

Nashville, Tennessee

February 20, 2002

Vol. 57, No. 4

Report from the Capital

NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

Bush backs compromise faith-based bill

Leaders in Washington have announced a compromise aimed at lessening controversy over President Bush's "faith-based initiative," which passed last year in the House of Representatives but stalled in the Senate.

President Bush said Feb. 7 he would support a faith-based bill sponsored by Sens. Joe Lieberman, D-Conn., and Rick Santorum, R-Pa.

The Charity Aid, Recovery and Empowerment Act of 2001 (CARE) would encourage partnerships between the federal government and religious and other private agencies to provide social services. It also would encourage charitable giving by making it easier for most taxpayers to deduct gifts to religious and other charitable causes.

The Senate bill omits two widely criticized portions of the House version, however.

One sought to expand "charitable choice" programs that provide funds to pervasively religious organizations that perform social services. Groups that support the separation of church and state objected to the use of government funds to finance such ministries.

The other exempted religious organizations from anti-discrimination standards. Civil liberties groups said government funds should not be used to discriminate in hiring on the basis of religion.

Instead, the Senate bill says that an otherwise qualifying religious provider cannot be compelled to remove religious art from its walls, change



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— President Bush

religious provisions or language in its founding documents or drop religious requirements for members of governing boards.

"This legislation will not only provide a way for government to encourage faith-based programs to exist without breaching the separation of church and state," Bush said, "it will also encourage charitable giving as well."

Baptist Joint Committee General Counsel K. Hollyn Hollman — whose agency opposed the House bill — called the new version a "U-turn" from previous faith-based legislation but expressed concern that it might be seen as a way to pursue charitable choice "through the back door."

Barry Lynn of Americans United for Separation of Church and State said the Senate proposal still "gives special treatment to religious groups" not given to secular service providers.

Lieberman, in a White House press conference announcing the president's support of his bill, said it creates what Bush has referred to as "a level playing field" by protecting the

religious character of charities.

"This says that if you qualify otherwise, you can't be discriminated against in applying for a grant to do social service work if you have a cross on the wall or a mezuzah on the floor, or if you praise God in your mission statement."

If the bill passes the Senate, it will be sent to a House-Senate conference panel to resolve differences between the two versions.

Further controversy could result from that process. Rep. J.C. Watts, R-Okla., — a co-sponsor of the original House bill — called the agreement on the Senate version "a good start" but said he hopes the two houses of Congress "can work out our differences" on the legislation.

The Senate bill contains other provisions that supporters say would aid the work of religious charities. Besides making it easier for most taxpayers to deduct charitable gifts, the bill also would make it simpler for churches and other pervasively religious groups to form separate non-profit corporations that would be eligible for government social service funds. It also would streamline the process for applying for government grants for such groups.

"Appealing to the generosity of the American people through tax incentives is the right way to do right," Hollman said. "This new approach recognizes that 'faith-based' initiatives need not divide us by trying to fund evangelism, religious worship, or discrimination." ▴

NewsMakers

◆ **K. Hollyn Hollman**, general counsel at the Baptist Joint Committee, recently voiced the BJC's opposition to charitable choice, calling the initiative "unconstitutional" and "bad public policy" before a meeting of the public policy advisory committee of Lutheran Services in America. A recent publication named Lutheran Services in America the largest nonprofit network in the United States.

◆ **Daniel Domenech**, school superintendent in Fairfax County, Va., commenting on the Virginia Senate's passage of a bill requiring all public schools in the state to post "In God We Trust" in a prominent place, said, "Send us the motto with the bills. All they're giving us are mottoes.... That's wonderful, but it's not going to help us with our very critical financial shortfalls." He was quoted in *The Washington Post*.

◆ **President George W. Bush** spoke on religion in America at the Feb. 7 National Prayer Breakfast. "Every religion is welcomed in our country; all are practiced here," Bush said. "Many good citizens profess no religion at all. Our country has never had an official faith. Yet we have all been witnesses these past 21 weeks to the power of faith to see us through the hurt and loss that has come to our country." △

Appellate judge: Chaplain should have day in court

An appeals court has sent the case of a former Navy chaplain who said he was forced to retire due to religious discrimination back to a lower court.

Ron Wilkins sued the Navy Chaplain Corps in June 1999, claiming his involuntary early retirement in 1995 was due to "religious repression, coercion and other illegal activities," according to court documents.

The U.S. District Court in San Diego dismissed the case, but the 9th U.S. Circuit Court of Appeals recently ruled that some of his claims should be heard in the district court.

