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NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

House panel hears objections to proposed HUD rules

A House committee hearing touted as a showcase for the benefits of government funding for religious housing programs instead became a forum for lively debate on the issues surrounding President Bush's "faith-based initiatives."

A subcommittee of the House Financial Services Committee held a March 25 hearing on proposed regulatory changes that would allow more government support of religious housing ministries.

The most controversial part of the HUD rule change, announced in January, would allow churches and other religious groups operating housing ministries to use public funds to construct buildings that could include sanctuaries or chapels, as long as the rooms were also used for secular purposes at times. It also would permit funding for church-owned buildings dedicated to eligible activities under



Walker testifies before House committee

HUD programs.

The regulations said that government funding would be reduced in proportion to the percentage of the building that was used for religious purposes.

"This approach creates the poten-

tial for excessive entanglement between church and state," said J. Brent Walker, executive director of the Baptist Joint Committee, in testimony before the subcommittee. "It raises the specter of horrendous accounting problems, logistical difficulties, and burdensome auditing and record keeping. Moreover, it would almost certainly create the need for perpetual [government] monitoring."

The proposed regulations — like many recent changes to executive branch agency rules regarding government grants to religious organizations — were in response to executive orders issued as part of President Bush's "faith-based initiatives." Bush has asserted such organizations should have the right to receive government funding to provide social services without changing

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'Faith-based' bill primed for passage minus controversial section

The sponsor of a Senate bill, which the White House counted as an important part of President Bush's "faith-based initiatives," has agreed to drop a provision that opponents said would cross church-state lines and allow employment discrimination with federal dollars. Sen. Rick Santorum, R-Pa., announced in a March 27 press conference at the Capitol that he agreed with fellow Senate leaders to drop a portion of the

CARE (Charity, Aid, Recovery and Empowerment) Act of 2003 to ensure its passage.

Santorum and other Senate leaders "have agreed in a unanimous consent request to remove that provision from the bill," he said. "We have spoken to several who have expressed concerns . . . The ones I have spoken with have said that, if that issue is off the table, this can pass."

The CARE Act is the Senate version

of President Bush's faith-based initiative. Bush's plan would expand the ability of the government to grant funding to thoroughly religious organizations — including churches and mosques — for the provision of social services.

The plan has proven controversial on two fronts: Supporters of church-state separation say the government

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NewsMakers

◆ **Pat Robertson**, the founder of the Christian Coalition, has encouraged President Bush to make sure a secular government with separation of church and state is established in a postwar Iraq. Speaking on the March 17 broadcast of his "700 Club" television program, Robertson said, "If the United States tries nation building, it's got to [have] at the very top of its agenda a separation of church and state. There has to be a secular state in there and not an Islamic state."

◆ **Charles Li**, a California man who is a member of Falun Gong, a banned spiritual movement, was sentenced March 21 to three years in prison by a Chinese court after being convicted of sabotaging television broadcasts. Li was ordered to be expelled from China. More than 20 members of the group have been tried and sentenced on charges of hijacking TV signals around China. Falun Gong material has been broadcast at times over hijacked signals.

◆ **Harry F. Holsinger**, a member of the Loudoun County, Va., school board, commented on the recent decision by Potomac Falls High School officials to remove bricks engraved with crosses from a walkway in front of the school. Students bought the bricks as part of a fundraiser run by the school. "The school is in a sense endorsing what it puts on the walkway. It's a part of the school structure, and those bricks are owned by Loudoun County Public Schools once they're donated," he said. △

House votes to support 'under God' in Pledge

The House of Representatives voted 400 to 7 on March 20 to condemn a federal court ruling that found the daily recitation of the Pledge of Allegiance in the public school classroom unconstitutional.

The nonbinding House resolution said, "The recitation of the Pledge of Allegiance to the flag, including the phrase 'one nation, under God,' is a patriotic act, not an act or endorsement of religious faith or belief."

The resolution came three weeks after the San Francisco-based 9th U.S. Circuit Court of Appeals upheld its controversial decision that found the pledge violates the constitutional separation of church and state. Attorney General John Ashcroft has said he will appeal the decision to the U.S. Supreme Court.

Atheist Michael A. Newdow sued the Elk Grove, Calif., Unified School District last year, claiming that his daughter's religious freedoms were violated by being forced to recite or listen to the pledge. A lower court rejected the suit, but the 9th Circuit agreed with Newdow.

The resolution, introduced by Rep. Doug Ose, R-Calif., said the court's ruling could lead to the prohibition of other "voluntary speech containing religious references" in classrooms.

