

Report from the Capital

NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

Voucher supporters target state measures that restrict funding of religious organizations

State constitutions banning school vouchers should be overturned because they are anti-Catholic. That's a new argument being used increasingly by some advocating the use of public money to send students to parochial schools.

While the U.S. Supreme Court gave voucher programs a boost this year by ruling that they do not necessarily violate the U.S. Constitution, many states have more restrictive constitutions that ban government support of religious institutions even indirectly.

But now voucher supporters are saying these laws ought to be abandoned due to their sordid history.

Depending on who is counting, as many as 37 states have constitutional bans on government funding of religion. They are nicknamed "Blaine amendments," after James Blaine, who as speaker of the House of Representatives in 1875 proposed a constitutional amendment banning the distribution of any public funds to religious schools.

Blaine's amendment passed the House but failed in the Senate. Even so, many states picked up similar language in adding amendments to their own constitutions.

Modern critics say Blaine's motivation was anti-Catholic bigotry that was rampant in the United States during his day.

"When they were originally adopted as part of state constitutions, the motive was virtually always anti-Catholic animus," said Pat Korten,

*Has the battle over
vouchers shifted
to the states?*

vice president for communications at the Becket Fund, a pro-voucher organization.

Pro-voucher groups say passage of the Blaine amendments fed on anti-immigration and anti-Catholic sentiment as Catholic schools tried to obtain tax funding in the 1800s.

The Becket Fund's Anthony Picarello has noted that public schools of the era were not exactly religion-free.

"The common schools taught the common religion, which was a sort of non-denominational form of Protestantism," Picarello, the group's general counsel, said. "Readings of the [Protestant] King James translation of the Bible and teacher-led prayer were common in America's public schools, and Catholic parents often objected to these requirements."

The proliferation of state constitutions banning the use of tax dollars for funding of "pervasively sectarian" schools particularly disadvantaged Catholics, who operated nearly all of America's private religious schools at the time.

Forces on the other side of the

voucher argument, however, say that oversimplifies the history behind the amendments.

Rob Boston of Americans United for the Separation of Church and State said Blaine's original amendment was inspired by President Ulysses Grant, who supported banning not only government funding for sectarian schools but also the teaching of Protestant tenets in public schools.

"Certainly there were instances of anti-Catholic bigotry at that time, but that doesn't mean that everybody who advocated limiting funding to non-sectarian schools was motivated by anti-Catholic animus," Boston said.

K. Hollyn Hollman, general counsel of the Baptist Joint Committee, said even if there is some mixed history about why the Blaine amendments were enacted, it does not follow that they are bad law.

"While it is true that the history of these state constitutional provisions is tainted by some of their supporters at the time, that history in no way diminishes the important broader purpose they served," she said. "To focus on 'bigotry' is to overlook the great value that the 'no-aid' principle has served in maintaining good relations among religions and between religion and government."

Voucher proponents, meanwhile, take the argument a step further. Rather than singling out Catholics, they say the Blaine amendments now

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NewsMakers

◆ **The Rev. Major L. Jemison**, pastor of St. John Missionary Baptist Church in Oklahoma City, has been elected president of the Progressive National Baptist Convention. Jemison, who succeeds the Rev. C. Mackey Daniels of Louisville, previously served as the denomination's first vice president. He was elected to a four-year term on Aug. 8 during the annual meeting of the Baptist group in St. Louis.

◆ **Commissioner Sir John Stevens**, head of the London, England, Metropolitan Police, said Aug. 14 that the idea of removing the cross from the badge of London's police force has been dropped. The proposal was first made when a Muslim traffic warden threatened to take the police to an employment tribunal for race discrimination on the grounds that he could not wear the symbol of another faith, but he later dropped his claim.

◆ **Alan Wolfe**, director of the Boisi Center for Religion and Public Life at Boston College, responded to arguments Thomas Jefferson may not have meant for the "wall of separation" between church and state to be a firm barrier. "The 'wall' idea has taken on a life of its own and is part of our custom and law. Americans love God and hate politics, so they ask, 'Why mix the two?'" He was quoted by *The Washington Times*. △

Florida appeals ruling against education voucher program

Gov. Jeb Bush and other state officials quickly appealed a court ruling overturning Florida's 3-year-old voucher program.

In the first sign that the debate over public money for religious schools is moving from the federal level to the states, a Florida judge ordered a halt to the program Aug. 5, saying it violates the state constitution.

Circuit Judge Kevin Davey of Tallahassee ordered an immediate halt to a program offering state-funded scholarships, which students may use to pay for tuition at private religious schools. The scholarship program is intended to provide educational alternatives to children in chronically failing public schools.

The U.S. Supreme Court said in June that a similar program in Ohio did not violate the U.S. Constitution's ban on the establishment of religion because religious institutions received the tuition money through the independent, private choices of parents.