In a case similar to several others filed in courts in Washington, D.C., and California, Wilkins claims there is an ongoing policy in the chaplain corps that prevents nonliturgical ministers like himself from receiving the appropriate number of positions. He claimed that Protestant liturgical chaplains are three times as numerous proportionately as service members who are nonliturgical Protestants.

"This case cannot be characterized simply as a military discharge case with a few constitutional claims thrown in for good measure," wrote Judge M. Margaret McKeown in a ruling filed Jan. 31.

"Although Wilkins sought money damages and reinstatement, his chief complaint is with the Navy Chaplain Corps' organization and its system of evaluation, assignment, promotion and selection for early retirement."

Art Schulcz, a Vienna, Va., lawyer who represents Wilkins — now serving as a pastor of a Southern Baptist church in Oklahoma City, Okla. — and a number of other chaplains in cases against the Navy, hailed the decision.

"I think it's very significant," he said. "It puts another case back in the district court. It's one more chaplain who's out there saying, 'We've been wronged.'"

The Navy continued its policy of not commenting on such cases. △

Judge bars Bible classes in Scopes trial county

A federal judge has ruled that a 51-year tradition of teaching Bible classes in the county where the famous Scopes trial was held must end.

U.S. District Judge Allan Edgar in Chattanooga, Tenn., ruled Feb. 8 that classes in Rhea County violate the First

Amendment's clause requiring separation of church and state, *The Associated Press* reported.

In his decision, Edgar said that county officials "acted with both purpose and effect to endorse and advance religion in the public schools."

Baptist Joint Committee Executive Director Brent Walker said that "objective teaching about religion, such as courses on comparative religions or the Bible as literature, is constitutional if properly done."

About 800 students in the county's three elementary schools attended the weekly 30-minute classes. Students could choose to take part in alternative activities if they objected to the classes, but parental consent was not required for attendance.

A couple with two children in the schools sued over the Bible classes, which were taught by students from Bryan College, a Christian college in Dayton, Tenn.

The school is named for the orator William Jennings Bryan, who was on the opposite side of a 1925 courtroom battle with defense lawyer Clarence Darrow during the prosecution of schoolteacher John T. Scopes for teaching evolution instead of creationism. Scopes was found guilty, but his conviction was thrown out by the Tennessee Supreme Court. △

LA school officials pull Qurans with anti-Semitic reference

Los Angeles school officials have removed almost 300 translations of the Quran from school libraries after discovering that they included commentary that was considered derogatory toward Jews.

Copies of "The Meaning of the Holy Quran" were donated to the Los Angeles Unified School District from a local Muslim foundation as a goodwill gesture in response to the Sept. 11 terrorist attacks, the *Los Angeles Times* reported.

Jim Konantz, director of information technology for the district, said the books were distributed during the last week of January without the usual content review. It was unclear why the review was skipped.

Konantz received a complaint from a history teacher who determined that some of the footnotes in the book were anti-Semitic.

"It's not an issue of whether the Quran should be available in the library," he told the newspaper. "It's like any other research volume. But these interpretations are certainly in question." △

Hanging Decalogue raises theological, constitutional issues

Advocates of hanging the Ten Commandments in public buildings are back. Across the nation, including at our back door in the Virginia Assembly, people are spending a great deal of time, energy and money looking for ways to post the Decalogue in government buildings. Legislative efforts have intensified since the September 11 attacks, with more than 20 bills introduced at the state level.

You might wonder why the "hang ten" movement has been resurrected, given the clear legal guidance the high court issued more than 20 years ago. In the 1980 case of *Stone vs. Graham*, the Supreme Court struck down a Kentucky law that required the posting of the Ten Commandments in public classrooms. Recognizing the Ten Commandments as "undeniably a sacred text," the court properly found that the Kentucky statute served a religious purpose. Some other courts have reached the same result when the Ten Commandments are posted on other government property.

With such a clear legal precedent against them, leaders of the "hang ten" movement are looking for creative ways to avoid losing again in the courts. The new tactic in this old campaign involves surrounding the Ten Commandments with secular historical texts. Placed in a broader display, advocates assert, the Ten Commandments simply serve a secular educational purpose, which is to acknowledge them as a basis of our system of law. The context, it is argued, neutralizes the religious nature of the display, making it less likely to be viewed as endorsement or promotion of religion and thus as a violation of the Constitution.

While it is difficult to imagine how one can secularize a commandment such as "Thou shalt have no other gods before me," the effort to do so highlights one of the main problems with the "hang ten" movement. Simply put, the placement of the Ten Commandments among secular texts disrespects their religious significance in Christianity and Judaism. The

commandments are holy scripture. Government should neither endorse such indisputably religious texts nor seek to deny their essential meaning by depicting them as a secular foundation of our legal system.