Both houses of Congress approved similar resolutions last summer. All seven members voting against the resolution were Democrats; 15 other Democrats voted present. △ (RNS)

Federal judge rules in favor of religious candy canes

A federal judge ruled March 17 that students at a Massachusetts high school had the right to distribute candy with religious themes last Christmas and should not have been suspended.

U.S. District Court Judge Frank Freedman said the students' free speech rights were violated when they were prohibited from handing out candy canes with Christian messages. Freedman also said the school was wrong to suspend the students after they ignored the principal's order to stop.

Students "enjoy the right to free personal intercommunication with other students so long as their communication with other students does not substantially or materially disrupt the operation of the classroom," Freedman said in his ruling.

The candy canes were accompanied by

a note that explained the candy's history and included an invitation to Christianity. Freedman rejected the school's argument that the principal had the right to restrict the messages because the student Bible club was a school sanctioned activity.

"If the court were to accept the school's proposition that the LIFE Club is a school-sponsored, curriculum-related group, then the school would be in flagrant violation of 40 years' worth of Supreme Court precedent barring school-sponsored prayer and devotional activities," Freedman ruled, according to The Associated Press.

Erik Stanley, who represented the students as part of the Florida-based Liberty Counsel, called the opinion "well-reasoned." △ (RNS)

(CARE) (Continued from Page 1)

should not provide direct funding to pervasively religious organizations, even for the delivery of so-called "secular services"; and when government funds religious organizations they should not be allowed to discriminate in hiring on the basis of religion.

Although the House passed a faith-based bill that included both controversial provisions, the CARE Act was crafted in the Senate last year as a compromise that attempted to avoid those two pitfalls. However, a section of that proposal stated organizations that have religious names, religious art or icons on their walls or religious requirements for service on their boards of directors should be treated the same as other potential government grantees for social services.

Federal law generally allows for organizations with some religious affiliation to receive funding as long as the groups are not pervasively religious in their makeup and do not use the funding for a religious purpose.

Therefore, some congressional critics thought the CARE Act provision left the door open for the Bush administration to interpret it as expanding government's ability to fund pervasively religious groups directly.

"The Senate language is less direct than the House language, but it could be just as devastating in its impact by potentially allowing billions in federal tax dollars to go to churches, along with the regulations and red tape that go along with that money," said Rep. Chet Edwards, D-Texas, a frequent congressional watchdog on church-state issues, regarding the CARE Act. △ (ABP)

Victory in Senate should inspire vigilance on 'faith-based' agenda

While the ultimate outcome remains uncertain, the announcement by co-sponsors of the CARE Act that they are dropping the "equal treatment" provision of that bill marks a significant legislative victory. For months, the Baptist Joint Committee and other groups sought to remove that provision, apparently with little hope of success. But last week the tide suddenly turned in our favor.

The CARE Act contains much that is positive about the president's so-called "faith-based" agenda, such as charitable giving incentives and technical assistance for small nonprofits, which we support. However, the "equal treatment provision" raises concerns at odds with our basic commitments to protect religious liberty and to avoid government-funded employment discrimination. In the context of recent regulatory action by the administration, this provision became as indefensible as explicit "charitable choice" language the BJC has opposed since 1996.

In a meeting just a few weeks ago, Jim Towey, director of the White House faith-based office, showed no interest in abandoning any part of the CARE Act. Instead, he appeared singularly focused on codifying the president's recent executive orders. Like the bill's co-sponsors, Towey continued to refer to the CARE Act as "compromise" legislation that is silent on the most divisive issues, unlike the controversial House version of the measure that would explicitly expand "charitable choice" across a wide spectrum of federal funding programs. He argued that amendments to CARE could jeopardize the entire bill, including proposed funding of basic social services. He characterized those seeking amendments as holding the poor hostage. This inflexibility suggested that the White House and the lead co-sponsors were intent on legislation that opens the door to the direct funding of churches while ensuring that religious organizations that discriminate in hiring based upon religion could continue to do so even if they accept government funds.

It is difficult to pinpoint exactly what

led to the remarkable reversal of course last week. It was likely a combination of factors.

First, we should credit the Bush administration for recognizing that their decision to pursue an ambitious agenda without approval from Capitol Hill was beginning to backfire. While the CARE Act was languishing in the last Congress,

President Bush simply stepped up the administrative implementation of his initiative. He ordered sweeping review and revision of regulations to loosen constitutional safeguards and strip nondiscrimination provisions.

As Congress became more aware of these changes, support for the White House's legislation dwindled, prompting a reassessment.

