

Report from the Capital

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NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

Bush plan sparks more constitutional debate

With "faith-based initiatives," is President Bush trying to have his constitutional cake and eat it too?

That is what critics of Bush's approach to church-state relations say regarding his latest announcement on the initiative. Bush signed an executive order Dec. 12 that expanded federal agencies' ability to provide funding to heavily religious organizations — including churches and mosques — that provide social services.

In announcing the move, Bush said government funding to faith groups should be given on an equal basis with all other social service groups.

"I recognize that government has no business endorsing a religious creed, or directly funding religious worship or religious teaching," Bush said. "Yet government can and should support social services provided by religious people. ... And when government gives that support, charities and faith-based programs should not be forced to change their character or compromise their mission."

But supporters of church-state separation said the two principles — government funding and lack of government regulation — tend to be mutually exclusive. "The president is trying to have it both ways," said K. Hollyn Hollman, general counsel for the Baptist Joint Committee on Public Affairs. "There is an inherent conflict between allowing religious social service providers to maintain their distinctive character and complying with the Constitution's prohibition against government funding of religious activities, such as religious worship, instruction or proselytization."

For years, federal, state and local governments have contracted with



"Government can and should support social services provided by religious people."
— President Bush

organizations with religious ties — such as hospitals or groups like Catholic Charities — that did not include religious content in the services they provided. But that began to change in 1996 with the passage of so-called "charitable choice" legislation, which allowed certain federal welfare programs to fund groups whose religious work was deeply intertwined with their social work.

Bush has made expansion of such principles to other federal programs a centerpiece of his domestic agenda, saying that he was trying to create a "level playing field" for inherently religious organizations to receive federal social welfare funds. But opponents of the plan say "charitable choice" violates the Constitution's ban on government support for religion.

Bush's order also included written assurances that government funding to such agencies would not be spent on "inherently religious" activities. Bush announced the release of new guidelines, written "in plain English," to be sent to religious social service providers. They outline what Bush sees as the Constitutional boundaries of public funding for religious social services.

The guidelines say, for instance, that "a faith-based organization

should take steps to ensure that its inherently religious activities, such as religious worship, instruction or proselytization, are separate — in time or location — from the government-funded services that it offers." The guidelines also say that religious social service providers should be prepared to be audited and be able to account for and document the expenditure of any federal funds.

But critics have said that it would be difficult for the government to adequately monitor such programs in many small religious charities on tight budgets, and that such monitoring would in itself compromise the character and integrity of churches and other thoroughly religious groups.

A senior administration official told Associated Baptist Press that such monitoring would be done just as it is with any other government contracting or grant program. "I think they will monitor these programs the way we monitor programs today," the official said.

But to one foe of federal funding for thoroughly religious charities, those answers are not good enough.

"This president is not doing religion a favor," said Welton Gaddy, a Baptist minister who is director of the Washington-based Interfaith Alliance. "In fact, while he demonstrates an understanding of and concern for the poor and needy that heartens all of us in the religious community, President Bush displays a frighteningly limited understanding of the nature of houses of worship and the legal complexities necessary for the preservation of religious liberty in this country." Δ

— Robert Marus
Associated Baptist Press

NewsMakers

◆ **Pope John Paul II**, the Rev. **Billy Graham** and former President **Jimmy Carter** were cited among the top 10 most admired men in the Gallup Organization's annual survey, with President **George W. Bush** cited again at the top of the list. The CNN/USA Today Gallup Poll taken in mid-December found that 28 percent of Americans called the president the most admired man in 2002. Bush also topped the 2001 list, with a record 39 percent mentioning him that year.

◆ **Felice D. Gaer**, chair of the U.S. Commission on International Religious Freedom, lauded the passage of the Afghanistan Freedom Support Act. The legislation's purpose is to advance human rights, including religious freedom, in Afghanistan as part of America's multibillion-dollar assistance program for the rebuilding of that war-torn country.

◆ **Peter Rutland**, a political scientist at Wesleyan University, said the Russian city of Penza's decision to put the face of Jesus Christ on its regional flag points to state sponsorship of religion. "The design of the flag could be a show of loyalty to Moscow," he said. "This may be a more political than spiritual gesture." Rutland, quoted by *The Washington Times*, said Russian President Vladimir Putin has attempted to increase the visibility of the Orthodox Church to rebuild the national identity. △

Iranian factions argue over mosque-state separation

In the desert city of Qom, 90 miles south of Tehran, scores of blue and green domes and gold pillars mark Shi'a Islam's theological schools, called hozah.

The students, some as young as 16, come from all over Iran and the greater Shi'a world.

Some spend a year or two here and then go back to their hometowns to preach. Others stay on to study and teach for decades and climb the ranks to become hojato'l-Islams and ayatollahs, gaining the right to interpret the laws of Islam.