Apart from whether a collage-type display can clear the constitutional hurdle — one federal court in Kentucky has already ruled that it cannot — there are other theological and practical reasons to oppose government postings of the Ten Commandments.

First, any posting necessarily begins with the government choosing which version of the commandments will be enshrined as orthodox. One scholar estimates that there are more than 250 English translations. Even in the original Hebrew, the twin accounts in Exodus and Deuteronomy vary. Do we really want the government in the role of secular high priest choosing which is most worthy? Any such decision will likely engender rivalry among proponents of the various translations.

Second, even if the Supreme Court were to approve the "collage" approach as lawful, the treatment of the Ten Commandments as just another secular text would remain deeply offensive to people of faith in the Christian and Jewish traditions.

Finally, if we take "hang ten" proponents at their word regarding their central objective — to promote morality and shared values, not religion — decorating public buildings with sacred texts is unlikely to be effective. In the classroom, the inclusion of character education would better teach children the difference between right and wrong. And in the community, individuals should actively impart their religious values in their homes and houses of worship, rather than relying on government to do so in public schools and courthouses.

"Hanging ten" is unconstitutional, represents bad theology and is not the way to achieve its advocates' lofty goals. Δ



K. Hollyn Hollman

General Counsel

Resources

Reconciling Liberty and Security

A new Bible study by Curtis Ramsey-Lucas is available from American Baptist Churches USA's Office of Governmental Relations. The one-session study explores the balance between liberty and security in the aftermath of the events of September 11.

For free copies or more information, contact:

**American Baptist Churches USA
Office of Governmental Relations**

110 Maryland Ave., N.E.
Washington, D.C. 20002
202-544-3400

Vouchers: Breaching The Wall

A question-and-answer look at the constitutional issues raised by the use of tax funds to pay for education at pervasively religious elementary and secondary schools.

Available at the Baptist Joint Committee's website: www.bjcpa.org or by contacting the Baptist Joint Committee at: 200 Maryland Ave., N.E. Washington, D.C. 20002 202-544-4226 bjcpa@bjcpa.org

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Report from the Capital

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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.

Bush's budget proposes tax credits for private education

President Bush's proposed budget for fiscal year 2003 contains a tax-credit provision that some critics term a backdoor approach to tuition vouchers for private schools.

The concept of the government providing tax dollars to pay for tuition at private and parochial schools was a prominent feature in a Bush-proposed education bill last year. Congress removed the voucher proposal before passing the bill, however, because it was so controversial.

Opponents of school vouchers say they hurt public schools and that government funds going to parochial schools violates the separation of church and state.

Bush's new proposal would set up an "Alternative to Failing School" tax credit for families in certain public school districts who choose to send their children to private schools. The credit would reimburse parents for tuition and other educational expenses up to \$2,500.

Supporters say the plan simply returns parents' money to them to do with as they choose. Opponents argue it would put the government in the business of subsidizing religious and other private schools.

A coalition of public school, civil libertarian and religious liberty groups, including the Baptist Joint Committee, announced opposition to the proposal Feb. 9. "Because the tax credit could be applied to reimburse dollar-for-dollar private religious school tuition, it raises serious church/state concerns and undermines accountability for how public education dollars are spent," the National Coalition for Public Education said in a letter to members of Congress.

The coalition also opposes another aspect of Bush's education budget propos-

al. A new \$50 million "Choice Demonstration Fund" would be used to support research on vouchers and conduct a pilot voucher project. Congress rejected a similar proposal last year.

The total estimated cost of the tax credit and voucher projects would approach \$4 billion over the next five years. Δ

Vatican cites religious liberty in flap with Russian Orthodox

Tensions between the Catholic and Russian Orthodox churches heightened Feb. 15 with the Vatican accusing the Orthodox Church of seeking to violate the right under Russian law to freedom of religion.

The Vatican replied to a demand from the Moscow Patriarchate that Pope John Paul II correct his "strategic error" of establishing four Catholic dioceses in historically Orthodox Russia.

"Beyond the contingent facts, the basic question seems to me: do they want to accept and protect the fundamental rights of freedom of conscience and freedom of religion that are the basis of every form of civil and pluralistic coexistence?" Vatican spokesman Joaquin Navarro-Valls said.

"These rights permit every religion to be recognized and respected in its own specific identity, avoiding discrimination among citizens for religious reasons as, moreover, is guaranteed by the regulations of the Russian Federation," he said.

The Vatican announced Monday that the pope has created four dioceses to serve the 1.3 million Catholics living in Russia.

Russian Orthodox officials accused the Catholic Church of proselytizing and cancelled talks with Cardinal Walter Kasper, president of the Pontifical Council for Promoting Christian Unity, scheduled for Feb. 21-22 in Moscow. Δ



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