

Report from the Capital

NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

At Hill hearing

Church politicking proposals prove divisive

Separate bills have been introduced in the U.S. House of Representatives to repeal a portion of tax law that bars churches, as tax-exempt organizations, from electioneering.

Supporters say removing the ban would uphold the free speech rights of ministers and churches. Opponents say it would divide churches and turn pulpits into partisan shills.

On May 14, a subgroup of the House Ways and Means Committee heard testimony from several prominent religious and political leaders on the "Houses of Worship Political Speech Protection Act," sponsored by Rep. Walter Jones, R-N.C., and the "Bright-Line Act of 2001," sponsored by Rep. Phil Crane, R-III.

Both bills would revise the Internal Revenue Code so churches and other religious organizations could endorse or oppose candidates and parties in elections while maintaining their tax-exempt status. Jones' bill would allow churches to spend "insubstantial" portions of their budgets on partisan political causes. Crane's bill would allow churches to spend up to 20 percent of their income on lobbying and up to 5 percent on campaign activities.

Churches and other organizations incorporated under section 501(c)(3) of the Internal Revenue Code are now allowed to speak out on moral and social issues — including issues at stake in pending legislation or public referenda — but are effectively barred

"Make no mistake about it, at this very moment houses of worship are free to endorse candidates for political offices and to give money to those candidates' campaigns. However, such politicking cannot be done with funding that is tax deductible."

— Welton Gaddy



pits of our churches."

But Barry Lynn of Americans United for Separation of Church and State said that supporters of the bills are addressing a problem that does not exist. "No freedom of speech of any American pastor, priest, imam or rabbi is endangered by the current Tax Code," Lynn told the panel. "Religious leaders are as free today as any time in American history to expose

from endorsing or opposing a particular candidate or political party.

The bills address only churches and other religious organizations. Other nonprofits incorporated as 501(c)(3) organizations still would be banned from partisan politics.

Supporters said churches' First Amendment rights are at stake. "The IRS should not be the 'Speech Patrol,'" Jones said in his statement to the committee. "Our spiritual leaders should feel free to speak on moral and political issues of the day, including talking about candidates for public office and where they stand on those issues. If a minister believes that one candidate best reflects that church's moral beliefs, the IRS should be in no position to deter him or her from saying so."

D. James Kennedy, prominent television preacher and pastor of Coral Ridge Presbyterian Church in Fort Lauderdale, Fla., said that the legislation "is a vitally important step in reversing a long-standing injustice whereby free speech seems to be protected everywhere except in the pul-

moral evils, propose ethical solutions and hold our leaders to the highest standards. In fact, the only thing that our tax laws prohibit is use of resources or personnel of a tax-exempt group to promote the campaigns of candidates for public office."

The two sides also debated whether the bills would allow large donors to circumvent new campaign finance laws by "laundering" their contributions through churches or other houses of worship. Colby May, a lawyer with Pat Robertson's American Center for Law and Justice, took issue with an AU argument that the bills would create a loophole in campaign finance laws.

"[A]ll corporations, including tax-exempt nonprofit corporations, are barred from making 'hard money' contributions, or any direct or indirect disbursements for 'electioneering communications' under the new Bipartisan Campaign Finance Reform Act of 2002," May said in his testimony. "These restrictions apply right

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NewsMakers

◆ **Wanda Henry**, Baptist Joint Committee administrator, has earned a Master of Theological Studies degree from Wesley Theological Seminary in Washington, D.C.

◆ **James M. Dunn**, president of the Baptist Joint Committee endowment, will receive an honorary Doctor of Divinity degree from Furman University at the school's June 1 graduation ceremony.

◆ **J. Brent Walker**, executive director of the Baptist Joint Committee, and **K. Hollyn Hollman**, BJC general counsel, sent a letter to members of the Government Oversight Subcommittee of the House Ways and Means Committee about legislation before the panel that would allow political electioneering from the pulpit. The "Houses of Worship Political Speech Protection Act" and "The Bright-Line Act" would allow houses of worship to endorse political candidates for public office without jeopardizing their tax-exempt status. These bills "may sound good at first but would ultimately pervert, not protect, houses of worship," they wrote.

