

Report from the Capital

NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

Differing visions invoked on Religious Freedom Day

President Bush marked national Religious Freedom Day by proclaiming his vision of religious liberty from the White House. Meanwhile, from the steps of the nearby Jefferson Memorial, church-state separationists accused Bush and his ideological allies of endangering that very liberty.

Religious Freedom Day commemorates the adoption of the Virginia Statute for Religious Freedom on Jan. 16, 1786. The statute, authored by Thomas Jefferson, later became the model for the religion clauses of the First Amendment.

"Our Founding Fathers recognized that religious freedom is a right we must protect with great vigilance," Bush said in a Jan. 16 statement. "We must continue our efforts to uphold justice and tolerance and to oppose prejudice; and we must be resolved to countering any means that infringe on religious freedom."

But several groups that advocate separation of church and state chided Bush — as well as congressional and judicial leaders — for some of their recent actions. Participating in a joint Jan. 16 press conference at the Jefferson Memorial were leaders of The Interfaith Alliance, Baptist Joint Committee, American Jewish Committee, National Council of Churches and Religious Action Center of Reform Judaism.

Interfaith Alliance President Welton Gaddy, a Baptist minister, said that Bush and other government leaders are forgetting Jefferson's devotion to religious freedom. "Thomas Jefferson's vision of the necessity of religious liberty is as important today as it was in 1786," Gaddy asserted. "But



Walker speaks at Jan. 16 news conference at Jefferson Memorial.

our national memory is short and this precious principle is in trouble."

Gaddy and some other religious leaders say that Jefferson's idea of church-state separation is necessary to preserve the First Amendment's stated goals. The Supreme Court has tended to agree, although recent decisions have placed that interpretation somewhat in doubt.

In a Jan. 12 speech commemorating the historic Virginia statute, Supreme Court Justice Antonin Scalia attacked the court's interpretation of church-state separation, claiming that the Constitution's original meaning did not create government neutrality toward religion but government equality among all religious faiths.

Scalia said government endorsements of "generic" religious sentiment such as the motto "In God We

Trust" should be perfectly allowable under the Constitution. He also asserted that if courts wanted to ban government endorsement of such generalized religious faith, they should first wait for voters to authorize such an interpretation explicitly.

Gaddy criticized that stance, asking, "Is Justice Scalia suggesting that we put religion on the ballot of our national elections and determine by a majority vote what religious language should prevail, which name for God should be used in public — if, indeed, any divine name at all?"

J. Brent Walker, executive director of the Baptist Joint Committee, criticized Bush's executive order implementing parts of his "faith-based initiative," which stalled in Congress last year. The initiative expands the ability of governments to give money to churches and other religious organizations to perform social services.

"By taking such an aggressive approach, the administration seems to be telling religious organizations to take the money now and worry about the consequences later," Walker said. "This far-reaching action shows a lack of concern for constitutional safeguards that have served us well."

Besides asserting that government funding always increases the risk of government regulation, Walker also said governments should not fund faith-intensive programs because of something that the Virginia religious-freedom law itself asserted: "That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical."

— Robert Marus
Associated Baptist Press

NewsMakers

◆ **Sen. Joseph Lieberman**, D-Conn., announcing his bid for president in 2004, said, "I think if the spirit moves me occasionally to say a word or two of faith, I think it's a very American thing to do." Lieberman, an Orthodox Jew, was the first Jewish candidate on a major party ticket, running with Al Gore in 2000.

◆ **Richard Casavant**, chairman of the Hamilton County (Tenn.) Commission, says the panel's decision to seek bids of at least \$2,000 each for plaques of the Ten Commandments has caused a "public spectacle for what to me is a religious document." Some commissioners sought to display plaques in local court buildings but a federal judge ordered their removal. Proceeds from the sale will be used to pay legal bills from the panel's court fight against the ACLU.

◆ **K. Hollyn Hollman**, BJC general counsel, said the Bush administration is "clearly taking a path that is legally suspect" in its charge to implement its faith-based initiative. "It's the way they are implementing prior charitable choice law — the way they are promoting the initiative in soliciting groups to apply for government funding, and the way the executive orders guide the agencies that are giving out the money. It's all of these things in combination that will lead to more legal challenges." Hollman was quoted in an interview with The Roundtable on Religion and Social Welfare Policy. (www.religionandsocialpolicy.org). △

Religious liberty lobbyists see major challenges in Congress

Religious liberty will face an onslaught unseen in recent years in the 108th Congress, according to some groups that track church-state issues on Capitol Hill. However, other religious-issue advocates are looking forward to action on the same issues that their colleagues decry.

According to legislative liaisons for groups that support strong church-state separation, Republican control of both houses of Congress and the White House means more attempts at weakening the metaphorical "wall of separation" that bans government support for religion.

