle said. "The very first words out of my mouth at the oral argument were, 'This is a free speech case.'"

Holly Hollman, general counsel for the Baptist Joint Committee and one of the panelists, said the decision "gives schools an opportunity to re-evaluate whether or not they want to adopt a policy, whether or not their policy is sufficient to comply with the law, and whether or not they may want to change their policy in a way that avoids some of the controversy that arose in the case."

Elliot Minberg, vice president for the People For the American Way Foundation, detailed ways he believes schools can avoid some of the problems caused by the Supreme Court decision that he says "will be bad for schools and bad for religion."



Thomas Marcelle

Minberg said the school can completely close its facilities to outside organizations wishing to use them, a tack he says is "bad" for the kids. Schools can change the time organizations are allowed to meet in its facilities. This adjustment would address the argument that a meeting's close proximity to the end of the school day indicates school endorsement of the activity.

He also said schools can make "fine distinctions" on the types of activities taking place and try to distinguish between "purely worship activities, worship divorced from the teaching of moral values and the kind of activities taking place [in this case]."

While sorting out the implications of the case, several panelists were quick to point out that the decision's significance should not be over emphasized.

"This case, for all its significance in this area of free speech and religious speech, does not have relevance to other Establishment Clause areas," Hollman said. Δ

High court refuses hearings in two church-state cases

The U.S. Supreme Court turned away appeals in two church-state cases June 18.

Left intact was a ruling that allowed students to participate in group prayer at school functions and a decision in favor of a teacher who refused to let a first-grader read a Bible story to fellow classmates as part of the class activity.

In 1996, a high school vice principal, Michael Chandler, and his son Jesse, objected to school-sanctioned Christian prayers, Bible distribution, religiously based student assemblies and other religious activities in Alabama's DeKalb County public schools. Chandler challenged a 1993 state law that said students may lead prayers at school activities, including sporting events, student assemblies and graduations.

The 11th U.S. Circuit Court of Appeals ruled in 1999 that teachers and other school officials may not prescribe prayers, but it allowed a wide array of religious speech by students.

Last year, the Supreme Court told the lower court to review the policy in light of its decision against a Texas school district's policy of allowing students to lead stadium crowds in prayer over the public address system.

But the 11th Circuit stood by its original ruling and its language.

Chandler argued to the high court that

Good News decision did not lower wall separating church and state



K. Hollyn Hollman
General Counsel

When the BJC joined an amicus brief in support of the Good News Club, we found ourselves on the opposite side of the fence from some organizations with whom we often agree on church-state cases. As the media reports

on the high court's decision illustrate, however, one's view of this case depends largely on how you frame it.

For us, the case was primarily about free speech, not church-state separation. We were not defending the club's methods of evangelism, but its right to meet. Nor did we pass judgment on the wisdom of the school's policy to open its doors widely to members of the public immediately following the school day. Instead, our view is that the club had been wrongly excluded based upon its religious viewpoint. We believe, as the court held, that having opened its facilities to other groups for similar purposes, the school could not selectively close its doors to the religious club.

The case involved a school that created a forum, open to residents for events pertaining to the "welfare of the community," including discussion of moral and character development. It is extremely significant that the religious speech at issue was not that of school officials; occurred after school hours; involved only voluntary participation by the students (with written parental permission); and was not endorsed by the school. Thus, the club's religious speech did not indicate any endorsement of religion by the school.

Unfortunately, some media reports framed the Good News Club decision as having a broader, more dramatic impact than is warranted. Perhaps it is understandable that a newspaper would want a more exciting headline than "Court Affirms Established Legal Principle." However, some reports distorted the impact of this decision. While the Supreme Court is clearly divided on matters of church and state, this case does not

represent a significant change.

First, despite some reports, the case does not signal "a lowering of the wall of separation between church and state." The court did not disavow its previous Establishment Clause cases that had assigned significance to the ages of the schoolchildren involved. The majority noted, however, that such cases did not determine the outcome of a case involving private religious conduct during non-school hours. The decision does not mean the court no longer gives special consideration to church-state issues involving elementary-age schoolchildren, as in the context of school-sponsored prayer.

Second, the court did not "lurch alarmingly in the opposite direction" of its decision refusing to allow organized student-led prayers before public high school football games. Last year's Santa Fe football prayer case (a 6-3 decision) involved a state-sponsorship of religion not present in this case.

