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Report from the Capital

NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

Court says father can challenge 'Pledge'

The federal appellate court that declared recitation of the Pledge of Allegiance unconstitutional in public school classrooms ruled Dec. 4 that the father who sued on his daughter's behalf had a right to bring the case.

The decision by a three-judge panel of the 9th U.S. Circuit Court of Appeals rejects a challenge by the girl's mother and others who said Michael Newdow could not bring a suit against the pledge on his daughter's behalf because he did not have custody of her, The Associated Press reported.

The San Francisco-based appeals court has been asked to reconsider the June ruling that banned recitation of the pledge with the words "under God" in public schools in the nine Western states it covers.

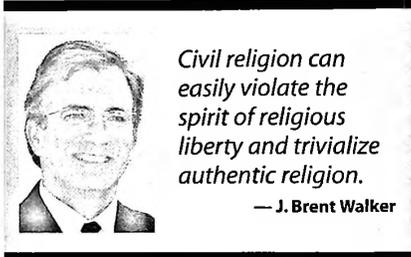
The court has no deadline to decide whether it will revisit that decision.

In June President Bush and Congress quickly condemned the pledge decision, which the court put on hold a day after it was issued pending a decision whether to rehear it.

Bush called the decision "ridiculous," while the Senate voted 99-0 and the House of Representatives voted 401-5 to reaffirm the reference to "one Nation under God" in the pledge.

The suit turned into a parental rights case between Newdow, an atheist, and Sandra Banning of Elk Grove, Calif., the mother of the 8-year-old child. Banning said her daughter is not opposed to God and is not harmed by reciting the pledge.

In affirming Newdow's right to



Civil religion can easily violate the spirit of religious liberty and trivialize authentic religion.

— J. Brent Walker

challenge the classroom pledge, the appeals court majority showed no signs of backing away from its June ruling that classroom recitation of the Pledge of Allegiance — modified in 1954 to add the words "under God" — violates the Constitution's ban against governmental establishment of religion.

"When school teachers lead a recitation of the Pledge of Allegiance according to school district policy, they present a message by the state endorsing not just religion generally, but a monotheistic religion organized 'under God,'" wrote Judge Alfred T. Goodwin in an opinion joined by Judge Stephen Reinhardt.

"While Newdow cannot expect the entire community surrounding his daughter to participate in, let alone agree with, his choice of atheism and his daughter's exposure to his views, he can expect to be free from the government's endorsing a particular view of religion and unconstitutionally indoctrinating his impressionable young daughter on a daily basis in that official view," Goodwin wrote.

"The pledge to a nation 'under

God,'" Goodwin wrote, "with its imprimatur of governmental sanction, provides the message to Newdow's young daughter not only that non-believers, or believers in non-Judeo-Christian religions, are outsiders, but more specifically that her father's beliefs are those of an outsider, and necessarily inferior to what she is exposed to in the classroom."

The First Amendment's Establishment Clause, Goodwin concluded, protects "unpopular and despised minorities from government sponsored religious orthodoxy tied to government services."

Baptist Joint Committee Executive Director J. Brent Walker said the fact that Goodwin and Reinhardt "went out of their way to reiterate their reasoning on the merits sends a strong signal that the debate is far from over in the 9th Circuit."

"While, in my view, the words 'under God' should not render the Pledge of Allegiance unconstitutional," Walker said, "the case demonstrates how easily forms of civil religion can violate the spirit of religious liberty and trivialize authentic religion as it sparks angry and overblown rhetoric about God and country."

In June, Goodwin and Reinhardt said the addition of the words "under God" had no secular purpose, a key test used by the Supreme Court in determining whether laws are neutral with regard to religion.