"We are expecting a very tough congressional session this year, with everything on the table from school vouchers to 'faith-based' funding for churches," said Joe Conn of Americans United for Separation of Church and State. "President Bush sees tax-funded religion as the answer to every social problem, and he will be pushing hard for that agenda."

Conn, as well as People for the American Way Legal Director Elliott Minberg and Baptist Joint Committee General Counsel K. Hollyn Hollman, cited several anticipated pieces of legislation as likely bones of contention in the new session of Congress:

◆ A second attempt at passage of the so-called "Houses of Worship Political Speech Protection Act." Sponsored by Rep. Walter Jones, R-N.C., in last year's Congressional session, the bill would have exempted churches, synagogues, mosques and other houses of worship from laws that prevent involvement in partisan politics by nonprofit groups organized under section 501(c)(3) of the federal tax code.

Jones has reintroduced a revised version of the bill in this session. In the last Congress, the bill failed by a wide margin to pass the House, and the Senate version never even got off the ground.

◆ Federal school voucher proposals. Last year, the Supreme Court said a Cleveland program that provides government scholarships to children in private schools, including religious schools, is constitutional as long as the recipient families have a legitimate choice between using the scholarships at secular and religious schools. Emboldened by this decision, proponents of government funding for religious schools have vowed to push for voucher programs on the federal level. Both Minberg and Conn said they expect legislation in this session to set up a

voucher program in the District of Columbia, over which Congress has legislative authority.

According to Minberg, voucher legislation may be less popular in Congress than its supporters expect because voucher proposals have met several legislative and electoral defeats around the nation in recent years. But the BJC's Hollman said new committee assignments in both the House and Senate may make for smoother sailing for voucher proposals.

◆ Federal funding for religious charities. A recent executive order by President Bush instituted many of the most controversial parts of his "faith-based initiatives" that got bogged down in the last Senate term. Nonetheless, opponents of such "charitable choice" programs said legislators may attempt to add legislative authority to that executive order now with a friendlier Senate leadership in place. Sen. Rick Santorum, R-Pa., has already said he will reintroduce his version of the faith-based bill that died last year. (ABP) △

Supreme Court declines Columbine religious tile case

The U.S. Supreme Court declined Jan. 13 to hear a case concerning religious-themed ceramic tiles placed at Columbine High School by family members of children slain there in 1999.

Without comment, the high court has let stand a decision by an appellate court permitting the removal of tiles with religious references from among others along the corridors of the school in Littleton, Colo.

After the shootings at the school, in which 15 lives were lost, school officials invited relatives of the victims to add to the tile project. The officials banned tiles with religious content, citing the separation of church and state.

The Virginia-based Rutherford Institute, which filed suit on behalf of families who wanted to include religious content, was disappointed by the Supreme Court's decision.

"This case would have provided the court with the perfect opportunity to ensure fair and equal treatment of religious expression," said John W. Whitehead, president of the institute, in a statement.

A district judge ruled in 2001 that the religious tiles were permitted, but that decision was overruled by the 10th Circuit Court of Appeals last year. (RNS) △

Putting policy before law

Three days before President Bush signed far-reaching executive orders implementing controversial aspects of his so-called "faith-based initiative," I met with Jim Towey, head of the White House Office of Faith-Based and Community Initiatives. The meeting included nine other representatives of national civil rights and religious organizations that have been critical of "charitable choice." Despite our differences with the White House, we welcomed the chance to voice our concerns.

The meeting began with Mr. Towey asking what fault we found with the CARE Act, the Senate bill left lingering in the last Congress.

Implicit in the question (and the invitation to meet) was the suggestion that the administration might pursue a less divisive approach in the future. The invitees responded respectfully, outlining our objections about the lack of accountability for grants funneled through intermediaries, the funding of employment discrimination, the potential coercion of beneficiaries and the regulation of religion.

On the positive side, Towey acknowledged that some of the areas of disagreement were unsettled under the law. But his use of misleading metaphors such as "unlevel playing field" reveals a lack of respect for basic church-state principles. The meeting ended with a cordial invitation to send him suggestions on how to approach troublesome issues. Towey gave us no indication that the White House would unveil sweeping executive orders and "guidance" on the initiative three days later — much less that he viewed the very groups he invited to meet with him as "extremists," as he told the press.

The new executive orders and accompanying guidance reveal a view of the First Amendment that is much less supportive of religious liberty than current Supreme Court jurisprudence. The Bush administration's message to religious organizations seems to be "take the money now and worry about the law later." Dismissing our concerns, they are putting policy and politics before the law.

According to the recently released guidance to faith-based organizations, the

only restriction imposed by the Establishment Clause is that government money cannot be used directly for "inherently religious activities." The official White House guidance on this point is remarkably casual: "Don't be put off by the term 'inherently religious' — it's simply a phrase that has been used by the courts in church-state cases. Basically, it means you cannot use any part of a direct

Federal grant to fund religious worship, instruction, or proselytization. Instead, organizations may use government money only to support the non-religious social services they provide."

