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Report from the Capital

NEWSLETTER OF THE BAPTIST JOINT COMMITTEE

High court to hear school funding dispute

The Supreme Court has agreed to hear a case that may decide whether the government is required to fund religious organizations in some circumstances.

The high court agreed May 19 to hear arguments in *Locke vs. Davey*, a case that originated in Washington state but could have nationwide consequences for church-state relations.

Joshua Davey applied under a state program that provides scholarships to disadvantaged Washington students who want to attend in-state colleges. The scholarships may be spent at any accredited school, including religious ones.

Davey, who qualified under the program's rules, elected to spend his scholarship at Northwest College, a Seattle-area Bible school affiliated with the Assemblies of God. However, the state revoked the scholarship when officials learned Davey planned to major in theology and business management.

State officials cited a provision in Washington's constitution that prohibits the state from spending any money on religious instruction. Davey sued the state with the help of the American Center for Law and Justice, a legal advocacy group founded by religious broadcaster Pat Robertson.

Davey won at the 9th U.S. Circuit Court of Appeals. A three-judge panel of that court ruled 2-1 that the Washington constitutional provision, as well as a similar state law, violated Davey's freedom of religion under the U.S. Constitution. Washington Gov. Gary Locke appealed the ruling to the Supreme Court.

Washington's constitutional provi-

*Will justices expand
2002 voucher ruling?*

sion is similar to clauses of several other state constitutions, sometimes collectively referred to as "Blaine amendments."

While critics of the so-called Blaine amendments say the provisions had their origins in anti-Catholic bias rampant in the 19th century, opponents of government funding for religious instruction say that argument is an oversimplification and that bad motivations do not necessarily make for bad laws.

The state Blaine amendments are seen by both sides as the last major legal obstacle to government funding for religious schools.

Last June, the Supreme Court declared that an Ohio program that provided vouchers that could be used in private religious schools did not violate the U.S. Constitution's ban on government support for religion. Justices decided that case, *Zelman vs. Simmons-Harris*, on a contentious 5-4 vote.

"Blaine amendments are the Jim Crow laws of our time," said Becket Fund President Kevin Hasson, whose organization supports government funding for private religious schools.

But supporters of church-state separation hold a different perspective. "People who want to enter the ministry should pay their own way, not hand the bill to the taxpayer," said Barry Lynn, executive director of Americans United for Separation of Church and State.

Baptist Joint Committee General Counsel K. Hollyn Hollman said the suit has the potential to push the school voucher debate to a significant new level.

"What this case really does is present the issue of whether the Free Exercise Clause actually requires funding" of religious groups, she said. "So, historically, the Establishment Clause has prohibited funding, and then in the *Zelman* case, five members of the Supreme Court were willing to say that the federal Constitution at least allows some funding schemes."

But, Hollman added, "You have to say whether or not it is a substantial burden on an individual's free exercise of religion to have the government refuse to pay for his religious education."

Hollman said a ruling against Washington in the case could potentially nullify Blaine-type amendments in state constitutions — in as many as 37 states.

Oral arguments in the case will be heard during the court's next term, which begins in October. Δ

— Robert Marus
Associated Baptist Press

NewsMakers

◆ **David Silvis** of Virginia Beach, Va., and **Aaron Young** of West Jefferson, N.C., are serving summer internships at the Baptist Joint Committee. Silvis is a senior at Old Dominion University in Norfolk, Va., majoring in economics and philosophy with a minor in Japanese studies. Young is a recent graduate of the University of North Carolina, where he majored in English. He will enter the University of North Carolina Law School in the fall.

◆ **Mary Ellen Simonson**, attorney for a Scottsdale, Ariz., school district, reacted to an appeals court ruling that the district cannot prohibit distribution of literature advertising a program with religious content. She said the decision by the 9th U.S. Circuit Court of Appeals puts school districts in the "untenable position" of assessing "how far a brochure can go in promoting a religious event in its advertising."

◆ **Mark Pelavin**, associate director of the Religious Action Center of Reform Judaism, expressed opposition to Alabama Attorney General Bill Pryor's nomination to a federal judgeship. Among other concerns, the center takes issue with Pryor's endorsement of school prayer and his defense of governmental displays of the Ten Commandments. △

Supreme Court declines to hear invocation dispute

The U.S. Supreme Court has declined to hear an appeal from a California city that offered sectarian invocations at city council meetings. Justices refused, without comment, to entertain an appeal by the city of Burbank to a state court ruling that outlawed their practice of beginning city council meetings with prayers offered by members of a local ministerial alliance.

The clergy, who included representatives of faiths other than Christianity, could offer any prayer they desired under the Los Angeles suburb's policy. But two city residents — one Jewish, one Christian — sued after they heard a Mormon offer a 1999 prayer that was addressed to "Jesus Christ."