Second, the hard work of a handful of legislators in both chambers made a powerful impact. In the House, those who pushed for oversight hearings on the proposed changes to HUD rules exposed the lack of support for the administration's approach to civil rights. In the Senate, Sens. Durbin and Reed were unwilling to allow a vote on CARE without debate on important aspects of the bill. They insisted on an amendment strategy to add civil rights protections and prohibit proselytizing in programs that receive government funds.

Finally, a broad coalition of religious and civil rights groups played a crucial role in explaining the problems with "equal treatment." The BJC and other organizations participated in Senate staff briefings and lobbying efforts to describe why the CARE Act's "silence" on controversial issues was unacceptable.

It is appropriate to reflect on this legislative victory. Still, we must not overstate its importance. The Bush administration remains committed to implementing its agenda through administrative action, despite opposition from Congress and even the public at large. Federal courts or future presidents may yet undo what this administration has done. In the meantime, we should enjoy and continue to build on our progress in the Congress. Δ



K. Hollyn Hollman

General Counsel

EEOC announces settlement between Muslims, steel plant

The U.S. Equal Employment Opportunity Commission has announced a \$1.11 million settlement involving Muslim employees who claimed they were harassed due to their religious beliefs while working at a steel plant.

The settlement, announced March 19, involves an employment discrimination lawsuit against Stockton Steel, a subsidiary of Herrick Corp. It resolves a January 2000 lawsuit by the EEOC charging that Pakistani-American employees were repeatedly harassed at Herrick's steel plant in Stockton, Calif. The employees alleged they were ridiculed during their daily Muslim prayer obligations and subjected to derogatory name-calling such as "raghead" and "camel jockey."

Stockton Steel denied all charges but agreed to resolve the suit by paying \$1.11 million to four former employees. The company also agreed to conduct training to prevent future discrimination and guarantee the right of employees to request that their religious needs be accommodated.

"The EEOC is particularly pleased with Stockton Steel's willingness to review their existing policies and to make improvements as needed," said Susan McDuffie, director of the EEOC's San Francisco District, in a statement. "When employers institute training programs and maintain clear anti-discrimination policies, everyone wins." Δ (RNS)

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their fundamental religious character.

Critics have said Bush's plan is unconstitutional. Court rulings have not provided a settled answer.

Douglas Kmiec, dean of the Catholic University School of Law, claimed that such regulations as the one Walker decried were the grant recipient's problem to worry about, not the government's.

Kmiec said tension exists between limiting the use of federal funds for religious purposes and imposing a change on the religious character of a grant recipient. "It is a difficult balance, but failure to keep it is [an] administrative failure, not a constitutional one."

Subcommittee chairman Rep. Bob Ney, R-Ohio, a supporter of Bush's faith-based initiatives, scheduled the hearing at the request of subcommittee member Barney Frank, D-Mass., a strong opponent of the faith-based initiatives.

Besides Ney, only one other member of the Republican majority — generally supportive of the faith-based measure — showed up for the hearing. But several Democratic members questioned several aspects of the faith-based plan in general.

Many of the Democrats on the subcommittee questioned the proposed exemptions for religious discrimination.

The White House has assured religious organizations receiving government funding that they would be allowed to retain an exemption under federal civil rights laws that allows churches and other pervasively religious groups to discriminate on the basis of religion in hiring.

Several Democratic subcommittee

members seemed to take exception to allowing government to fund groups that could discriminate.

"My concern is trying to figure out exactly why these proposed changes are being offered," said Rep. David Scott, D-Ga. "Of what value is it, and why would we want to remove the requirement that employment discrimination not be funded by government?"

Kmiec argued that forbidding religious organizations to hire on the basis of religion to receive government funding would force them to change the very nature of their organizations, thus in itself discriminating against religious groups.

But Rep. Artur Davis, D-Ala., noted the regulations would also forbid religious organizations receiving funds from discriminating on the basis of religion when serving clients with government funds. "If it doesn't change the nature of an organization for me to serve people of another faith, then how does it change the nature of an organization to hire people of another faith?" Davis asked.

In addition to Walker, also testifying against the measure were Rev. Wendell Anthony, pastor of Fellowship Chapel in Detroit, Mich., and Ellen Feingold, president of Jewish Community Housing for the Elderly in Boston, Mass.

HUD representatives did not attend the hearing, leading the subcommittee's Democrats to request another hearing where they could question an administrator from that agency. Δ

— Robert Marus
Associated Baptist Press



Rep. Artur Davis



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