

Report from the Capital

NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

'Faith-based' program wins court battle

Relying on a recent U.S. Supreme Court ruling that state-funded scholarships to religious schools do not necessarily violate the Constitution, a federal judge in Wisconsin has ruled that a faith-based drug-treatment program can continue to receive tax dollars through a contract with the state Department of Corrections.

In an earlier ruling in the case, U.S. District Judge Barbara Crabb held that direct funding by the Wisconsin Department of Workforce Development of a faith-based treatment program called Faith Works violated the First Amendment's ban on establishment of religion. But the January ruling left open the question of a separate stream of indirect funding by which eligible participants receive services from Faith Works. The case went to trial to determine the precise nature of this funding stream and whether participants exercised independent, private choice.

Since then, the U.S. Supreme Court handed down the landmark *Zelman* ruling upholding an Ohio program providing government-funded scholarships that parents may use to send their children to private — including parochial — schools.

The June *Zelman* decision said such voucher programs are allowed by the Constitution, as long as parents have a genuine choice between religious and secular schools in deciding where to use the scholarships and the government does not steer recipients toward a religious option.

In the July 29 Wisconsin ruling, Crabb said state funding of the Faith

"When the individual chooses the religious program, the 'circuit' between government and religion is broken."

— U.S. District Judge Barbara Crabb

Works program through the Department of Corrections operates on a similar principle because individual inmates consent to participate in the faith-based program.

In addition to Faith Works, the Corrections Department contracts with six non-faith-based treatment facilities in the Milwaukee area as part of a welfare-to-work program.

In her opinion, Crabb said the Establishment Clause is designed in part to "prevent the government from placing its imprimatur on religion." Citing the *Zelman* case, the Wisconsin judge noted that "the Supreme Court has drawn a distinction between government programs that provide aid directly to religious schools and those involving true private choice."

When government funds flow to a religious institution because of choices made by individuals, the funding is considered indirect, Crabb wrote.

Relying on recent court rulings, the judge also found that individuals can "nullify any appearance of government endorsement" through programs that allow "genuine and independent choices."

"When the individual chooses the religious program, the 'circuit' be-

tween government and religion is broken, and the establishment clause is not implicated," she wrote.

Citing a 2000 high court plurality, Crabb wrote, "as long as the individual selects the publicly funded program freely, ... it is irrelevant whether the funding passes through the hands of the individual first or goes directly to the selected program."

Taxpayer plaintiffs challenging the Wisconsin program had argued that the prisoners did not have a true private choice among programs because Faith Works operated the only long-term residential drug program available to prisoners. They also argued that prisoners would feel compelled to choose a treatment program recommended by prison staff.

In her ruling, Crabb said the Department of Corrections issued regulations, which were revised during the course of the litigation, to prison staff requiring that they inform prisoners that they were not required to use the Faith Works program and that they could choose a secular alternative.

Baptist Joint Committee General Counsel K. Hollyn Hollman said the court "correctly affirmed the prohibition of direct funding of religious institutions when it struck a direct grant to Faith Works.

"Unfortunately, the court upheld indirect funding of the same religious program. This is a disappointing extension of the Supreme Court's definition of 'true private choice.'"

— Associated Baptist Press
and Staff Reports

NewsMakers

◆ **U.S. District Judge G. Thomas Porteous Jr.** has ruled that a Louisiana program designed to promote sexual abstinence unconstitutional advanced religion. He ordered the Governor's Program on Abstinence to halt its practice of giving money to individuals or groups that offer religious messages "or otherwise advance religion in any way" in events that receive funds from the program.

◆ **Moody County (South Dakota) Judge Rodney J. Steele** has reunited a child with his mother — who had converted to Islam — after a custody battle that she claimed had separated them because of religious discrimination. Sally Barakat and her 5-year-old son, Trevor, were reunited July 23 after the circuit court judge ruled that Barakat had the right to raise her son as she saw fit.

◆ **Minnesota Gov. Jesse Ventura** inadvertently declared a week in October as "Christian Heritage Week." Ventura's office submitted the proclamation, along with 16 others, to the Secretary of State's office. When staff members realized the error, they were told it was too late and that the proclamation was already official. "Somehow it got in the wrong pile," spokesman John Wodele told The Associated Press. "It would not have been approved." △

Appeals court: State wrongly denied student's scholarship

The state of Washington wrongly denied a scholarship to a college student who wanted to pursue a degree in theology, the 9th U.S. Circuit Court of Appeals ruled July 18.

Joshua Davey was awarded a "Promise Scholarship" in 1999 but was then denied it after he declared a major in pastoral ministries at Northwest College, an Assemblies of God school in Kirkland, Wash. The state's Higher Education Coordinating Board said it denied the scholarship because state law barred funding of religious instruction.

