

Report from the Capital

NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

Director leaves U.S. religious freedom panel

The head of the U.S. Commission on International Religious Freedom has stepped down as the agency reshuffles its emphasis, according to some familiar with its work.

Executive Director Steven McFarland has left his position as the commission's head staffer to "pursue other opportunities," according to the panel's communications director, Lawrence Goodrich. Goodrich said he could not be specific about what opportunities McFarland was pursuing.

McFarland will continue to serve on the commission's staff as a special adviser, according to Goodrich. Meanwhile, the agency's research director, Ted Stahnke will serve as acting executive director.

*"The commission
has moved into a
new stage."*

— Steven McFarland



McFarland told Associated Baptist Press he was stepping down at the request of the commission because "the commission has moved into a new stage in which they want to focus on implementation by the administration of their previous policy recommendations." While McFarland said

he supported the change in emphasis from a watchdog role to a policy-shaping role, "the commissioners believe that to do that requires a different job description for my position — and that specifically would be someone who knows movers and shakers in the administration and is familiar with how things get done in this town.

"I never held myself out as filling that job description."

The commission — an independent body made up of commissioners appointed by Republicans and Democrats in Congress and by the president — was created in 1998 by the International Religious Freedom Act.

— Robert Marus
Associated Baptist Press

Former ambassador says law created tension

Legislation approved in 1998 created several new tools designed to give religious freedom a more prominent role in shaping America's foreign policy. These tools included setting up a commission as an investigative body and the establishment of a special ambassadorship in the U.S. State Department to deal with international religious freedom issues.

However, according to the first person to fill the religious freedom ambassador's position, the legislation's two-pronged approach also created some internal tension in the work of the U.S. Commission on Inter-

national Religious Freedom.

"The commission was formed, essentially, out of a negative impulse," Robert Seiple, the former U.S. ambassador-at-large for International Religious Freedom, said in a telephone interview. "Specifically, the legislation of 1998 did not put enough faith in the State Department to carry out the mandate [to pay special attention to religious freedom in conducting foreign policy]. So you had a quote, independent commission to look over the shoulder of the State Department. That's always difficult."

The House version of the bill, ac-

ording to Seiple, was designed more to provide an instrument to punish nations that violated religious freedom than the Senate's version, which was designed more to provide an organization that would actively promote global religious freedom.

"Now, there's a large methodological difference between punishing and promoting. So, the bill that came out of the Senate was geared, in my mind, to a healthier approach to solving religious freedom issues," Seiple said. "But the kicker was that there would

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NewsMakers

◆ **Stan Hastey**, executive director of the Alliance of Baptists, said recently in his "State of the Alliance" speech, that the Christian response to the terrorist attacks of Sept. 11 should be more than "nationalistic sloganeering." He said, "As Christians, our response to jihad cannot and must not be that of jingoism. Our prophetic calling, even when the innocent blood of our own fellow citizens is shed, can and must be that of rendering a sturdy witness to peace with justice."

◆ Virginia governor **Mark Warner** recently proposed amendments to several bills in the Virginia legislature that called for posting the national motto "In God We Trust" in various public buildings. The amendments allow, but do not require, the posting of the motto until public funds are provided to do so.

◆ French Prime Minister **Lionel Jospin** ordered 1,100 police officers to guard Jewish sites and said he stands in solidarity with the country's 600,000 Jews, who say they feel increasingly outnumbered and vulnerable. This response comes after a growing tide of anti-Semitism has resulted in synagogue fires and attacks on Jews throughout the country. △

Bush urges Senate passage of faith-based program

President Bush was cheered by faith-based and charity leaders April 11 when he called for the Senate to pass legislation by Memorial Day that would aid their community work.

Proponents say the Charity Aid, Recovery and Empowerment Act would provide tax incentives for donors to charities and give faith-based and other community organizations equal treatment when they apply for governmental grants.

"The federal government should not discriminate against faith," said Bush, garnering applause from a gathering of more than 100 people in the East Room of the White House.

"There must be a level playing field available. When we have federal monies, people should be allowed to access that money without having to lose their mission or change their mission."

The proposed legislation, drafted by Sens. Joe Lieberman, D-Conn., and Rick Santorum, R-Pa., calls for grant applicants to be treated equally if they have a religious name, facilities containing religious art or other symbols, or religious criteria for membership on governing boards.

"Listen, some of the greatest welfare programs in America are on the street corners of inner-city America in a house of worship," the president said. "Some of the best places where lost souls find hope are in our synagogues. Mosques provide great hope for people who wonder whether America is meant for them."

The president also noted the aspects of the proposed legislation that would provide deductions to taxpayers who do not itemize on their tax returns.

