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NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

Alabama clergy join BJC in brief opposing Ten Commandments display at state building

More than 40 Alabama clergy and religious leaders from a variety of denominations and faith traditions have joined an *amicus* brief opposing a Ten Commandments monument placed in the State Judicial Building by Alabama Supreme Court Chief Justice Roy Moore.

Prepared by the Baptist Joint Committee, the friend-of-the-court brief supports a challenge to the constitutionality of the 5,300-pound monument filed by two civil liberties organizations.

According to the brief, which was filed Aug. 21 in U.S. District Court in Montgomery, Ala., the Ten Commandments display threatens the values underlying the Establishment Clause by disrespecting freedom of conscience, corrupting religion and creating social conflict and religious strife.

Moore, known for his earlier refusal to remove a Ten Commandments display from his circuit courtroom in Etowah County, Ala., helped workers place the granite display in the State Judicial Building after close of business on July 31, 2001.

The monument, which is engraved with the Ten Commandments, also includes engravings of religious excerpts from the Pledge of Allegiance, the Alabama Constitution and the Declaration of Independence, as well as religious statements by some of the nation's founders.

"By displaying the Ten Commandments in the State Judicial Building, Justice Moore has usurped the role of private individuals and faith commu-

"Governmental efforts to promote religion drain religious practices and beliefs of their spiritual significance, thereby depreciating, rather than revitalizing, religion."

— BJC *amicus* brief

nities in shaping their own religious practices and views," the brief states. "Governmental efforts to promote religion drain religious practices and beliefs of their spiritual significance, thereby depreciating, rather than revitalizing, religion."

K. Hollyn Hollman, Baptist Joint Committee general counsel, said the diverse group of clergy who joined the brief demonstrates the importance this issue has for all people.

"Posting the Ten Commandments in government buildings does religion no favors and makes a mockery of the Establishment Clause's command that government refrain from giving preference to religion," Hollman said. "This brief asserts what many know to be true — that religion flourishes best when the separation of church and state is protected."

Americans United for Separation of Church and State and the Alabama affiliate of the American Civil Liberties Union filed suit against Moore on behalf of Stephen R. Glassroth, Beverly Howard and Melinda Maddox.

The brief contends that the Ten

Commandments display violates the freedom of conscience of those inside and outside the Judeo-Christian faith by endorsing a particular version of the Commandments.

The brief notes that no uniform version of the Ten Commandments exists and that various religions adhere to "a version with particular phrasing, composition, and ordering."

It also states the Ten Commandments display would lead to the corruption of religion by leaving "religion vulnerable to the changing political whims of public officials and invit[ing] the misuse of religion for political purposes."

Joining the BJC brief were the Anti-Defamation League, The Interfaith Alliance and The Interfaith Alliance of Alabama.

Twenty-one Alabama Baptists were among the clergy and religious leaders who joined the brief. The list of clergy and religious leaders also included Disciples of Christ, Episcopal, Jewish, Presbyterian, Unitarian-Universalist and United Church of Christ representatives.

The clergy and religious leaders who joined the brief affirmed that "the vitality of all faith traditions is served when each is constitutionally guaranteed that the state cannot dictate, define, or affect in any way its doctrines or practices."

To read the friend-of-the-court brief, including a list of Alabama clergy and religious leaders who joined it, visit the Baptist Joint Committee website at www.bjcpa.org. ▽

NewsMakers

◆ **Chris George** of Greenville, S.C., and **Stephanie Wyatt** of Knoxville, Tenn., are serving fall semester internships at the Baptist Joint Committee. George graduated in 2001 from Harvard Divinity School with a master of theological studies degree. Wyatt graduated in May from Wake Forest Divinity School with a master of divinity degree. George and Wyatt are ordained Baptist ministers.

◆ **Ryan Berry**, a U.S. Air Force captain who once served on missile combat crews, filed suit Aug. 29 against the Air Force, claiming the military service punished him for requesting accommodation of his religious beliefs. Berry claims he was suspended from certain duties and later permanently decertified because he had asked for accommodation of his belief that as a married Catholic man he should avoid situations where he had to spend 24 to 48 hours in a small underground bunker with a woman.

◆ President **George W. Bush** declared the weekend of Sept. 6-8 to be National Days of Prayer and Remembrance and called for observances by the nation's houses of worship to mark the anniversary of the Sept. 11 terrorist attacks in New York and at the Pentagon. △

Support for First Amendment eroding post-9-11, survey says

Nearly half of Americans surveyed said the First Amendment goes too far in protecting the rights it guarantees, suggesting new public concerns in light of the Sept. 11 terror attacks.

"The stakes have risen for the First Amendment in the wake of Sept. 11," said Ken Paulson, executive director of the First Amendment Center, an arm of the Freedom Forum.