In a dissenting opinion in June, Judge Ferdinand Fernandez, accused his colleagues of wanting to eradicate religion from the public sphere. △

NewsMakers

◆ Baptist Joint Committee General Counsel **K. Hollyn Hollman**, speaking recently at the Alfred B. Teton Forum on Law & Policy, said that the U.S. Supreme Court's decision in the Cleveland school voucher case is a call to action for those who cherish religious freedom. "Reinforcing the wall requires that we work together to find ways to meet the social welfare and other policy challenges before us without sacrificing the religious liberty of beneficiaries or the autonomy of other religious institutions," Hollman said. The Chicago chapter of the Anti-Defamation League sponsored the forum.

◆ **Joseph R. Crapa** has been appointed executive director of the U.S. Commission on International Religious Freedom, an independent federal agency advising the Administration and Congress. Prior to joining the commission, Crapa served as chief of staff for Sen. **Charles E. Schumer**, D-N.Y. Crapa has worked for more than 25 years in Congress and the executive branch, holding various policy and administrative positions.

◆ Alabama Chief Justice **Roy Moore** has stated he will appeal a federal judge's order that he remove a Ten Commandments display from the state's judicial building. Attorney Stephen Melchior said Moore would ask a federal appellate court to allow the monument to remain in the building until the appeals process is completed. The Associated Press reported. △

Lawmakers oppose suit challenging Hill chaplains

Twenty-two members of Congress urged a federal court to dismiss a suit challenging the constitutionality of congressional chaplains.

The American Center for Law and Justice filed a friend-of-the-court brief in U.S. District Court in Washington on behalf of itself and 22 members of Congress in response to a lawsuit filed in August by Michael Newdow, a California atheist.

"It is clear that this suit has no merit and should not be permitted to move forward," said Jay Sekulow, chief counsel of the center founded by religious broadcaster Pat Robertson.

"The Supreme Court has clearly upheld the constitutionality of paid chaplains. Our country has a deep and cherished history of ensuring that prayer is available to members of Congress."

The brief, filed on Nov. 22, cites a 1983 U.S. Supreme Court decision in which the high court determined that the payment of chaplains using public funds did not establish a religion.

Newdow, a lawyer and emergency room doctor based in Sacramento, became well-known after successfully getting the 9th U.S. Circuit Court of Appeals in San Francisco to rule in June that the Pledge of Allegiance's mention of God was unconstitutional. The decision was promptly stayed.

In a separate action, the Virginia-based American Center for Law and Justice is representing some of the same members of Congress in a friend-of-the-court brief asking the 9th Circuit Court to reconsider the decision by a three-judge panel. △

Pittsburgh settles dispute over parking near creche

City leaders in Pittsburgh have reached a parking agreement between the organizers of a downtown Nativity scene and the American Civil Liberties Union.

The Christian Leaders Fellowship, an ecumenical network of 10 local church organizations, sponsors the Nativity exhibit that draws some 30,000 visitors each year. The creche is a replica of the Nativity scene displayed in St. Peter's Square at the Vatican, according to the *Pittsburgh Post-Gazette*.

But when organizers posted their own signs allowing temporary 10-minute parking to visit the scene, the ACLU protested. The city-sanctioned private signs made it

look like "the city is promoting this particular display," Witold Walczak, the local ACLU director, told The Associated Press.

Organizers balked, saying they had city permission to post the parking signs. "It seems to me an effort to remove God as much as possible from every aspect of life," said the Rev. Ronald Lengwin, spokesman for both the fellowship and the Roman Catholic Diocese of Pittsburgh.

On Nov. 29, the city brokered a deal that replaced the organizers' permits with city-issued permits that do not mention the creche scene by name.

"There can be public safety issues with parking there and we realize that," Lengwin told the *Post-Gazette*. "If they need to take signs down, they need to take them down."

It is not the first time the creche has become the subject of legal wrangling. The ACLU won a suit against Allegheny County in 1989 over a Nativity scene in the county courthouse. The high court said the display on government-owned land was a violation of the separation of church and state. △

Glenn L. Archer, former head of Americans United, dies

Glenn L. Archer, the first executive director of Americans United for Separation of Church and State, died Nov. 15 at the age of 96.

