

Report from the Capital

NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

'Charitable choice' decision awaits Senate

What to do with President George W. Bush's plan to expand government's ties to faith-based social service providers is among the decisions awaiting the U.S. Senate when it returns Jan. 23.

The Republican-led House of Representatives approved Bush's proposal last summer. But the measure faces an uncertain future in the Senate where the House-passed plan has gained no traction and a compromise bill sought by Sens. Joseph Lieberman, D-Conn., and Rick Santorum, R-Pa., also failed to move before Congress adjourned.

Lieberman and Santorum are expected to try again when the Senate returns this month.

Bush continues to tout his plan. In a Dec. 29 radio address, Bush called for quick action on several measures that have passed the House but stalled in the Senate, including his proposal "to mobilize faith-based institutions for a new era of effective compassion."

The "charitable choice" portion of Bush's plan would allow pervasively religious organizations, including churches, to receive tax dollars to provide social services. It has drawn opposition from religious groups concerned that federal funding would undermine the nature and role of religious organizations and violate the First Amendment's ban on funding religious activities.

Strong opposition to the Bush plan also emerged from lawmakers and civil rights groups concerned that the

Seeking a compromise?



U.S. Sens. Joseph Lieberman (left) and Rick Santorum

measure would allow religious organizations to discriminate in hiring for jobs funded with tax dollars.

Lieberman and Santorum have been working to address concerns by opponents of the House plan.

According to OMB Watch, a non-profit government accountability watchdog organization, the Santorum-Lieberman proposal would provide tax incentives to encourage charitable gifts, including a phased-in deduction for charitable gifts by taxpayers who do not itemize deductions.

Rather than extending "charitable choice" to a full range of federal social programs, the proposal would provide for "equal treatment" of non-government organizations using federal funds to provide social services.

It also would streamline the process for smaller organizations to apply for tax-exempt status with the Internal Revenue Service.

Baptist Joint Committee Executive Director Brent Walker said the compromise proposal represents some improvement over the House-passed legislation, but it does not clearly bar the use of tax funds to pay for social service ministries of pervasively religious organizations.

"The compromise should not simply obscure the difficult issues," said BJC General Counsel K. Hollyn Hollman. "It matters not only what the language of the compromise says, but how it may be interpreted by the executive branch."

In a related development, the administration is proposing to implement the principles of "charitable choice" in a new juvenile justice program designed to support community and faith-based organizations addressing juvenile crime.

OMB Watch filed comments with the Office of Juvenile Justice and Delinquency Prevention warning of the pitfalls of funding faith-based programs.

While the program has the potential to help address juvenile crime, it also has "the capacity to cause harm if adequate safeguards are not included to prevent proselytizing directed at program participants and their families," OMB Watch said.

The organization said final rules for the program should be more specific about ways community organizations can be involved "without subsidizing religious activity or proselytizing participating youth." ▴

NewsMakers

◆ **Boyce Brannock**, an attorney from Staunton Va., and a Baptist Joint Committee board member, has been elected president of the board of directors of the Center for Baptist Heritage and Studies in Richmond, Va. He succeeds **Robert F. Woodward**, who died Dec. 6.

◆ **The Rev. Samuel Edwards**, a conservative Episcopal priest who was ordered out of his suburban Washington pulpit by a federal judge, will stand trial for preaching in the Washington diocese without the permission of the local bishop. The disputed rector of Christ Church in Accokeek, Md., was presented with a church indictment by an investigatory panel in Fort Worth, Texas, where Edwards last worked and is considered "canonically resident."

◆ **Transportation Secretary Norman Y. Mineta** hailed the cooperation on a series of public service announcements designed to promote vigilance against hate crimes and discrimination, especially against Arab-Americans and Muslims in the wake of Sept. 11. "We have built a nation on the idea that all men and women are of equal worth ... and that each of us are equally entitled to call ourselves Americans," he said.

◆ **Rep. Ernest Istook**, R-Okla., reintroduced a school prayer amendment to the U.S. Constitution on Dec. 20, saying the amendment would free the American people to honor and respect God in public places. Istook's previous attempt to get a prayer amendment through Congress failed in 1998. △

Supreme Court sidesteps school prayer controversy

School prayer received a boost in Florida but took a hit in Louisiana in recent court actions.

The U.S. Supreme Court sidestepped a school prayer controversy, leaving intact a Florida school policy that allows student-led "messages" — which may include prayer — at high school graduation exercises.

A federal appeals court, meanwhile, struck down a Louisiana law that judges said promotes school prayer.

The Supreme Court declined to review an 8-4 decision by the 11th U.S. Circuit Court of Appeals that upheld a policy of the Duval County School Board in Jacksonville, Fla.

The policy allows high school seniors to decide by vote whether they want one of their classmates to deliver a "brief opening and/or closing message" at commencement ceremonies.