The lower court ruling, which the California Supreme Court also declined to overturn, banned sectarian prayers. But the city may still have someone offer "generic" prayers, according to a city lawyer. "We still have the invocation. We just don't have a sectarian invocation," Assistant City Attorney Juli Scott told The Associated Press. "They are usually very benign, positive expressions of thanks asking for divine guidance so legislators do a good job." △ (ABP)

Russian Supreme Court allows head scarves on ID photos

Russia's Supreme Court has ruled the country's Muslim women have the right to wear head scarves in photographs on official IDs, something previously forbidden by the government.

The May 15 ruling, hailed by Muslim leaders and religious freedom activists, ends years of legal tussling pitting devout Muslims from Russia's Tatarstan region against the police, who maintained women in head scarves would be too difficult to identify.

The women, members of Russia's 20 million-member Muslim minority, were trapped between a Quranic injunction to public modesty and Russian law. All adult Russian citizens must carry an internal passport with a photograph that shows where they are registered to live, a Soviet-era requirement still used to restrict freedom of movement.

"Religious requirements were being trampled by the dictates of law enforcement agencies," the women's lawyer, Vladimir Ryakhovsky, said in a statement issued by his Slavic Legal Center.

The Supreme Court's decision applies to other faiths as well, Ryakhovsky said. Russian Orthodox women may also now wear head scarves in official photographs, and Jewish men can put on yarmulkes.

The Interior Ministry, which issues the internal passports, plans to appeal the ruling to the full presidium of the Supreme Court. The daily newspaper, *Izvestia*, said May 16 that Interior Ministry lawyers might yet prevail since Russian President Vladimir Putin previously voiced his support for the head scarf ban. △ (RNS)

Evangelicals caution Bush on U.S. relations with Korea

Religious conservatives warned President Bush not to allow South Korea to soften U.S. relations with the communist government of North Korea.

In a letter to Bush on the same day he met with new South Korean President Roh Moo Hyun, the 32 religious leaders said the United States must continue to confront the human rights abuses and nuclear program of North Korea.

"We believe that silence toward the Pyongyang regime's vast system of gulags, toward the death sentences it imposes on dissidents and religious believers, and toward the mass starvation it imposes on all but its favored elites is neither an honorable nor a prudent option," said a letter to Bush spearheaded by the Institute on Religion and Democracy, a conservative Washington think tank.

Roh has voiced concern that a continued hard line against North Korea could damage his economy and provoke North Korea into a nuclear confrontation. Before his visit to Washington, Roh said he had "concerns" about U.S. policy on the Korean peninsula.

After a meeting at the White House, Bush said the two countries had made "good progress" on the North Korea problem. Roh told reporters he had "gotten rid of all my concerns" after meeting with Bush.

Diane Knippers, president of the IRD, said at a Washington press conference that "it is tempting for the world to turn a blind eye — ignore a small nation and its blustery leader. But we cannot ignore the plight of 22 million souls, created in the image of God, created to exercise and enjoy responsible freedom."

The letter's signers included Rabbi David Saperstein of the Religious Action Center of Reform Judaism and several evangelical leaders. △ (RNS)

Public school officials can avoid commencement prayer thicket

Every year at this time, the BJC receives inquiries about graduation prayers and baccalaureate services. This year's graduations come just a few months after the Department of Education issued new guidance on prayer in the public schools. The guidance seems to approve certain types of student-led religious expression, arguably going beyond what current case law allows. It is thus a good time to review the state of the law.

As the Supreme Court's most recent and thorough decision on graduation prayer, *Lee vs. Weisman* remains the benchmark for legal analysis. In that 1992 case, the principal of a Rhode Island middle school had asked a rabbi to give an invocation and benediction at commencement, giving the rabbi a set of guidelines to follow. The court struck the school's practice as an unconstitutional violation of the Establishment Clause because school officials impermissibly exercised control over the content of the prayer and coerced those who attended to participate in the prayer. By a 6-3 margin, the court highlighted some of the reasons that graduation prayer should be treated with caution. Specifically, the majority noted that while attendance at commencement was voluntary, the importance of the event meant that the state would be effectively coercing students into participating in prayer. By sponsoring a prayer at graduation, the state would send a message that those who did not agree with the prayer were not welcomed as full participants in the graduation.

In 2000, the court revisited the issue of school prayer, this time in the context of a student-led prayer at football games in Texas. In that case, *Santa Fe Independent School District vs. Doe*, the school facilitated the election of a student representative to offer prayers over the school public address system prior to football games. The Court held the practice unconstitutional, emphasizing key factors that demonstrated school sponsorship of the prayer. Among these factors were the school's adoption of a pro-prayer policy,

administration of an election for the student who would lead prayers, control over the pre-game program and public address system and encouragement of all students to attend the games.