Every prominent cleric in Iran, from the founder of the revolution, Ayatollah Ruhollah Khomeini, to today's top officials, including the supreme leader and the president, studied in Qom's hozah.

But Qom is not the medieval scholastic city it appears to be, nor are its residents all fundamentalist Muslim thinkers.

The small city has 20 cyber-cafes, and Islam's first encyclopedia written strictly by Muslims, as opposed to Western scholars, is being completed in Qom. The Computer Research Center of Islamic Studies here boasts of putting 1,000 volumes of Islam's most important texts and references on CD-ROMs and exporting them around the world.

And behind the closed doors of the hozah, a key debate is gaining momentum. It is the same question wracking Iranian society elsewhere in the country: What role should religion play, if any, in the politics of Iran?

The question of religion and the state, according to Ayatollah Seyed Hussain Mousavi Tabrizi, former chief prosecutor of Iran's Revolutionary Court and a prominent reformist-minded lawyer, is highly controversial and divides the Qom clergy.

"There are two lines of thinking here," Mousavi Tabrizi said. "The first group thinks religion must meddle in every little detail of government affairs and people's lives and the leader has God-like powers.

"The second group, like myself, thinks there is no mandate in Islam to dictate how a president or parliament or army should operate; the will and vote of the people must decide who shall run a country and how," he said. "It is written in a hundred places in the Quran that the will of people must be implemented. Any other way is not only illegal, but against Islam and such a system is bound for failure."

As the world's only existing national theocracy — where the government claims

to rule with divine authority — the outcome of this debate in Iran is especially important, experts say. It could have widespread repercussions both at home and in other Muslim countries that look to Iran as an example. (RNS) △

Virginia Wiccan priestess sues for right to pray

A Wiccan priestess is suing her county for the right to offer prayers at meetings of county officials. Cynthia Simpson contends that the Chesterfield County, Va., Board of Supervisors discriminated against her on the basis of her faith when it denied her request to offer the opening prayer at a board meeting.

The supervisors have for years opened their board meetings with prayers offered by local clergy. In every case, the clergy have been Christian ministers or priests or Jewish rabbis, who volunteer for the job.

But when Simpson volunteered, she was rejected by the county's attorney, who told her in a letter that only "Judeo-Christian" clergy could offer prayers at county board meetings. Spokesmen for Americans United for Separation of Church and State and the American Civil Liberties Union, which are representing Simpson, said such a requirement violates Simpson's civil rights and creates an unconstitutional government establishment of religion. (ABP) △

Second theology student sues state over scholarship

A student at Baptist-related Cumberland College is suing the commonwealth of Kentucky, claiming he was denied a scholarship in violation of his rights to free expression of religion. The suit makes him the second in recent years to sue a similar state program.

Woods Nash, a Cumberland junior, accepted a state-supported Kentucky Education Excellence Scholarship to pay for part of his first two years of college.

However, when Nash declared that he would major in philosophy and religion, the commonwealth informed him that his scholarship would not be renewed. State officials said students who enroll in programs leading to degrees in theology or divinity were ineligible for the award.

The American Center for Law and Justice sued on Nash's behalf, citing a recent decision by a federal appeals court invalidating a similar action by the state of Washington. (ABP) △

BJC continues to make waves despite economic downturn

The close of 2002 brings good news and bad. The bad first. The last year was a terrible time financially for many nonprofit organizations, both religious and secular. It may well have been worse than 2001 — even with the post-September 11 dip in gifts not related to relief efforts. Charitable giving was off and the decline in the stock market caused many endowment funds to lose value. These unfortunate developments resulted in many nonprofits closing their doors, others have had to scale back their operations, some laid off personnel to make ends meet.



J. Brent Walker

Executive Director

Now the good news. The Baptist Joint Committee is alive and well — and kicking. We finished the year in the black with gifts from supportive denominational bodies, freedom-loving churches, faithful individuals and generous foundations that exceeded \$1 million for the first time in our 67-year history. This is even more remarkable when one realizes that we did not draw any income from our endowment funds for the third and fourth quarters of 2002. Our commitment to be good stewards of your gifts to the endowment (as James Dunn has long and rightly preached) causes us to refuse to spend any of the fund's corpus to pay for current operating expenses.

I want to issue two heartfelt thank-yous for this good fortune. First, I hasten to express my gratitude to you, the readers of this publication and those who donated hard-earned money to allow us to fight for you to uphold the principles of religious liberty and the separation of church and state. The amount does not matter as much as the fact you participate. Three donors gave \$25,000 each; hundreds gave \$25 each. You are *all* critical to our cause.