Opponents said the policy amounted to government-sponsored prayer, which courts have ruled unconstitutional. The appeals court said, however, that the policy could stand because it doesn't specifically encourage students to pray.

The appeals court had earlier upheld the Duval policy by a 10-2 margin, but had reconsidered the case at the request of the Supreme Court. The high court ruled in 2000 that student-led prayers at the beginning of football games in Texas were unconstitutional because school officials manipulated the policy to ensure that prayers would be said at the football games.

The high court asked the 11th Circuit to review the Jacksonville case in light of its decision on the Texas case.

The appeals court said the Florida case, *Adler vs. Duval County School Board*, differed from the one in Texas because prayer was not specifically listed as one of the options for students to choose.

Rick Mullaney, attorney for the Jacksonville school district, told the *Florida Times-Union* that the court was right to uphold the policy, since it "does not advocate prayer at high school graduation ceremonies, nor does it prohibit it. It provides a level playing field."

Critics, such as Barry Lynn of Americans United for Separation of Church and State, said the policy violates the spirit of the First Amendment by allowing the predominant religion in any school's senior class to rule.

"The rights of religious minorities should never be subjected to majority rule, whether it's by a graduating class or a school board," Lynn said.

Since the Supreme Court did not rule on the case, the 11th Circuit's decision upholding the practice only applies in states over which it has jurisdiction — Florida, Georgia and Alabama.

Meanwhile, a three-judge panel of the 5th U.S. Circuit Court of Appeals has struck down a Louisiana law that allowed spoken prayers in public school classrooms.

Louisiana legislators in 1999 amended a state law by deleting the word "silent" from a provision that previously allowed a brief time each day for silent prayer or meditation.

Civil liberties groups filed suit on behalf of parents, saying that the change opened the door to teacher- or principal-led school prayer, which the Supreme Court has ruled unconstitutional.

State officials said they might appeal the unanimous decision to the Supreme Court. The case is *Doe vs. Foster*. △

'Winter solstice' sign stolen from Wisconsin Capitol

A "winter solstice" sign that the Freedom From Religion Foundation traditionally places in the Wisconsin Capitol rotunda disappeared a week before Christmas.

The missing sign is the latest wrinkle in ongoing church-state wranglings affecting the state government and matters of belief and nonbelief.

The tree placed in the rotunda at Christmastime, near where the sign has been displayed, has been called a "holiday tree," after the state was sued more than a decade ago by a state chapter of the American Civil Liberties Union.

Earlier this year a suit against state officials was dismissed after authorities permitted religiously themed ornaments to be used to decorate the branches of the balsam fir.

The winter solstice sign, which reads "At this season of the winter solstice may Reason prevail," apparently was stolen. It has appeared at Christmastime since 1996 but disappeared sometime between Dec. 17 and Dec. 18.

Debbie Monterrey-Millett, spokeswoman for Gov. Scott McCallum, confirmed that the sign has apparently disappeared and said police officials were investigating. △

First, the first principles

On the day I began writing this column, National Public Radio's Diane Rehm did a show on "Faith-Based and Community Initiatives." The guests included E.J. Dionne of *The Washington Post*, Keith Pavlishchek from the Center for Public Justice, and my predecessor, Melissa Rogers, executive director of the Pew Forum on Religion and Public Life, all of whom have been heavily involved in the national discussion on the funding of "faith-based" organizations.

The program provided an overview of legislative proposals that remain under debate on Capitol Hill. The participants discussed different perspectives on the issue, including that of the Baptist

Joint Committee, which long has opposed "charitable choice" — the proposal that would fund pervasively religious organizations to perform social services.

In describing the development of this national conversation, E.J. Dionne lamented that people like "to retreat too quickly to first principles" before fully examining what many faith-based organizations are currently doing. He is correct to note that our love of liberty and commitment to the integrity of the First Amendment should not keep us from listening, learning and exploring ways to improve the delivery of social services by houses of worship. We recognize that a religious organization's cooperation with government on issues of shared concern does not always require a compromise of religious convictions. Indeed, the BJC has worked to find common ground with a variety of organizations that have differing perspectives on religious and constitutional matters.

But keeping an open mind does not mean departing from first principles. We have insisted throughout the "charitable choice" debate that church-state issues remain front and center. In the early stages, our concerns were largely dismissed. After months of refusing to acknowledge any problems, however, proponents of H.R. 7 in the House amended the bill to address some of the constitutional concerns.

Finally, it seemed that there was a greater understanding of the proposal's complexities. More people began recognizing the problems that arise when tax dollars are used to proselytize recipients of social serv-

ices; when the government funds jobs that can be restricted to members of a particular religion; when federal regulations dictate how religious organizations should fulfill their missions; and when "secular alternatives" are required to prevent religious coercion.

As the cover story explains, the "charitable choice" debate is far from over. Despite some helpful last-minute revisions, H.R. 7 still includes several worrisome provisions. And the debate in the Senate is just getting started.