"Charitable giving is important for all the people in our country, not just the wealthy," Bush said. "Everybody ought to be encouraged to give."

The legislation is a compromise measure that drops an expansion of "charitable choice" legislation, the 1996 welfare reform program that opened government funding to faith-based social service groups. A House measure passed last summer stalled over concerns about church-state separation and the ability of faith-based groups to possibly discriminate in hiring while receiving federal money.

Santorum told reporters afterward that he believes the measure continues to have bipartisan support and is simply awaiting scheduling for further consideration. △

Kazakstan religion law ruled unconstitutional

Draconian new legislation governing religious activity in the former Soviet republic of Kazakstan has been ruled unconstitutional, much to the relief of leaders of religious minorities in the vast Central Asian country.

Protestant pastors from across Kazakstan gathered April 13 in Almaty, the country's largest city, to celebrate the legislation's defeat by the country's Constitutional Council.

"It will be a service to thank God for this. We're going to write letters from all the pastors to the president and the Constitutional Council," said Vladimir Lyashevskiy, a leader of the Association of Religious Unions of Kazakstan, in a telephone interview from Almaty.

The Constitutional Council ruled April 3 that the proposed law gave too much power to the government-aligned Spiritual Directorate of the Muslims of Kazakstan, which would have been in a position to veto the registration of new Muslim communities and the construction of mosques.

Like officials in other former Soviet republics — including Kyrgyzstan, Azerbaijan and Russia — Kazak bureaucrats are keen to control and squash faiths that are considered nontraditional.

Lyashevskiy, whose association represents 159 churches, said he fully expects more attempts to control religious expression in the mostly Muslim country, especially since the Constitutional Council sent the bill "back for more work. But it will take them at least a year to do that, so we can rest for a little while."

The proposal, which sped through the Kazak parliament in January as part of an anti-terrorist package, would have forced all religious communities and missionaries to obtain government registration.

In addition, starting a congregation would require at least 50 people and unregistered congregations would have been forbidden to rent property for worship — a heavy blow in post-Communist Kazakstan where construction of new mosques and churches was long banned.

Nurym Taibektegi, general secretary of Almaty's minority Ahmadiyya Muslim community, had predicted that if the law had been signed, it would have meant the end of his 250-member organization. Taibektegi's London-based group is regarded as heretical by the Spiritual Directorate, which upholds Kazakstan's dominant Hanafi school of Sunni Islam. △

Federal appeals court questions exclusion of housing allowance

The minister's housing allowance is under attack. A three-judge panel of the 9th U.S. Circuit Court of Appeals is poised to consider the constitutionality of the tax code provision that allows ministers to exclude from gross income the allowance given as compensation to purchase or rent a home.

This issue came up in a case involving the Rev. Rick Warren, pastor of Saddleback Valley Community Church and the author of the popular book, *The Purpose Driven Church*. The IRS argued that Warren claimed too much housing allowance. He argued that he only claimed what the church authorized and what he actually spent. The tax court ruled for Warren, and an appeal was taken to the 9th Circuit. Before a decision was rendered, two of the three judges ordered briefs on the issue of the housing allowance's constitutionality, even though neither party raised the constitutional issue.

The fact that two of the three judges took this bold, unsolicited step strongly suggests an inclination to strike down the housing allowance as a violation of the First Amendment's Establishment Clause.

This judicial behavior has caused one member of the Congress to say that the court "hijacked the case" to declare the housing allowance unconstitutional. It's a settled canon of law that courts try to avoid deciding a constitutional issue, even when asked to do so by one of the parties; certainly a court should not strain to decide a constitutional issue, particularly where neither party has raised it. This is the worst form of judicial activism.

The minister's housing allowance appears to be consistent with Supreme Court precedents. Government violates the Establishment Clause when it gives religion a benefit, such as grants to churches to finance their ministries or vouchers to parochial schools to pay for the teaching of religion. However, accommodations of religion, such as tax exemption and other exclusions from generally applicable laws, are usually permitted.

The Supreme Court has upheld reli-

gion-specific exemptions, such as the practice of "released time" from school for religion instruction and exemptions from the anti-discrimination provisions of Title VII of the Civil Rights Act. Sometimes, however, the court has required that the relief be afforded to a category broader than religion, particularly when dealing with tax exemptions. Thus, in upholding property tax exemptions for religious uses, the court was impressed by the fact that such exemptions usually include secular nonprofit taxpayers. *Walz vs. Commission* (1970). But, the court ruled unconstitutional a sales tax exemption that was given only for religious periodicals. *Texas*

Monthly vs. Bullock (1989). That case condemning religion-specific tax accommodation has been criticized by commentators and at least four current justices on the Supreme Court.