◆ **Michael K. Young**, chair of the U.S. Commission on International Religious Freedom, wrote a letter on behalf of the panel to President Bush urging him to meet with non-Orthodox Christian leaders, as well as leaders of the Russian Orthodox and non-Christian religious groups, during the president's visit to Moscow. Δ

Bush signs law protecting clergy housing tax break

President Bush has signed into law a bill designed to shield an 81-year-old tax break for clergy housing expenses from possible court action.

Bush signed the measure, the Clergy Housing Allowance Clarification Act, without fanfare at the White House on May 20. Originally sponsored by Rep. Jim Ramstad, R-Minn., the bill cleared both houses of Congress with unusual speed.

The tax break allows clergy to exclude from their taxable income the portion of their salary devoted to housing expenses.

The bill drew the support of a wide array of religious groups, including Baptists, Orthodox Jews, mainline Protestants and Catholics. Religious groups said that without the housing allowance exclusion, small and rural churches would be especially hard-hit.

Ramstad said religious groups would be forced to pay \$2.3 billion in extra taxes without the housing tax break. The new law does not settle questions about the housing rule's constitutionality, but supporters say by limiting the exemption to the "fair market rental value" of the house, IRS officials would leave it alone.

The dispute originated when the pastor of one of the nation's largest megachurches, the Rev. Rick Warren of Saddleback Community Church in Lake Forest, Calif., was prevented by the IRS from deducting \$79,999 from his income in housing expenses. Warren appealed, and in 2000 a tax court ruled in his favor.

But when the IRS appealed the case to the 9th U.S. Circuit Court of Appeals, two of the three judges said they wanted to examine its constitutionality.

In a prepared statement, Warren said the long and expensive legal fight was "well worth fighting and winning for clergy across the country. I'm glad God let me play a part in it." Δ

Update: Judge refuses to allow 'Lord's Prayer' at graduation

A federal judge ruled that the high school choir in Woodbine, Iowa, may not sing "The Lord's Prayer" at graduation ceremonies, even though a majority of students and parents want the song included as part of a 30-year-old tradition.

U.S. District Court Judge Charles R. Wolle ruled May 10 that the "principal effect" of including the sacred prayer would be to "advance the Christian reli-

gion," in violation of the separation of church and state.

"That the majority of the students, choir members and parents want 'The Lord's Prayer' to be a part of the program is not a factor in the constitutional analysis," Wolle wrote. "This is not a situation where the majority rule. Our Constitution prohibits state-compelled religious conformance."

The Iowa Civil Liberties Union and the American Jewish Congress sued to block the song on behalf of two atheist students who said being forced to sing the prayer made them uncomfortable.

Marc Stern, legal director for the American Jewish Congress, said, "The decision indicates clearly that the federal courts will not be fooled by subterfuges employed by school boards to impose Christian prayer on non-Christian or non-believing students."

Terry Hazard, superintendent of the Woodbine school system, told the *Omaha World-Herald* that school officials would have no comment on the decision until they decide whether to make a last-minute appeal. "That doesn't mean we are going to appeal or aren't going to appeal," Hazard said. Δ

House passes bill banning Pentagon rule on abayas

By a unanimous voice vote, the House of Representatives passed a bill May 14 that would prohibit the Pentagon from requiring or encouraging U.S. servicewomen to wear Muslim-style head-to-toe robes in Saudi Arabia.

"I am puzzled by the fact that our female military personnel are treated like second-class citizens while stationed on soil they're defending from Iraqi aggression," said Rep. John Hostettler, R-Ind., cosponsor of the measure.

The bill also would prevent the Defense Department from purchasing the garments, known as abayas, for regular issuance to servicewomen, The Associated Press reported. The Senate has not addressed the issue.

The requirement that servicewomen wear the abayas whenever they left their bases began in 1991, but was changed to a rule that "strongly encouraged" the dress in January.