But the Florida Constitution, Davey said, is more specific in prohibiting the indirect transfer of state funds to sectarian religious institutions.

Florida's Constitution says, "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution."

Davey said the voucher program violates "the clear mandate of the people as enunciated in the constitution."

Several Florida groups — including a teachers' union, the state PTA, the Florida League of Women Voters and the state NAACP — filed the lawsuit in 1999, immediately after Bush, a Republican, signed a bill establishing the program.

Fewer than 50 students received vouchers last year, but parents of 702 children have notified the state that they expect to take part in the program this fall.

The state's Aug. 6 appeal of Davey's ruling automatically delays its implementation, meaning voucher students may attend religious schools this fall. Florida's teachers' union said it would challenge the automatic stay.

"Parents in Florida should not lose the power of choice," the governor said in a statement. "This decision is particularly disappointing given the U.S. Supreme Court's recent decision finding Ohio's

choice program constitutional. This ruling is also troubling because it suggests that the Florida Constitution requires aid programs to discriminate against parents who choose religious schools."

Opponents of government aid for religious schools hailed Davey's ruling.

"We welcome the Florida court's decision and expect state constitutions will play a significant role as we enter the next phase of the voucher debate," said K. Hollyn Hollman, general counsel of the Baptist Joint Committee on Public Affairs.

Hollman said most state constitutions are more specific than the U.S. Constitution in banning support for religious institutions. △

Church wins injunction against property seizure

Cottonwood Christian Center in Orange County, Calif., has been granted a preliminary injunction temporarily preventing the City of Cypress from seizing an 18-acre property the church had bought for a new worship center.

The decision by Judge David O. Carter of the U.S. District Court for the Central District of California is the latest development in a two-year controversy over the property, which the city wants to be used by a business to generate tax revenue.

The church filed for the injunction in June after the city made preparations to seize its property by eminent domain. The city entered negotiations about the property with Costco, a large discount store.

David Bilmer, community development director for the city, said he was "disappointed" with the court's decision, which officials are still analyzing.

A nondenominational church with weekly attendance in the thousands, Cottonwood has outgrown its present facility, which seats only 700. To accommodate the crowds, the church holds two Saturday services and four on Sunday.

The congregation began searching for land as far back as 1994, completing purchase of the now-disputed property in fall 1999 for \$13 million, according to a court document. To comply with Cypress zoning laws, Cottonwood applied for a conditional use permit to proceed with its building plans.

After a lengthy and unsuccessful struggle to obtain the permit, the church filed suit against the city in January 2002 charging violation of the Religious Land Use and Institutionalized Persons Act and the U.S. and California constitutions. △

North Carolina dispute offers lessons on teaching about religion

Public schools have always provided fertile ground for church-state debates. Indeed, many of the Supreme Court's most famous decisions interpreting the extent of free exercise and the boundaries of no establishment have arisen in that context. While these cases commonly address hot-button issues such as organized prayer or public funding of religious education, this year's back-to-school dispute centers on an equally sensitive topic: how schools treat religion as an object of study in the classroom.

As it does every year, the University of North Carolina (UNC) this summer assigned incoming freshmen a book for discussion during orientation. To initiate them into the university's intellectual life, UNC asked the freshmen to read passages from the book, to write a one-page essay in response to one of four general questions and to discuss the reading in small groups.

The university's choice of *Approaching the Qur'an: The Early Revelations* by Michael Sell guaranteed that faculty and students would discuss not only the reading, but also the First Amendment. A selection committee chose the book in the wake of September 11th, with the stated purpose of introducing students to the unfamiliar beliefs of more than one billion Muslims around the world.

UNC's actions were challenged in court by the Family Policy Network, a conservative Christian organization dedicated to informing churches and families "on the moral issues of the day." The plaintiffs argued that it is unconstitutional for a publicly funded university to require students to study a specific religion. In several respects, their case appears to lack merit. Worse, it invites confusion about what teachers can and cannot do in educating students about religion.

First, the UNC assignment is not compulsory. While the university described it as a "requirement," roll is not taken, grades are not given and there is no penalty for failure to participate. Reports noted that in past years about 50 percent to 60 percent of incoming students took

part. Nonetheless, UNC responded to complaints about this year's assignment by stating that students who objected could write a one-page essay explaining their objections.

Second, UNC does not seem to be promoting Islam. The general constitutional rule, often affirmed by the Supreme Court, is that public schools cannot sponsor or promote religion. Schools cannot do so even if students are allowed to opt out of the activity. Yet the Court has also noted that teaching about religion is an important part of a complete education.