Archer, who lived in Silver Spring, Md., began leading the religious liberty watchdog group in 1948, a year after it was founded.

"Glenn Archer was a figure of towering energy and intellect," said the Rev. Barry Lynn, current executive director of the Washington-based organization, in a statement.

"During his professional career, he interacted with presidents, U.S. senators and leaders of national religious denominations. But he never forgot that Americans United was created to protect the religious liberty of the average person."

When Archer began his post, the organization was called Protestants and Other Americans United for Separation of Church and State (POAU). The organization changed its name in the 1960s.

Archer was dean of the Washburn University Law School in Topeka, Kan., when he was selected to head POAU.

J.M. Dawson, the first executive director of the Baptist Joint Committee, served as acting director of POAU from its founding in 1947 until Archer was hired. △

Voucher ruling offers opportunity to support local public schools

Lately, everyone seems to ask me what effect the November election results will have on issues of concern for the BJC. Will the president's faith-based bill win passage in the Senate? Will the federal judiciary undergo significant change with the appointment of more conservative judges? While I am hesitant to make predictions, I am almost certain the election results will have a significant impact on the voucher debate.

Republican gains in state legislatures and Congress, coupled with the Supreme Court's *Zelman* decision last term upholding the Cleveland voucher program, have given voucher proponents a shot in the arm. On the national level, Sen. Judd Gregg, R-N.H., will likely take over chairmanship of the Senate Education Committee. He is a leading advocate of vouchers, as is House Education Committee Chairman John Boehner, R-Ohio. Together they are likely to push vouchers in the Individuals With Disabilities Education Act (IDEA) and other federal programs.

In the voucher debate, the BJC has long focused on questions of constitutionality and on the negative effects of using tax dollars to fund religious education. When government funds religious entities, it threatens to entangle them with regulations, dilute their religious mission and foster division between faiths. While we believe these concerns remain central, it is clear that in the wake of *Zelman* the public debate instead will focus on how best to educate our nation's school children.

In speaking to me about the *Zelman* case, BJC supporters have recounted various arguments for vouchers that are sometimes heard in their congregations. Some believe competition is important to spur reform. But even if so, school choice programs need not extend to private schools. Others are mistakenly convinced that public schools are hostile to religion, unaware of the many legal protections that accommodate religious practices.

While Christians and other people of faith continue to struggle with the prospect of vouchers, some churches and

religious groups are focusing instead on how best to support public schools in the present. After all, even if voucher programs multiply, the vast majority of children will remain in public schools.

Recognizing that public schools will continue to serve the most vulnerable segments of our society, these groups support public education because of their religious commitment to social justice.

A primary example is the Public Education Task Force of the United Church of Christ. In its 2001 publication, *Separate and Unequal*, the Task Force reports on

how it is working to rekindle support for public education within congregations, including participation in "immersion visits" to public schools in various demographic settings. The report offers a glimpse into one way congregations can learn to support public education reform.

Of course, there are many ways churches can strengthen and improve the public schools. Here are some examples from a policy statement of the National Council of Churches on this issue:

- ◆ Encourage and monitor reform efforts, especially regarding governance, funding, assessment and class size;
- ◆ Honor teachers and other school employees (including congregants) as role models for young people;
- ◆ Initiate programs to provide after-school and vacation help;
- ◆ Advocate for adequate and equitable school funding at the state and local levels;
- ◆ Provide volunteers for school programs and activities.

Looking ahead, the voucher debate will primarily occur at the state and local levels. This shift in battleground will give individuals and congregations a more significant role to play. While it is vital that people of faith maintain their voice in that debate, it is equally important that we support the majority of students that will remain in the public schools, regardless of the outcome in the voucher debate. △



K. Hollyn Hollman

General Counsel

Latter-day Saints to appeal ruling in plaza dispute

The Church of Jesus Christ of Latter-day Saints plans to appeal to the Supreme Court a lower court's ruling in its case restricting speech on a Salt Lake City plaza.