K. Hollyn Hollman

General Counsel



Baptists long have proclaimed that separation of church and state protects our religious liberty. The First Amendment provides an essential restraint on govern-

ment and a promise of the free exercise of religion, with minimal bureaucratic intrusion. Government should not interfere with or seek to regulate the work of churches. Government should be neutral toward religion, neither advancing nor inhibiting it, but leaving it free to flourish. Whether the issue is "charitable choice," vouchers for parochial schools or school prayer, keeping these core principles in mind helps lead to sensible, constitutional answers.

During a recent debate on the Virginia minute of silence statute, former Solicitor General Walter Dellinger offered some useful advice for thinking about policy proposals that lead to constitutional debate. He noted that it is important to remember that not all good ideas are constitutional and not all things constitutional are good ideas.

Constitutional concerns aside, it is not even clear that "charitable choice" is a good idea. Important practical questions remain, such as whether religious providers of social services are more effective than secular programs — and if so, whether they would remain more effective after receiving public funds and becoming accountable to government regulators.

But even if these questions were resolved favorably, we would strongly oppose any proposal that threatens to compromise our first principles. The separation of church and state has served our country well for more than two centuries. It is our first freedom, and it must be defended against all ideas that would jeopardize it, both good and bad. △

Panel discusses responses to terrorist attacks

Faith has assumed a greater role in public life since Sept. 11 terrorist attacks, but is that necessarily a good thing?

A diverse group of religious leaders recently discussed that question in a panel on some of the best — and worst — Christian responses to the terrorism. The Pew Forum on Religion and Public Life, the Council of Christian Colleges and Universities and the Center for Public Justice sponsored the discussion, titled "What Do Christians Have to Say Post 9/11?"

One positive outcome, said Joan Rosenhauer of the U.S. Conference of Catholic Bishops, is that, "We can no longer pretend that there is this distinction between religion and politics."

Several panelists noted that, in the post-Sept. 11 revival of faith and patriotism in American life, Christians should never confuse their identity as citizens of God's Kingdom with their identity as citizens of the United States.

Jim Skillen, executive director of the Center for Public Justice, worried that much of the expression of faith since Sept. 11 is a superficial form of civil religion. "I think a lot of what's going to happen — people praying more — it could be a very healthy sign," Skillen said. "On the other hand, will it continue after this is all over?" △

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150 percent deductions better than faith-based plan

President Bush's desire to fund faith-based organizations through his charitable choice initiatives is courageous, but not prudent.

In effect, he recognizes that charities do a better job than government agencies at meeting community needs.

That's good. But Bush's benevolence plan brushes against our patriotic insistence on separation between church and state.

Is there a way of achieving Bush's goal without fostering prejudicial maladies concerning an organization's faith, creed or social orientation?

Yes, there is — namely, refine the tax code so that donors receive a 150 percent tax deduction for their charitable gifts as opposed to the current 100 percent deduction. Some advantages of a 150 percent "donor choice" tax deduction vs. the "charitable choice" faith-based initiatives:

◆ It's simple. We already have the tax system in place. Just change the deduction formula.

◆ It's nonbureaucratic. The faith-based initiatives will create offices within five cabinets led by a national director.

The 150 percent deduction method has no director, office or expenses.

◆ It's democratic. Let the donors decide which nonprofits deserve our hard-earned money. Who better to decide.

◆ It's survival of the fittest. Donor choice forces agencies to prove to the public the veracity of their purpose and the validity of their character. Donors are wise and getting wiser.

◆ It's a tax relief. Donor choice vs. charitable choice allows the top 5 percent of

taxpayers who are bearing 50 percent of our nation's tax burden to create their own tax relief through philanthropic giving.

◆ It's philanthropic. A 150 percent gift deduction would show that Washington truly wants Americans to assume a greater charitable responsibility for the needy of our communities. Bush's charitable choice program, in effect, becomes another federal handout system, fraught with serious constitutional potholes.

◆ It's financially wise. Lost revenue from the 150 percent deduction would be compensated by eliminating the billions of dollars spent through the faith-based initiative program. Additionally, the donor-based method would encourage a windfall expansion of charitable services, which historically have been proven more effective and efficient than government programs.

◆ It's politically neutral. Donor choice reduces the chances of political involvement in religious matters.

Bush means well, but his method is faulty. Another federal program is an impersonal way to give tax dollars to an organization without making the hearts of American people more caring.

Why not encourage Americans to be more philanthropic in their hearts?

For it is with the heart that we can improve the life of a child, relieve the pain of a cancer victim or restore the dignity of an Alzheimer's patient.

Donor choice, not charitable choice, merges dollars and cents with good common sense.



David Miller

David Miller is president and CEO of Hendrick Home for Children in Abilene, Texas. This column was printed in the Aug. 19, 2001, edition of the Abilene Reporter-News. Δ



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