I also want to thank Todd Heifner, the Baptist Joint Committee's director of development. His leadership over the past nearly three years has allowed the Baptist Joint Committee to establish a solid financial foundation and continue to grow and expand. I am sorry to report that Todd will leave the Baptist Joint Committee at the end of January. He will be going to work

for our sister Baptist agency, the Birmingham-based Passport, Inc., which provides mission and camping opportunities for youths. We wish Todd every success as he lends his considerable talents to Passport's worthy ministry.

What about 2003? The late Don Harbuck once told of a pastor encouraging a congregation to give generously to an annual budget drive with these words: "We took a good offering last year, but we spent it all." Your partnership in this religious liberty endeavor will be just as vital in 2003 as it was last year. The new year will bring enough work to keep a staff

twice our size busy. The fight against charitable choice must continue; the rush to education vouchers will go unabated, the recently defeated Houses of Worship Political Speech Protection Act will be back in this Congress; Supreme Court retirements and nominations to fill vacancies will almost certainly occur this year; the ability of churches to operate autonomously continues to be threatened by invasive governmental regulations.

In short, we always have more work to do than our energy and our finances will easily accommodate. In fact, we could increase our budget by 50 percent and not feel as if we were experiencing a surplus. Today's challenges at the intersection of church and state demand all we can muster and more. We need to hire additional staff to allow us to be more proactive and dedicated to education, both on Capitol Hill and in the pews.

I hope and pray that you will continue to support us in 2003 the way you have in the past. We continue to be the *only* church-based agency that works *only* on church-state issues at a time when religious liberty is unappreciated and the separation of church and state is dismissed as a myth.

The cause of religious liberty and church-state separation needs the Baptist Joint Committee now more than ever. We need you now more than ever, too! Δ

Quoting

President Bush punched a dangerous hole in the wall between church and state earlier this month by signing an executive order that eases the way for religious groups to receive federal funds to run social services programs. The president's unilateral order, which wrongly cut Congress out of the loop, lets faith-based organizations use tax dollars to win converts and gives them a green light to discriminate in employment. It should be struck down by the courts.

President Bush's initiative runs counter to decades of First Amendment law, which holds that government dollars cannot be used to promote religion. The White House claims money will not be used to directly support religious activities. But by financing religious people who provide social services in a way that includes religion, the program will be doing just that. Δ

Editorial
The New York Times
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Federal court upholds law protecting religious practice

The federal appeals court that declared recitation of the Pledge of Allegiance unconstitutional in public school classrooms has upheld a law designed to protect religious freedom from state interference.

A three-judge panel of the 9th U.S. Circuit Court of Appeals unanimously upheld the Religious Land Use and Institutionalized Persons Act, which offers some protection against government actions — such as zoning laws and prison rules — that can be used to restrict religious practice.

The Dec. 27 ruling turned back a challenge from the state of California. A group of Muslim inmates at Solano State Prison for Men in Vacaville sued state officials in 1996 because they prohibited the men from growing beards or attending Friday prayer services. The prisoners said Islam required the beards and worship attendance. The prisoners sued under the First and 14th Amendments to the Constitution, saying their rights to free exercise of religion were being unfairly infringed.

After Congress passed the Religious Land Use and Institutionalized Persons Act in 2000, the inmates added a RLUIPA claim to their ongoing case.

The Religious Land Use and Institutionalized Persons Act encourages states and municipalities to refrain from imposing “substantial” burdens on any religious practice of individuals or groups without a compelling reason to do so.

The act uses the Commerce and Spending clauses of the Constitution to withhold federal funding from states or municipalities that substantially burden religious practice without a reason that serves a greater state interest. Other laws use the same principle to encourage state and

local governments to adopt certain policies, such as the law that withholds federal highway funds to states that do not raise their drinking age to 21.

In the case of the Muslim prisoners, a lower court ruled the state of California could not prohibit the men from growing beards or attending Friday prayer services. State officials appealed to the 9th Circuit.

The 9th Circuit’s decision, written by Judge Dorothy Nelson, said the state was incorrect to claim that the Religious Land Use and Institutionalized Persons Act violates the First Amendment. Instead, the court said, the statute does just the opposite by extending the First Amendment’s protections.

“Protecting religious worship in institutions from substantial and illegitimate burdens does promote the general welfare,” Nelson wrote. “The First Amendment, by prohibiting laws that proscribe the free exercise of religion, demonstrates the great value placed on protecting religious worship from impermissible government intrusion. By ensuring that governments do not act to burden the exercise of religion in institutions, RLUIPA is clearly in line with this positive constitutional value.”

The court also rejected California’s claims that RLUIPA was not authorized by the Constitution’s Spending Clause and that its enactment to rectify a court decision violated the constitutional separation of powers between branches of the federal government.

Members of the broad coalition that supported RLUIPA hailed the most recent ruling. “The decision is a welcome addition to the growing number of cases upholding the constitutionality of RLUIPA,” said K. Hollyn Hollman, general counsel for the Washington-based Baptist Joint Committee. (ABP) Δ



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