The decision followed the Nov. 14 refusal by a federal appeals court to rehear a ruling that barred the church from banning protests and other free speech on the plaza sidewalks. The Associated Press reported.

"The way is now clear for the Church to ask the U.S. Supreme Court to hear the matter," the church said in a statement issued immediately after the decision by the 10th U.S. Circuit Court of Appeals in Denver.

The appellate court ruled in October that the city should protect free speech rights on the sidewalks because they are a traditional public forum. The city sold the land for the plaza — once a section of Main Street — to the church but kept easement rights to ensure pedestrian access.

After the appeals court refused to rehear the case, the church started distributing information packets to business, community and religious leaders in northern Utah to present their side of the ongoing dispute.

"Unfortunately, some have ... felt that this place of peace should be a place of protest, that this island of quiet beauty should be used for confrontational or noisy demonstrations," wrote Gordon B. Hinckley, the church's president, in a letter accompanying the packets. △

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Report from the Capital

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Book Review

Freedom for the Journey

Phyllis Rodgerson Pleasants. *Center for Baptist Heritage and Studies: Richmond, Va., 2002, 79 pp.*



In her newly published work, *Freedom for the Journey*, Phyllis Rodgerson Pleasants examines the foundational freedoms of Baptist faith as demonstrated in the historical

confessions, early American society and contemporary stories of individuals and church communities. Pleasants, a professor of church history at Baptist Theological Seminary at Richmond, offers an analysis that is informative and engaging while surprisingly accessible in form and content. Utilizing a variety of supporting materials and summarizing the subject matter accurately and succinctly, Pleasants presents a compelling and persuasive argument that commends Baptists to re-examine history and reclaim their proud heritage of freedom.

Pleasants structures her discussion around four central freedoms: *Freedom to Assemble, Freedom to Read and Interpret Scripture, Freedom to Follow and Freedom for Religion*. Each of these broad subject headings represents an important tenet in Baptist faith and theology.

Suffering persecution and often times imprisonment, early Baptists in both England and the United States consistently proclaimed a *Freedom to Assemble* for corporate worship as a fundamental right that could not and should not be inhibited by the government.

The authoritative role of the holy scriptures has always been an integral part of Baptist practice and polity, as well as part of the larger Christian tradition. Pleasants argues Baptists' emphasis on the importance of the *Freedom to Read and Interpret Scripture* yields a text that is living, pow-

erful and transformative.

The *Freedom to Follow* can be derived from an ancient Baptist confession that urged Baptists to "follow the Lamb wheresoever he goes." The freedom recognized the continued interaction of God in human affairs and commended people to remain open to follow God's direction regardless of the cost. Pleasants points to this freedom as a primary motivator of shifts in Baptist thought across the years.

The *Freedom for Religion* relates directly to the concept of religious liberty as outlined in Virginia's Declaration of Rights and adopted into the U.S. Constitution. The language of these provisions echoes the words of ancient Baptist confessions and the words of early American Baptists, expressing clear convictions about the importance of freedom of conscience and the need for church-state separation to ensure religious freedom.

In her conclusion, Pleasants draws upon the work of Dee Hock about institutional and organizational structures in the 21st century world of globalization where the sense of community seems lost. Lamenting this loss and many of the recent shifts in Baptist life, she offers a persuasive call for a recognition of the value of Baptist freedom in the contemporary world and urges us to reclaim the concepts contained in these early confessions and embodied in the life of Baptist individuals and communities in both historical and contemporary settings.

The author effectively bridges the often deep chasm between academia and the real world, offering a text that would prove interesting and informative for both the minister and the layperson. Ultimately, Pleasants inspires us to rediscover and reclaim the legacy of our Baptist predecessors.

— Chris George
BJC Intern



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