Officials have said wearing an abaya reduced the possibility that servicewomen would be attacked or harassed in a country where government-paid religious police enforce dress restrictions. Δ

Supporters fail to make case for new electioneering law

There are many reasons to fight the recent proposals to amend IRS rules to allow churches to engage in partisan political activity. Several were listed in this space just a couple of months ago. Since then the number of religious organizations, including mainline denominations, opposing these measures has multiplied. Their statements reflect widespread concerns about houses of worship becoming tools in partisan campaigns, congregations being divided along party lines over the pastor's endorsement of a candidate, and the inevitable dampening of the religious community's prophetic witness.



K. Hollyn Hollman

General Counsel

So it was with great interest that I recently attended congressional hearings on the proposed legislation. What arguments would proponents make in favor of the bills? Why would they claim the religious community needs these changes in the law?

Unfortunately, the hearings produced only two answers, repeated many times over. Neither rang true.

First, proponents contended that pastors have been silenced. Colby May, attorney for the American Center for Law and Justice, claimed that pastors live in fear of the IRS shutting down their ministries. He argued that legal reform is required to remove the "anxiety and uncertainty" that churches face. Even more boldly, D. James Kennedy, a witness representing a large television ministry, claimed that many pastors "would not say anything on any moral issue" because they feared the IRS. He described current law as a "gag rule" on churches.

The testimony on this point was hard to believe, especially since it followed testimony from the head of the IRS office responsible for tax-exempt organizations. He observed that IRS enforcement activity is extremely limited and explained the strict audit procedures for churches that prevent any investigation unless there is substantial evidence of unlawful activity. In more than 20 years under the current regulations, he knew of only two churches and a handful of religious organizations that have been sanctioned.

Second, proponents argued that there has been uneven enforcement by the IRS. While some anecdotal evidence supports this claim, it does not come close to justifying the proposed remedy of lifting the ban on political activity. Spotty enforcement of this rule is no indictment of its underlying value. If anything, this argument suggests that the government should dedicate more resources to applying existing regulations and educating the public.

Before becoming the chief spokesperson on this bill, Mr. May represented the Church at Pierce Creek, which lost its tax exemption because of its unrepentant political activity.

For example, it once placed a full-page advertisement in *USA Today* with the heading "Christian Beware." Citing biblical warnings, the ad questioned how Christians could vote for Bill Clinton and openly solicited tax-deductible contributions. It is hard to understand how such an egregious violation of the rules (unlike the close calls sometimes discussed) could inspire sympathy. Nevertheless, May depicted the church's loss of its tax-exempt status as an evil in need of correction. Instead, the Church at Pierce Creek incident is a telling example of the cheap and divisive campaigns these bills would encourage.

One final note. Months before the hearings, proponents of the legislation on Capitol Hill sought the reaction of a major religious denomination and were stunned that an endorsement did not result. The direction of that call is illuminating. These bills did not originate among grassroots communities of faith; they have been pushed by politicians. And far from removing any "muzzle" or "gag," the proposed legislation promises to place new shackles on houses of worship, as politicians seek to exploit their resources for partisan ends. △

White House leader backs 'charitable choice' expansion

The official in charge of President Bush's "faith-based initiative" said the White House hasn't given up on efforts to expand the government's ability to give money to churches and religious charities.

Speaking May 21 at an event sponsored by the Heritage Foundation, Jim Towey, director of the White House Office of Faith-Based and Community Initiatives, said Bush continues to support the expansion of programs that would make it easier for religious charities to qualify for federal funds.

Towey also countered arguments of those who oppose the practice on grounds of the separation of church and state.

Towey also painted opposition to Bush's plan as political, asking why there wasn't similar criticism when then-candidate Al Gore said he supported charitable choice in 1999 or when President Clinton signed the welfare-reform bill that included charitable choice in 1996.

Church-state watchdog groups including the Baptist Joint Committee and Americans United for the Separation of Church and State did criticize Gore and Clinton at the time, but charitable choice didn't receive much media attention until Bush unveiled his plan. △