A 2002 survey by the University of Connecticut found 49 percent suggesting the First Amendment hinders the war on terrorism. That is up 10 percent from a similar survey the year before.

Freedom of the press raised the most concern, with 42 percent saying they thought the press has too much freedom to do what it wants. That is roughly the same percentage as last year.

About half said the government should be allowed to monitor religious groups in the interest of national security, even if it means infringing on religious freedom. More than four in 10 said the government should have greater power to monitor the activities of Muslims living in the United States than it does other religious groups.

More than four in 10 said they would limit the academic freedom of professors and bar criticism of the government's military policy.

Paulson said Americans are not monolithic in their views on the First Amendment. "While a majority says they respect the First Amendment, a significant percentage seems inclined to rewrite it." △

Housing allowance case dismissed; threat remains

A federal court has thrown out one challenge to a long-standing benefit that exempts American clergy from paying taxes on the money they spend on housing. But a law professor challenging the practice vows to file another lawsuit claiming it is unconstitutional.

The 9th U.S. Circuit Court of Appeals in San Francisco dismissed a high-profile case pitting Southern Baptist mega-church pastor Rick Warren against the Internal Revenue Service.

Warren sued the IRS after it turned down his \$80,000 claim as a housing allowance. The IRS said the tax code allows deduction of only the fair-market rental value of a minister's home. Warren argued that it exempts all costs related to

clergy housing.

The case took on added importance when a three-judge panel hearing the case took upon itself to decide whether the housing allowance exemption violates the Constitution by subsidizing religion and creating excessive entanglement between church and state.

They asked a law professor at the University of Southern California Law School to prepare a friend-of-the-court brief on the legality of the practice. Professor Erwin Chemerinsky, previously an outspoken critic of the clergy tax break, argued the exemption is clearly unconstitutional.

Anticipating a ruling against the exemption, Congress rushed to pass legislation to protect ministers from being forced to pay an additional \$500 million in annual taxes. President Bush signed the bill into law in May. Both sides in the lawsuit, joined by the Department of Justice, asked that the case be dismissed.

But Chemerinsky opposed the motion for dismissal, asking the court to allow him, as a federal taxpayer, to intervene in the case and keep the constitutional question alive.

In its Aug. 26 ruling, the three-judge panel said Chemerinsky had not established grounds to continue in the lawsuit, but noted that he may now want to file his own separate lawsuit as a taxpayer challenging the ministerial tax exemption on constitutional grounds.

Chemerinsky said he would do just that in a telephone interview Aug. 27. From his office in North Carolina, where he is spending the semester as a visiting professor at Duke University Law School, Chemerinsky told Associated Baptist Press he plans to challenge the exemption in a lower federal court.

"I am going to file a taxpayer action — I'm not sure exactly when, but relatively soon — challenging the parsonage allowance," he said.

Phill Martin, director of education for the Dallas-based National Association of Church Business Administration, said he was not surprised by news that Chemerinsky would continue challenging the tax exemption.

"We continue to have great concern for the future of the minister's housing allowance [tax exemption]," said Martin, a Baptist minister and current moderator of the Cooperative Baptist Fellowship. "Its elimination would have serious financial impact on religious ministries of all faiths." △

Dredging up ugliness in the name of vouchers

Energized by their Supreme Court victory in June, advocates of school vouchers have set their sights on a new target. They are now trying to discredit, and eventually dismantle, state constitutional provisions that present a larger obstacle to government funding of religious institutions than the First Amendment.

In "Retrograde on School Choice" [op-ed, Aug. 22], Nathan J. Diament depicts these provisions as nothing more than "remnants of religious bigotry," tainted by the times in which they were passed.

Undoubtedly some supporters of the "Blaine amendments," named for the Republican senator who lobbied unsuccessfully for an amendment at the federal level in 1875, were motivated by anti-Catholic bias. But the relevance of this ugly episode in our country's history to the current school voucher debate is highly suspect for several reasons.

First, the concept of church-state separation, including the notion that religious institutions should be self-supported and self-governing, predates and is in no way diminished by the anti-Catholic sentiments of some who supported the concept during the 1870s. It was Roger Williams, the 17th-century founder of Rhode Island, who first advocated a "wall of separation between the garden of the church and the wilderness of the world." The legal provisions that promote church-state separation, which were championed by Founders such as James Madison and Thomas Jefferson, have been good for both government and religion.

Many Baptists and other people of faith cling to these laws as the best way to protect the religious liberty that has allowed so many diverse communities of believers to flourish in America. They share a sincere conviction that tax dollars should not be used to finance the teaching of any religion — including their own — because they believe that autonomy from the state is good for all religions. This principled stance is the enemy of discrimination, not the product of it.