The dispute over whether the university was simply teaching about religion or unconstitutionally promoting religion thus centered on conflicting evaluations of Prof. Sell's book. The plaintiffs charge that it is a biased account of Islam, in that it omits controversial passages from the Qu'ran. Of course, no single text could provide a comprehensive study of Islam, and brief orientation sessions allow faculty to cover only limited material. Perhaps anticipating this problem, UNC recommended no fewer than 19 supplemental books in the assignment.

Third, allegations of hypocrisy are overstated. Critics argue that if the university assigned excerpts from and commentaries on the New Testament, rather than the Qu'ran, a court would strike it down. Although claims involving the promotion or endorsement of Christianity are more common, the legal standards are the same. Schools may teach about the Bible as long as the course is presented objectively as part of a secular program of education.

Schools often avoid teaching about the majority religion unnecessarily for fear of litigation, but there is no reason to believe that the law disfavors Christianity. The divisive and misleading charges in this case underscore the importance of improving understanding of not only diverse religious traditions, but also of the proper place of religion in the classroom. △



K. Hollyn Hollman

General Counsel

Suit against Navy certified as class action, judge rules

A U.S. District Court judge ruled Aug. 19 that a case in which nonliturgical chaplains have sued the Navy over alleged discrimination is a class action suit, raising the possibility that hundreds of chaplains eventually could be affected.

U.S. District Judge Ricardo M. Urbina agreed with the suing chaplains that the Navy incorrectly characterized their claims as relating to individual incidents rather than a common policy.

"What the plaintiffs actually allege is a pervasive pattern of religious preferences favoring liturgical Christian chaplains over nonliturgical Christian chaplains," he wrote in a 16-page opinion. "All the comparatively minor individual differences among the plaintiffs' claims shoot out like spokes on a wheel from the tire's center — the Navy's alleged policies and practices that supposedly foster unconstitutional religious preferences."

Urbina has yet to determine how many chaplains might be included in the class, but the lawyer for the chaplains estimates the case that has had 17 named plaintiffs could eventually total anywhere from 700 to 1,000 people.

Art Schulz, the attorney for the 17 current and former nonliturgical chaplains, said he hopes the class certification will include all nonliturgical Protestant chaplains who have served in the Navy since 1988. △

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discriminate against all religious people. "Under the [U.S. Constitution's] free exercise clause, government is prohibited from singling out religious people for special disfavor — that is what Blaine amendments do," Picarello said. "Government cannot provide benefits to everybody but single out the religious institutions for discrimination."

Picarello contends that making government benefits like vouchers generally available but excluding their use for religious purposes amounts to "viewpoint discrimination," something the Supreme Court has said is illegal.

But Hollman said past viewpoint discrimination cases have involved speech, not funding. "I can say very generally that the fact that religion must be treated in a non-discriminatory way in the context of some speech cases does not mean that individuals will have a free exercise right to government money," she said.

Boston said what groups like the Becket Fund are advocating is actually "the creation of a new constitutional principle — the idea that not only can a religious institution receive tax money in certain cases, but that the government may be required to provide it in some cases."

"To say that the government may [fund religious groups] under certain conditions is one thing; to mandate it is entirely another," Boston said.

Voters in several states in the past 20 years have rejected efforts to alter or remove state Blaine amendments to clear the way for voucher programs. Soon, however, the debate may be making its way into federal courts.

In Florida, a circuit judge recently struck down a voucher program, saying it violates the state's constitution. Gov. Jeb Bush and other state officials quickly

appealed the ruling. A similar case out of Washington could also potentially make it to the U.S. Supreme Court, thus forcing the issue of whether such provisions are constitutional or not.

— Robert Marus
Associated Baptist Press

Tensions grow in Georgia between Orthodox, minorities

Tension between Orthodox Christians and religious minorities is rising in the former Soviet republic of Georgia despite calls from local and U.S. politicians for a halt to religious violence.

In three separate incidents in July, Roman Catholics, Jehovah's Witnesses and Pentecostals all claim they have been threatened, harassed and, in two cases, physically attacked by members and clergy of the country's dominant Georgian Orthodox Church.

Over the last three years, religious freedom monitors have documented more than 100 cases of beatings, arson, vandalism and theft in Georgia, a country of 5 million people located between Russia and Turkey. Most of the attacks are by followers of a radical Orthodox priest, Father Basili Mkalavishvili, against Jehovah's Witnesses.

Now, however, Catholics are complaining that Orthodox Christian thugs forced the halt of an early July walking pilgrimage to the grave of St. Nino, the woman credited with bringing Christianity to Georgia in the fourth century.

In a recent letter to Georgian President Eduard Shevardnadze, the leader of the pilgrimage, Bishop Giuseppe Pasotto, complained of the July 3 confrontation with two Orthodox priests and some 20 men, some of them armed with bats. Δ



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