"We conclude that HECB's policy lacks neutrality on its face," wrote Circuit Judge Pamela Anne Rymer in the 2-1 decision. "It makes the Promise Scholarship (which is neutral toward religion) available to all students who meet generally applicable criteria, except for those who choose a religious major."

Davey had appealed his case after a district court ruled in the state's favor.

Jay Sekulow, chief counsel of the American Center for Law and Justice, which challenged the state, hailed the decision.

"This decision sends a strong message that religious exclusions will not be tolerated under the Constitution," Sekulow said in a statement.

Washington state Attorney General Christine Gregoire had not decided whether to appeal, The Associated Press reported.

It's too early to determine that, said Cheryl Reid, spokeswoman for the attorney general's office. "We are going to be looking at what our options are." △

Company fined for 'religious harassment' of employees

An Indiana home health care company was fined \$270,000 after six Catholic employees said they were harassed and a Unitarian was refused a job when they refused to accept the owner's evangelical Christian beliefs.

A nine-person jury fined Avon-based Preferred Home Health Care \$270,000 in damages on July 25 for trying to impose religion on its employees. The jury, however, said the employees were not discriminated against by being disciplined, fired or forced to resign because of their beliefs. The Equal Employment Opportunity Commission filed suit against the compa-

ny in 1998, and said the jury verdict proves that its religious practices "were its standard operating procedure and constituted religious harassment to those who did not conform to the company's prevailing religious beliefs and practices."

The company's founder, Jackie Steuerwald, said she founded the company in 1988 after receiving a message from God. Steuerwald made employees sign an agreement to abide by the company's faith-based principles.

One woman, a Unitarian, said she was denied a job when she revealed her faith during an interview. "You damned humanists are ruining the world," Steuerwald told Theresa Raloff, according to Raloff's testimony, and said she would pray for her as she burned in hell.

One of the Catholic employees, Mary Mulder, said she was repeatedly harassed for her faith and when she complained, she was told by the company's human resources director that "you're the hardest kind to break."

Joy Pentz, a supervisory investigator for the EEOC, said the company created a "hostile work environment" through "religious indoctrination."

"This is an important verdict because it sends a message to employers that they cannot impose their religious beliefs and practices upon their employees," Pentz said. △

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debates and attempts to influence legislation in their day. I know of few separationists today who would endorse Hamburger's hard-edged characterization of separation as hostile to religion.

Separation has been good for both church and state. For each to do its work, there must always be a decent distance, between the two — some "swingin' room," to use Gardner Taylor's phrase. The institutional and functional separation of church and state has resulted in a vibrant religion, a plush pluralism and a vital democracy. History teaches and contemporary geo-politics reveals that nations that abjure a healthy separation of church and state wind up with tepid, attenuated, majoritarian religion, at best, or a theocracy, at worst.

I, for one, will cast my lot with my Baptist forbears Williams, Leland and Backus, and founders like Jefferson and Madison, not with misguided historical revisionism. △

Despite Hamburger's claims —

Nation's founders, early Baptists supported principle of separation

In a new book titled *Separation of Church and State*, Philip Hamburger tries to debunk what he calls the "modern myth" of church-state separation. He peddles the wrong-headed thesis that our nation's founders and early religious dissenters consciously avoided using the word "separation" and never intended to enshrine even the concept of separation in the First Amendment. Rather, he contends separation was popularized in the 19th and 20th centuries as an anti-Catholic polemic and as a tool of secularists to segregate religion from public life. Hamburger concludes that this view of separation has militated against the full flowering of religious liberty in this country.

Hamburger could not be more wrong. While Roger Williams advocated for the "wall of separation between the garden of the church and the wilderness of the world," during the 17th and 18th centuries, the words "separation of church and state" were not widely used or well known. It is also true that 18th-century Baptists, like Isaac Backus and John Leland, probably did not use the word "separation." But they certainly supported the principle. Backus, for example, argued that church and state should "never be confounded together" and Leland opined that attempts by "the magistrate to foster Christianity has done it more harm than all the persecution ever did." They both fervently opposed the use of taxes to support the advancement of religion.

Although there is no evidence that Thomas Jefferson or James Madison used the word "separation" in the 18th century, how could anyone read Jefferson's "Bill Establishing Religious Freedom" in Virginia and Madison's "Memorial and Remonstrance Against Religious Assessments" without concluding that they unequivocally supported the concept? They both used the word explicitly in the early 19th century.

The fact that the separation of church

and state has been supported by some who exhibited an anti-Catholic animus or a secularist bent does not impugn the validity of the principle. Champions of religious liberty have argued for the separation of church and state for reasons having

nothing to do with anti-Catholicism or desire for a secular culture. Of course, separationists have opposed the Catholic Church when it has sought to tap into the public till to support its parochial schools or to argue for on-campus released time in the public schools. But that principled debate on the issues does not support a charge of religious bigotry.