Two George Washington University law professors, Ira

Lupu and Bob Tuttle, have been closely monitoring developments in the "faith-based initiative." In their view, the executive orders "may exacerbate significant ambiguity that remains about the application of the Establishment Clause in this context." They note that the phrase "inherently religious" appears in only one majority opinion of the Supreme Court and only once in a case that involved public financing of social services.

While it is correct that government money cannot be used for religious worship, instruction, or proselytization, that description does not capture the full meaning of the Establishment Clause's prohibition of government-funded religion. "As a matter of judicial precedent or logic," report Lupu and Tuttle, "the concept of 'inherently religious' thus cannot sufficiently guide government agents or FBOs in their judgment about what the government may subsidize."

Even Attorney General John Ashcroft, the nation's top law enforcer, seems set on changing the law. Last week he spoke in favor of the faith-based initiative, claiming that "out of fear, ignorance and occasional bigotry, faith-based groups have been prohibited from competing for federal funding on a level playing field." Such comments ignore the millions of tax dollars that go to religious affiliates operating within current constitutional norms and demonstrate the top down push of the policy. △



K. Hollyn Hollman

General Counsel

InterVarsity Christian fellowship sues Rutgers

The campus ministry InterVarsity Christian Fellowship has sued Rutgers University, arguing that the New Jersey school has removed its funding because religion is a factor in its leadership selection.

The suit, filed in district court during the week of Dec. 29, claims that Rutgers University at New Brunswick violated the local chapter's freedom of speech and religion, *The Washington Times* reported.

Fellowship members charge that the college revoked their group's recognition in September because InterVarsity's constitution does not meet university guidelines on nondiscrimination, the suit states. That policy mandates that student groups be open to all students and permit any active member to run for office.

Sandra Lanman, a Rutgers spokeswoman, confirmed that the school has halted funding because "the group is not willing to operate under the university's nondiscrimination policy."

But she told the newspaper that university officials have not "de-recognized" or suspended the group and "have made it clear to the group that it still has access to the same facilities."

InterVarsity says it permits anyone to become a member, but its charter states that only those "committed to the basis of faith and the purpose of this organization are eligible for leadership positions." (RNS) △

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Guest View

In God I trust

I appreciate the wonderful intentions of those who have proposed adding "In God We Trust" to the wall above the logo of the City of Porterville in the City Council chambers. I believe with all my heart that there is nothing more important in all of life than trusting God!

But I personally feel it would be a mistake to add those words to the wall of the City Council chambers.

This is a personal conviction. I am not speaking as a representative of the Porterville Area Ministerial Association. Many, if not most, of my colleagues in PAMA would disagree with the stand I am taking. I am not speaking as pastor of the First Baptist Church, for we as a congregation have not taken a stand on this particular issue. I am speaking only as an individual citizen of this area.

My reasons for stating that I oppose this move are simple:

1) Trusting God is a very individual act. Groups do not "trust God." ... To put the words "In God We Trust" up where they currently do not exist implies that the City of Porterville trusts God. Individuals trust God.

2) Our country is founded on Judeo-Christian values. ... But the founders of our country were very careful to make our country a secular, not a religious, state. The First Amendment of the Constitution was written to protect the freedom of churches and individuals from intrusion by the government, and it was also an attempt to keep the government from endorsing one religion or religion in general.

3) My ancestors as Waldensian, Men-



John O. Eby

*Pastor
First Baptist Church
Porterville, Calif.*

nonite, Huguenot and Church of the Brethren found themselves driven out of Italy, then Switzerland, then Germany and France because their religious beliefs did not conform to the religion recognized by the government of those countries. My spiritual ancestors, the Baptists, were driven out of Massachusetts by those who fled religious persecution in England and then set up their own religious state on these shores. We see much that should cause us deep caution in nations of the world today where the lines of separation between church and state have been muddied. It seems so harmless and comforting just

to add a little phrase to the City Council chambers wall. I certainly would not question the motives of the City Council members who propose this since I know most of you personally and respect you deeply. But because of my deeply held religious conviction that the higher the wall of separation between church and state is, the safer our freedom is, I must speak in opposition to this resolution.

One of the great Baptist leaders of the 1700s, John Leland, wrote that the fondness of magistrates "to foster Christianity has done it more harm than all the persecutions ever did." As a follower of a God who is Almighty, let me affirm that we who trust in His almighty authority need neither the endorsement nor support of any worldly government, but only the freedom and protection by a government to compete in the open market of ideas. That is all we ask. Δ

Excerpts of remarks by John O. Eby opposing a proposal to add the words "In God We Trust" to the Porterville, Calif., City Council chambers.

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