

Report from the Capital

NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

High court to weigh in on voucher case

The Supreme Court will hear arguments Feb. 20 in a case that will decide whether spending federal dollars for religious school tuition is a constitutional use of taxpayer money.

At issue is the Ohio Pilot Scholarship Program, a plan enacted by the Ohio legislature in 1995 that allows low-income families to use a voucher of up to \$2,250 to attend private religious and non-religious schools in Cleveland or public schools in surrounding suburbs.

Some voucher opponents, including the Baptist Joint Committee on Public Affairs, claim the Cleveland plan violates the First Amendment ban on government establishment of religion. In a friend-of-the-court brief filed in December at the Supreme Court, the BJC argues that the Ohio program is unconstitutional "because it is a direct, unrestricted subsidy of religious education by state government."

K. Hollyn Hollman, general counsel of the Baptist Joint Committee, said, "the impact of this case will be felt far beyond the city of Cleveland or the state of Ohio."

"Public funding of parochial schools affects everyone who pays state taxes," Hollman said. "It does not matter whether you live in Wisconsin, Maine or Maryland, current voucher programs or proposed voucher legislation will be affected in some way by the decision in this landmark case."

Groups that favor school vouchers have weighed in by filing friend-of-



"O'Connor has been the deciding voice in a number of decisions and likely will be the deciding voice this time."

— Elliot Minberg

People For the American Way
Foundation

the-court briefs, as well. A legal brief written by attorneys for the Christian Legal Society and joined by the Southern Baptist Ethics & Religious Liberty Commission asserts that the program is neutral toward religion because recipients choose where to redeem the vouchers.

"The First Amendment's bar against established religion means at least that tax dollars should not be used to finance teaching religion," said J. Brent Walker, executive director of the Baptist Joint Committee. "Passing vouchers through the pockets of parents is no way to get around the fact that the Cleveland program favors religious schools — especially when over 90 percent of the students participating in the program attend religious schools."

Attorneys for the American Jewish Committee drafted the brief that the BJC joined, arguing that the Ohio program "contains no requirement that the aid be used only for secular purposes." In effect, the brief contends, the Cleveland program "supplants private funds with state money by providing the religious schools with

tuition money that the schools could only receive from private sources."

Two lower courts have struck down the program, in part because an overwhelming majority of the schools using vouchers are religious in nature. The last time the Supreme Court ruled on tax-funded tuition programs was in 1973, when a New York program was struck down because tax dollars were used to "subsidize" or "advance" the religious mission of participating private schools.

Elliot Minberg, vice president of the People For the American Way Foundation, said that the court's past rulings on similar cases are extremely important, especially since "the justices that are likely to be the deciding factors in the case take precedent very seriously."

Minberg's organization is co-counsel for the Ohio citizens who have challenged the program.

"Our arguments on behalf of voucher opponents say that the 1973 *Nyquist* decision has stood the test of time," Minberg said.

The court's decision, however, may depend on the vote of Justice Sandra Day O'Connor.

"O'Connor has been the deciding voice in a number of decisions and likely will be the deciding voice this time," Minberg said. "She's made it very clear that when it comes to the Establishment Clause she is against drawing broad lines."

A decision in the dispute, *Zelman vs. Simmons-Harris*, is expected by the end of June. Δ

NewsMakers

◆ **Hank Bennett** of Tulsa, Okla., and **Justin Steen** of Mars Hill, N.C., are serving spring semester internships at the Baptist Joint Committee. Bennett is a student at Belmont University in Nashville, Tenn., majoring in philosophy and music business. Steen attends the University of North Carolina in Chapel Hill, N.C., majoring in political science and public policy.

◆ **Li Guangqiang**, a Hong Kong businessman accused of bringing thousands of Bibles into China for an underground Christian congregation, was given a two-year prison sentence Jan. 28 by a court in the Fujian province. He was initially indicted on charges of "using a cult to subvert the law," an accusation that could have carried a death sentence. He was found guilty of the lesser charge of conducting "illegal business," according to *The New York Times*.