Hamburger's gravest error comes when he creates a straw man of his caricatured view of church-state separation — one in which religion is segregated from public life. In his view, "separation" harms religious liberty, when a proper understanding of the concept suggests the opposite.

For some of us, religious liberty is bound up in the notion of "soul freedom" that all receive as a gift of God; for others, it is intimately tied to freedom of conscience. Church-state separation is only the political/constitutional means of protecting the end of religious liberty.

Moreover, the separation of church and state serves both religion clauses in the First Amendment. It operates not only to insist upon non-establishment, but also to ensure the free exercise of religion. In fact, the Supreme Court's first use of the words "separation of church and state" came in a free exercise case in 1879. Properly understood, separation calls for "neutrality" — even, to use Chief Justice Warren Burger's words, "benevolent neutrality" — toward religion, not in any sense hostility.

Finally, the separation of church and state does not require a "segregation" of religion from public life. In fact, even Leland and Backus, for all of their insistence upon the principle of separation, were thoroughly involved in public policy



J. Brent Walker

Executive Director

Secret Service agent suspended for written slur

A Secret Service agent who admitted writing anti-Muslim graffiti in the home of a terror suspect has been suspended by the Justice Department, an Islamic civil rights group reported July 25.

The agent, a member of the U.S. Attorney's Joint Terrorism Task Force in Detroit whose name was not released by the Justice Department, allegedly scrawled an anti-Islamic epithet on a Muslim prayer calendar during the search of a Jordanian-American suspect's home in Dearborn, Mich.

"Islam is Evil, Christ is King" was found on the calendar of Omar Shishani, who had been arrested at Detroit Metropolitan Airport for allegedly carrying counterfeit checks and who may have been trained in al Qaeda camps, *The Washington Post* reported. The agent later admitted to writing the epithet.

A government attorney involved with the case said the incident was "a gross aberration and a great embarrassment."

"This act does not represent the professional and courageous efforts and the overwhelming ability of federal agents and local enforcement officers who continue in challenging times to do a superb job," Jeffrey Collins, U.S. attorney for the eastern district of Michigan, told *The Associated Press*. ▽

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The Origins and Growth of Baptist Faith Twenty Baptist Trailblazers in World History

Lawrence Holiday Harris. The Reprint Co., Publishers, Spartanburg, S.C., 2001, 794pp.



Baptists are an interesting people. In their nearly 400-year history they have undergone many changes and developed into many different bodies. In *The Origins and Growth of Baptist Faith*, Lawrence Harris, a former history professor, presents a history of Baptists by examining the lives of 20 of the most important actors in this tradition's history. Through their experiences and connections with other Baptists, Harris is also able to tell the story of the struggles and growth of this group.

The Baptist "trailblazers" featured are John Smyth, Thomas Helwys, John Bunyan, William Kiffin, Roger Williams, Isaac Backus, Martha Stearns Marshall, John Leland, George Leile, William Carey, Luther Rice, Johann Gerhard Oncken, Vasili Gurevich Pavlov, Philip P. Bliss, Lottie Moon, Benajah Harvey Carroll, Walter Rauschenbusch, Martin Luther King Jr., Jimmy Carter and Billy Graham. As bold thinkers, ministers, evangelists, missionaries and musicians, these persons were at the forefront of church-state separation, foreign missions, the social gospel and civil rights. They represent the great diversity that can be found in the Baptist tradition.

Harris' book is quite lengthy, nearly 700 pages of text plus extensive notes, bibliography and index. For the passionate reader interested in religion and history it provides an engaging read, while for others it provides a good, quick reference book on

key Baptists throughout history. Individual chapters on particular Baptists can be read for specific interest.

Harris includes detailed information for each featured Baptist, incorporating personal background, as well as historical details. This aids in providing an image of their struggles and place in history. Some of the stories and facts are repeated, allowing each chapter to stand alone, yet slowing the book's flow.

The most important contribution of Harris' book may be its emphasis on the historic Baptist focus of separation between church and state. Through the stories of early Baptists, he demonstrates why Baptists saw this principle to be so important and why they fought so hard to protect it. It is from their humble origins of persecution that they have grown to their large size today. Harris expresses this sentiment well, noting that Baptists:

From their simplest beginnings ... would not tolerate the interference of monarchs, magistrates, and governors in their sacrosanct privilege of direct worship. Often they chose the prison cell, rather than sign a document of forced compliance. Having been tortured and abused for their faith, these great Christians demanded religious freedom, not only for themselves, but for all people. (xi)

Baptists today should not forget that they were once a minority only seeking to have an equal opportunity to believe and worship, as their consciences would allow. From neither a fundamentalist nor liberal stance Harris notes this focus, providing an important reminder for Baptists of today to ponder.

— Andrew Canady
Baptist Joint Committee Intern

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