While mentioning these two cases, the new Department of Education guidance explicitly states that schools cannot

restrict religious expression by students at graduation as long as the school selects the student on neutral criteria and gives the student primary control over its content. We do not know if the Supreme Court agrees with the guidance, and

lower federal courts have split on these issues. For example, the 11th Circuit upheld the election of a student representative to present an unrestricted "message" at graduation. The 3rd Circuit, however, struck down a policy allowing students to vote on whether to have a "prayer, moment of reflection or nothing at all." Recently, the 9th Circuit rejected a claim by a student who asserted that the school impermissibly restricted his religious speech at graduation.

So where does this leave us? In terms of the law, several questions remain. While *Lee vs. Weisman* involved clergy-led rather than student-led prayer, *Santa Fe* warns against any assumption that having students speak automatically protects the school from constitutional challenges.

Until the Supreme Court clarifies these issues, school administrators eager to avoid legal disputes would be wise to retain control of graduation exercises and avoid religious expression. A moment of silence during the ceremony can provide the kind of solemnization desired by students of various faiths without infringing on the rights of others. In addition, privately sponsored baccalaureate services allow students to celebrate graduation with full expression of religious messages and worship.

With these options, there seems little reason for schools to risk litigation by inviting students to deliver messages that may be interpreted as coercive prayer. Δ



K. Hollyn Hollman

General Counsel

Links to U.S. raise risks for Christians in Pakistan

Pakistan's minority Christians are under increasing threat because they are lumped together with America in the minds of Islamic extremists, according to a leading Christian human rights activist in the country.

The Pakistani leader, who chose not to have his name revealed for fear of repercussions against him and his family, spoke with reporters May 22 in Washington, D.C.

He appeared in a special invitation-only press briefing arranged by the U.S. Commission on International Religious Freedom. The man was in Washington to meet with commission representatives, as well as administration officials and advocacy groups, regarding religious freedom in Pakistan.

"The religious minorities of Pakistan — especially the Christian minority — fear attack," he told reporters. Islamic extremists often think they are engaging in holy war by attacking local Christians, he said. "[The extremists] think that, by attacking and killing Pakistani Christians, they are taking revenge against the West and America."

There has been a dramatic rise in anti-Christian and anti-Western violence in the nation since U.S. and coalition forces began military activities in neighboring Afghanistan after the attacks of Sept. 11, 2001. (ABP) Δ

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Report from the Capital

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Panel cites religious liberty abuses in Saudi Arabia

Just hours after terrorists killed dozens in Saudi Arabia, a federal panel issued a scathing rebuke of both that nation's human rights abuses and America's handling of them.

In a May 13 press conference at Washington's National Press Club, the U.S. Commission on International Religious Freedom released its annual report on international religious freedom, as well as expanded reports on four countries. Among those was the independent commission's first detailed report on religious freedom in Saudi Arabia.

"Freedom of religion simply does not exist in Saudi Arabia," said commission Vice Chairman Michael Young in introducing the report. "It is a place where the government enforces one particularly narrow interpretation of Islam based on the Wahhabi doctrine." Young is dean of the George Washington University Law School.

Wahhabism is a particularly narrow and fundamentalist school of Sunni Islam embraced by the Saudi ruling family and Saudi government leaders. Both the commission's report and reports by the State Department detail how Saudi Arabia's government enforces a virtual ban on all non-Wahhabist religious expression — whether among Christians, Jews or the country's Shiite Muslim minority. Such offenses in Saudi Arabia are punishable, in many cases, by death.

The report also criticized Saudi repression of women, enforcement of religious laws by local groups of religious police rather than a professionally trained police force and application of its restrictive religious laws to the one-fourth of Saudi residents — such as U.S. and European work-

ers — who are not even Saudi citizens.

But the report also criticized U.S. handling of complaints over these issues. Although the commission has repeatedly found Saudi Arabia to be one of the world's most egregious violators of religious freedom, the U.S. State Department so far has declined to add the nation to its list of "Countries of Particular Concern" for violations of religious rights.

"Despite occasional disagreements over regional issues and a growing public debate on the direction of U.S.-Saudi relations following the attacks of September 11, 2001, official U.S. relations with Saudi Arabia remain close," the report noted. "The Commission, however, shares the State Department's view that freedom of religion does not exist in Saudi Arabia, and notes that advancing human rights, including religious freedom, has not been a public feature of the bilateral relationship. Indeed, some have argued that the U.S. government has refrained from criticizing human rights practices in Saudi Arabia, and has even gone so far as to restrict the rights of Americans to do so."

Young also pointed to the report's extensive discussion of the various ways in which the Saudi government has attempted to export Wahhabist doctrine around the world via establishment of educational institutions, television networks and religious ministries to teach Wahhabism.

Young said the purpose of the report is constructive. "We do this in a spirit of friendship with the people of Saudi Arabia. We think good friends can talk about these things."

State Department and White House officials have repeatedly said that the best way to encourage greater religious freedom in Saudi Arabia is to work through behind-the-scenes private diplomacy rather than public actions. (ABP) Δ



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