◆ U.S. District Judge **Robert S. Lasnik** has ruled that bowing to a picture of the founder of judo before a match is not a violation of an individual's religious freedom. He rejected the argument of three judo contestants who said the customary bow violated the 1964 Civil Rights Act because it discriminates on the basis of religion, according to *The Associated Press*. △

Bush names new head of faith-based office

President Bush has announced a new leader for his "faith-based initiative." Bush announced Feb. 1 that Jim Towey is the new director of the White House Office of Faith-Based and Community Initiatives.

Towey, who has worked with several religious nonprofit agencies, most recently headed Aging with Dignity, a Florida-based advocacy group.

He describes himself as a Democrat and was director of Florida's human services agency under former Democratic Gov. Lawton Chiles. However, he later endorsed Chiles' Republican successor, Gov. Jeb Bush, who is President Bush's brother. Towey also has worked for retired Republican Sen. Mark Hatfield of Oregon.

He succeeds John Dilulio, the prominent University of Pennsylvania professor who announced in August that he would leave the post.

Towey is a Catholic who lists the late Mother Teresa as one of his major inspirations. Towey worked in India with Mother Teresa, and later volunteered at a home for AIDS patients in Washington operated by the nun's ministry.

Critics of the president's faith-based measure called the appointment an effort to revive a controversial proposal that is foundering in Congress and said it sends mixed signals about the administration's commitment to more controversial elements of the plan.

When announced a year ago as a cardinal aspect of Bush's domestic policy, the legislation would have expanded the ability of government agencies to provide direct grants to churches and other pervasively religious organizations that provide social services.

Both liberals and conservatives objected to parts of Bush's plan, saying such grants would provide unconstitutional government advancement of religion, as well as endanger the integrity of the religious organizations receiving money from the government. The legislation passed the House but stalled in the Senate.

White House officials reportedly have offered to drop the most controversial parts of the plan, including the expansion of grants to sectarian organizations and a provision allowing religious groups to discriminate in hiring for jobs funded with tax dollars.

Also, Bush's announcement made clear that Towey's position and office have been reduced in their importance. Originally a

cabinet-level position, Towey's office now is under the newly created White House office on national service. That office will be headed by another Bush adviser, John Bridgeland. △

High court to hear arguments in Utah-N.C. census dispute

The Supreme Court has decided to hear arguments in a 2000 census dispute that could affect the makeup of the U.S. House of Representatives.

The state of Utah claims the census used an incorrect method to estimate a portion of the population, resulting in the loss of a congressional seat to North Carolina. Currently, Utah has three House members, while North Carolina has 12.

In April, federal judges dismissed claims that Utah lost the congressional seat because the census excluded thousands of state residents working as missionaries abroad. The three-judge panel ruled unanimously that counting the missionaries would have placed other states at a disadvantage, and that the missionaries would make up a small percentage of the estimated 5 million Americans living abroad. △

Voucher foes seek review of Wisconsin 'school choice' plan

The long battle over "school choice" — which involves channeling public money to religious schools — is revving up again in the state where it began. A group of taxpayers has asked the Wisconsin Supreme Court to review its 1998 decision upholding expansion of a school voucher program in Milwaukee.

Four plaintiffs in the original lawsuit are asking the state's highest court to overturn its decision allowing expansion of the program to include religious schools. They claim one of the justices deciding the case had a conflict of interest, violating their right to due process.

The justice, Jon Wilcox, voted with the 4-2 majority upholding the voucher program in 1998. A year earlier, however, Wilcox received contributions from pro-voucher individuals and groups in a reelection campaign against a voucher foe.

The original plaintiffs say Wilcox should have known that he had received campaign contributions from pro-voucher groups and recused himself.