Third, the case does not "bolster" arguments that government can fund religion when it also funds secular organizations providing social services. This case has little relevance for determining the constitutionality of government funding, as in the case of vouchers or "charitable choice." It involves private religious speech, not public funding of religion.

Despite the concerns raised by the media and others, there is more good news here than bad. The ruling affirms the rights of religious groups to express their beliefs (apart from government sponsorship) on the same basis as others. It underscores what we believe was already the law. Religion has not been banished from the public square. While the law prohibits school-sponsored prayer, it also prohibits the exclusion of private religious speech.

Perhaps the decision will quiet critics who condemn the government for what they characterize as hostility to religion and instead, will promote recognition of the fact that religious groups have equal access to public forums. Δ

Hill testimony spurs questions, confusion about Bush initiative

Proposals for enhancing government funding of religious social service programs are prompting questions and confusion as President Bush's faith-based initiative is debated on Capitol Hill.

Rep. Bobby Scott, D-Va., in testimony June 14, questioned the basic elements of "charitable choice," a provision of welfare reform law that has permitted government funding of some faith-based groups.

"Before we can intelligently discuss the pros and cons of charitable choice, we must first get a straight answer to a fundamental question: Are you funding the faith or not?" Scott said.

In a recent speech, Bush criticized opponents of his proposal, saying, "We ought to fund faith-based organizations."

But in testimony on June 7, Carl Esbeck, a Justice Department lawyer, said, "During the government-funded program there should not be worship or sectarian activity or proselytizing."

Esbeck told The Associated Press that his proposal relates only to programs that directly receive government grants. When assistance recipients get government-funded vouchers, they could choose a pervasively religious program among the options of programs to help them, he said. Δ

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general public."

It also states that school premises "shall not be used by an individual or organization for religious purposes." Groups such as the Boy Scouts, Girl Scouts and 4-H Club were among those using the school under the policy.

In 1996, the Good News Club — affiliated with Child Evangelism Fellowship, a Christian missionary organization — applied to use the school's facilities.

After reviewing the club's program materials, Robert McGruder, interim superintendent of schools in the Milford School District, said the proposed activities were not merely discussion of secular subjects from a religious perspective, but "were in fact the equivalent of religious instruction itself."

The Milford Board of Education denied the club's application, and the club filed a complaint with a U.S. district court in March 1997, charging its free speech, equal protection and religious freedom rights had been violated. The district court and the 2nd Circuit sided with the school.

Religious and civil liberties groups were quick to comment on the case.

The Baptist Joint Committee filed a brief in support of the Good News Club, as did the Southern Baptist Ethics and Religious Liberty Commission.

BJC General Counsel Holly Hollman said, "A policy that allows events pertaining to the welfare of the community, including the discussion of character and morals, cannot exclude the club based upon the manner in which it leads its discussions."

"This is clearly a free speech case," she said. "The court recognized that the separation of church and state does not require the exclusion of the Good News Club."

But Barry Lynn, director of Americans United for Separation of Church and State,

called the decision a "terrible mistake."

"The court's ruling means aggressive fundamentalist evangelicals have a new way to proselytize school kids," he said. "The only good news here is that safeguards remain in place to prohibit evangelism during the day," he added. Δ

Cases, continued from Page 2

the 11th Circuit ignored the Supreme Court's stadium-prayer decision.

In another case, justices left intact a ruling in favor of a public school teacher's refusal to let Zachary Hood, then a Medford, N.J., first-grader, read a Bible story to fellow classmates.

Teacher Grace Oliva rewarded reading achievement by allowing students to read a favorite story to classmates. Students were told they must select stories that were short and simple enough for first-graders to understand, and the teacher screened their selections.

Zachary chose a story based on the Old Testament account of brothers Jacob and Esau. Although it appeared in *The Beginner's Bible*, the text of the story did not contain overtly religious terms or references to God or the Bible.

Oliva thought it was inappropriate for youngsters to hear the story and had Zachary read it to her in private instead.

Zachary's mother complained, but the principal backed the teacher and said reading the story aloud would be "the equivalent of praying." Zachary's mother sued, seeking a school policy allowing religious expression in class work and money for the alleged discrimination.

The 3rd U.S. Circuit Court of Appeals rejected the complaint, ruling that the teacher was within her rights to restrict access to what the school calls a "captivate audience" of 6- and 7-year-olds. Δ



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