The clergy housing allowance may be upheld even in the face of *Texas Monthly*. Although Section 107 of the tax code affords relief only for clergy, other sections provide comparable accommodations involving exclusions from gross income for a variety of other categories. These include relief for certain members of the military, exclusions for housing furnished to employees required to live on premises (e.g., hotel managers, camp counselors, etc.), and breaks for state legislators and members of Congress for living expenses while in Washington.

Thus, viewing federal tax policy across the board, the housing allowance is part of a broader category of tax relief and, accordingly, makes this case look more like *Walz* than *Texas Monthly*.

On April 16, the House of Representatives approved legislation introduced by Rep. Jim Ramstad, R-Minn., that seeks to moot the Warren litigation so that the 9th Circuit would not be able to rule on the allowance's constitutionality.

This important issue bears watching. By one estimate, if the housing allowance is eliminated, it would cost ministers (and indirectly churches) \$2.3 billion in additional taxes over the next five years. It bears watching indeed. Δ



J. Brent Walker

Executive Director

House approves bill to protect housing allowance

The U.S. House of Representatives approved legislation April 16 designed to protect an 81-year-old tax exemption for clergy housing allowances.

H.R. 4156, introduced by Rep. Jim Ramstad, R-Minn., was approved 408-0.

Ramstad, a member of the influential Ways and Means Committee, introduced the bill after the 9th U.S. Circuit Court of Appeals ordered briefs on whether the housing allowance violates the separation of church and state.

Ramstad's bill is intended to clarify the housing allowance provision by limiting the value of the exemption to the "fair rental value" of the home.

The 9th Circuit case involves the Rev. Richard Warren, pastor of Saddleback Valley Community Church near Los Angeles, who used the law to deduct \$79,999 on his home in 1998.

The Internal Revenue Service disputed Warren's deduction and said he could deduct only \$59,479, which it determined to be the "fair market rental value" of his home. Warren appealed to a federal tax court, which ruled in his favor.

The IRS, however, took the case to the 9th Circuit, where the dispute is pending. Δ

BAPTIST JOINT COMMITTEE

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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.

still be a commission looking over the shoulder of the State Department to make sure that punishment was meted out.

"It's that dichotomy between promoting diplomatically or punishing using sanctions that has created sometimes confusion and sometimes tension."

Seiple was quick to point out that he didn't believe there had been a bluntly adversarial relationship between the State Department and the commission. However, he said that the tensions created by the law have prevented both organizations from maximizing their effectiveness in promoting religious freedom around the world. "Inasmuch as the commission or the State Department hasn't maximized their presence or their institutional role in religious freedom, I think you have to go back and look at how this thing was cobbled together in the beginning," Seiple said. "I think if you have an objective historical perspective about how the bill became a law — the players that were involved, what they wanted — you can see that there was a significant divergence of opinion at the beginning that would hold back the maximization of the two organizations working together. Should we be further ahead today than we were three years ago? The answer is, 'Yes.'"

Commission communications director Lawrence Goodrich disagreed with Seiple's assessment of the relationship between the commission and the State Department. "We wouldn't say the internal tension between the punitive and promotive roles of USCIRF has hurt the commission's and the State Department's ability to work together," he said. "At the same time, the commission not only has a role in working with the State Department, but it is also part of our task to monitor the State Department, and to monitor and report on how they are implementing the Inter-

national Religious Freedom Act. And the State Department has acknowledged how our critique of their work has been very helpful to them."

Goodrich said a major difficulty in the commission's work has been the absence for the past year and a half of an ambassador for international religious freedom. Seiple left the post in September 2000. Since he was near the end of his term, then-President Bill Clinton did not replace him. George W. Bush did not announce a nominee for the post until late September 2001, and his confirmation hearings were delayed due to complications resulting from the anthrax scares on Capitol Hill.

Goodrich said such difficulties don't point to flaws in the legislation that set up the commission as much as to the fact that the U.S. government is on the cutting edge of religious liberty issues.

Steven McFarland, former executive director of the commission, also disagreed with Seiple's assessment that the panel and the State Department were naturally predisposed to be in tension.

However, McFarland did expand on Goodrich's assessment that foot-dragging by the Bush administration in naming nominees has hindered the commission's work. "We didn't get a full house [on the commission] until late September," he said. "I know the president had a lot of things going on, but he didn't make his appointments until they were four and a half months overdue."

McFarland said one difficulty written into the legislation is the fact that there are no overlaps of terms for members of the commission — which meant that six of nine members were brand new to the commission this year. "There's a huge learning curve," McFarland said.

— Robert Marus
Associated Baptist Press



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