Second, it is well known that politics makes strange bedfellows. If laws and institutions are to be evaluated in the present based on who supported them in the past, other targets could be next in line. Should we dismantle the public schools because some early proponents of universal public education were anti-Catholic?

Should we repeal Title VII's ban on sex discrimination because it was originally proposed by segregationists seeking to defeat civil rights legislation? While we're at it, maybe we should close any private schools — whatever their racial composition today — that were initially estab-

lished as "segregation academies" when public schools began to integrate.

The principal test of an institution's viability should be its contribution to society, not its historical origins, and church-state separation has long served our nation well.

Finally, it is ironic that voucher proponents would attack the Blaine amendments as "remnants of bigotry" when the primary effect of church-state separation over time has been to reduce sectarian strife. After all, what is more likely to produce animus toward and among religious institutions than making the government a collection agency for religious schools?

The campaign to emphasize an anomalous period of religious conflict threatens to mislead Americans about the historical origins and contemporary importance of church-state separation — an ideal that promises religious liberty for all, not for some. Δ

This column is reprinted as it appeared in the Aug. 31 edition of The Washington Post.



K. Hollyn Hollman

General Counsel

University head reports threats in wake of reading assignment

"May you find a pack of anthrax and a pipe bomb in your mailbox."

E-mailed remarks like this have threatened or denounced University of North Carolina Chancellor James Moeser since the school asked all freshman students to read parts of the Qur'an for a faculty-led discussion.

But Moeser, who described the e-mails in detail this week before a swarm of reporters at the National Press Club, scoffed at such hate-filled messages.

"All of this because we asked students to read a book," he said.

Approaching the Qur'an: The Early Revelations by Haverford College professor Michael Sells was read by entering UNC students for discussion with faculty on Aug. 19, though not without a fight. Family Policy Network, a conservative Christian group, sued to stop what it called "UNC's Islamic indoctrination program," citing the constitutional separation of church and state. A federal appeals court allowed the discussions to proceed.

"We succeeded," Moeser said, heralding the university's victory over public pressure to drop the discussions. "We did not and would not ever take a public opinion poll before assigning a book." Δ

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Report from the Capital

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Atheist in 'under God' case sues to remove chaplains

The atheist who made legal news when he asked an appeals court to remove "under God" from the Pledge of Allegiance is now trying to have chaplains removed from the U.S. Congress.

Michael Newdow, a Sacramento, Calif.-based lawyer and emergency room doctor, filed suit in federal district court in Washington during the last week of August, claiming that it is unconstitutional for taxpayer-funded chaplains to minister to lawmakers and pray in Congress.

"If congressmen want to go to church, (then) walk down the block like other Americans do and go to church," Newdow told *The Washington Post* in an interview.

"Don't get my government engaged in it. There are some people who don't love God Almighty. That's why we have an Establishment Clause."

That clause of the Constitution's First Amendment bars governmental establishment of religion.

Newdow wants the court to stop the House and Senate from employing chaplains, who counsel members, lead prayers and have other religious duties.

Morgan Frankel, deputy Senate legal counsel, is convinced the chaplains will remain on the job, based on a 1983 decision by the nation's highest court.

"The Supreme Court has thoroughly examined the history of the congressional chaplaincies and determined they are completely consistent with the Constitution," he said. "We anticipate the same result in this case."

Newdow was successful in his last church-state case, when the 9th U.S. Circuit Court of Appeals agreed in June with his claim that the phrase "one nation,

under God" was unconstitutional. The ruling has been appealed, with the Justice Department asking the entire circuit court to review the case. Δ

Canadian Sikhs protest new bicycle helmet law

Sikhs in the Canadian province of Alberta are vowing to fight a new law enforcing the use of bicycle helmets for children.

The province's 60,000 Sikhs say the law is discriminatory because it would compromise the religious significance of the turban.

They are seeking an exemption from the law. Failing that, they say they are willing to take the case to a human rights panel or to the courts.

"This is discrimination," Happy Mann, a spokesman for Calgary's Sikh community, told *The Globe and Mail* newspaper. "The turban is part of our religious identity and the turban has been considered part of religious dress. We cannot compromise the turban at any cost."

Community leaders point out that turbans may not be covered with additional headgear or protective material. Earlier this summer, they rejected a proposal for specially designed helmets that would fit around turbans, saying that would subject Sikh children to taunts.

Sikh leaders say the turban provides nearly as much protection as a helmet.

The May 1 helmet law fines parents of children age 15 and under \$50 Canadian if a child is caught riding without a helmet.

Sixteen- to 18-year-olds will have to pay the fine themselves.

"We are very much concerned about our kids' safety as well," Mann said, "but sometimes (we) have to make individual choices." Δ



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