The Wisconsin case could become moot pending the outcome of an Ohio voucher case currently before the U.S. Supreme Court. (See story, Page 1). △

Jefferson's wall and Cheshire cheese

Baptists and all supporters of church-state separation celebrated two bicentennials last month.

I'm sure most readers of this periodical know about one — Thomas Jefferson's Jan. 1, 1802, letter to the Danbury Connecticut Baptist Association in which he popularized the metaphor of the wall of separation. Jefferson wrote in response to a letter of congratulations and encouragement from the Danbury Baptists, who, chafing under the heavy hand of an established church (Congregational), were grateful for Jefferson's support of the rights of conscience.

Using his reply as an occasion to "[sow] useful truths and principles among the people, which might germinate and become rooted in their political tenets," Jefferson penned those immortal words: "I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should make no law respecting an establishment of religion, or prohibiting the free exercise thereof, thus building a wall of separation between church and state."

But we celebrated another another bicentennial last month, occurring on the same day in 1802. Daniel Dreisbach, in a recent essay published in *Journal of Church and State*, reminds us of a lesser-known gift from another group of admiring New England Baptists. John Leland — the itinerant evangelist who fought for religious liberty in Virginia in the 1780s — had returned to his home in the Berkshire Hills of western Massachusetts. Under Leland's leadership, the citizens of Cheshire, Mass., made and delivered to Jefferson a mammoth round of cheese. It was said to have been more than 4 feet in diameter and weighed over 1,200 pounds. Eyewitnesses reported that the cheese bore the slogan: "Rebellion to tyrants is obedience to God." As with their Baptist cousins in Danbury, Dreisbach points out that the "cheese-makers of Cheshire were both a religious and a political minority subject to legal discrimination in a commonwealth dominated by a

Congregationalist-Federalist establishment." They, too, were grateful for Jefferson's strong stand against state establishment of religion.

The commemoration of these two incidents reminds us of the integral part that dissenters in general and Baptists in particular played in the fight for religious liberty in this country. As the late William Estep so persuasively pointed out in his *Revolution Within the Revolution*, born-again evangelicals, as much as the sons of the Enlightenment, argued for the First Amendment's religion

clauses and supported politically those who would champion their cause.

According to Professor Michael McConnell, "This explains why the more fervent evangelicals, including the Baptists, tended to become Jeffersonians, notwithstanding the deism of Jefferson and the piety of his opponents. Religion, the evangelicals believed, is vital to civic harmony. But voluntary religious societies — not the state — are the best and only legitimate institutions for the transmission of religious faith and, with it, virtue. The only support that churches can legitimately expect from the government ... is protection and non-interference."

Where do we stand two centuries later? Nobody remembers the huge hunk of Cheshire cheese — other than maybe a handful of historians. Dreisbach opines that remnants of the cheese lasted for two or more years after which the "decaying, maggot-infested remains were unceremoniously dumped into the Potomac River."

But the Connecticut Baptists-inspired metaphor of the wall of separation between church and state indeed has become "rooted in [our] political tenets" as Jefferson had hoped. It continues to remind us that the church and the state are both better off — and religious liberty is better protected — when neither tries to do the job of the other.

Happy Bicentennial, Mr. Jefferson and Elder John Leland; thank you both for your legacy of liberty. Δ



J. Brent Walker

Executive Director

Defense officials change Muslim garment rule

The Defense Department has changed its policy regarding whether female members of the military in Saudi Arabia have to wear a head-to-toe garment — traditionally worn by Muslim women — when leaving their base.

The military instructions, amended by the department's Central Command, now state that "wear of the abaya in the Kingdom of Saudi Arabia is not mandatory but is strongly encouraged."

Local commanders also were directed "to remove any requirement to wear civilian clothing to cover the uniform."

The action, made public Jan. 22, came after Air Force Lt. Col. Martha McSally sued Defense Secretary Donald H. Rumsfeld to get the policy overturned.

She believed the previous policy requiring abayas violated her constitutional rights to freedoms of religion, speech and equal protection.

"I think the mountain has moved, but I don't know how far," said John Whitehead, president of the Rutherford Institute, which filed the lawsuit on McSally's behalf.

"We hope, however, that this will mean that service people will not be forced to wear religious garb of other nations to which they may object," Whitehead said. Δ

BAPTIST JOINT COMMITTEE

Supporting Bodies

- ◆ Alliance of Baptists
- ◆ American Baptist Churches USA
- ◆ 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

Report from the Capital

J. Brent Walker
Executive Director
Larry Chesser
Editor
Jeff Huett
Associate Editor

REPORT from the CAPITAL (ISSN-0346-0661) is published 24 times each year by the Baptist Joint Committee. Single subscriptions, \$10 per year. Bulk subscriptions available.

Edgar Mallary Binns

February 1, 1921 – January 17, 2002

The words left him, recalls Atlanta pastor James Lamkin. Preaching on religious liberty at a previous pastorate, he had reached the point in his notes where it was time to recite the religion clauses of the First Amendment. But the words would not come. Turning to a retired Baptist minister and religious liberty advocate in the choir, he asked for help.

Mallary Binns delivered. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," he said, with a gentle Southern eloquence, rocking on his heels in the back row.

"I didn't always call on Mallary Binns every time my sermons cul-de-saced, but his life and love and lobbying on behalf of religious liberty influenced me," said Lamkin in the Baptist Joint Committee's 2000 Religious Liberty Day Sermon (visit www.bjcpa.org).

James Lamkin is not alone. Mallary Binns, who died January 17, 2002, at the age of 80, influenced many.

Mallary grew up as a son of influential Baptist leader Walter Pope Binns, who served as pastor of congregations in Georgia, Kentucky and Virginia before becoming president of William Jewell College in Liberty, Mo. His father also served more than two decades on the board of the Baptist Joint Committee and on the board of Americans United for Separation of Church and State.

After graduating from William Jewell College and Southern Baptist Theological Seminary in Louisville, Ky., Mallary served as minister at Newsoms (Va.)

Baptist Church from 1959-1963 and of Braddock Baptist Church in Alexandria, Va., from 1963-1969.

He joined the staff of Americans United in 1969, serving as director of public relations, director of operations and director of development before retiring in 1986. At Americans United, he spoke to churches and civic groups across the country about religious liberty.

He was more than prepared when his pastor needed help with the First Amendment. He not only knew well the words of religious liberty — he danced the music.

"Incarnation educates at a level deeper than information," is the way Lamkin put it. "Let us be people who take stands on the issue of religious liberty. Let us tell our children and our churches what we believe and why. And let us recall the community nature of faith. The community remembers. And the community helps one another remember — like Mallary Binns helped me."

Mallary and his father remind us that every generation has a role to play in securing and defending religious liberty.

A few months ago, a graduate student working on a dissertation asked to meet with the youth group of a Northern Virginia congregation. "Why are you a Baptist?" he asked Anna Bridgforth, Mallary's 16-year-old granddaughter. "Because of soul liberty," Anna replied without hesitation. Asked to explain what that meant, she said, "It means that every person has the responsibility to figure out what he or she believes about God and how to lead your own life as a Christian."

From generation to generation.

Thanks Mallary. Go Anna!

— Larry Chesser



Mallary Binns



BAPTIST JOINT COMMITTEE

200 Maryland Ave. N.E.
Washington, D.C. 20002-5797
202-544-4226
Fax: 202-544-2094
E-mail: bjcpa@bjcpa.org
Website: www.bjcpa.org

Non-profit Org.
U.S. Postage
PAID
Riverdale, MD
Permit No. 5061

*****AUTO**MIXED AADC 207 T29 P1
BILL SUMMERS
SOUTHERN BAPTIST HIST. LIBRARY & ARCHIVES
901 COMMERCE ST STE 400
NASHVILLE TN 37203-3628