

# SALT

**"You are the salt of the earth"** Matthew 5:13



Christian Life Commission, Southern Baptist Convention

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## Court faces liberty and death

### Justices question RFRA's validity

In recent arguments involving legislation critical to religious freedom in this country, some U.S. Supreme Court justices questioned whether Congress overstepped its authority when it passed the Religious Freedom Restoration Act in order to correct what it considered an erroneous high court decision regarding the free exercise of religion.

The court heard oral arguments Feb. 19 involving a Roman Catholic church's use of RFRA to battle a city government's refusal to allow expansion of its worship facility.

RFRA was proposed and adopted in response to a 1990 Supreme Court opinion, *Employment Division v. Smith*, in which the justices ruled government no

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of threat to RFRA, Page 2**

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longer has to demonstrate a "compelling interest" before restricting religion. After the *Smith* decision and prior to RFRA's enactment, it was easier for the government to limit religious expression.

Signed into law by President Clinton in November 1993, RFRA requires a government body to demonstrate a policy serves a "compelling interest" and is the "least restrictive means" in fulfilling the government's interest before restricting the free exercise of religion. The bill gained overwhelming bipartisan support in both houses of Congress.

Since RFRA's enactment, some state

### *Pro-lifers gain partial victory*

The U.S. Supreme Court handed pro-life advocates seeking to persuade women not to have abortions a victory Feb. 19 when it rejected no-speech, floating bubble zones around people entering abortion clinics.

In the same opinion, *Schenck v. Pro-choice Network*, however, the justices upheld fixed buffer zones around clinic entrances.

In a case involving anti-abortion protests outside abortion clinics in Buffalo and Rochester, N.Y., the high court voted 8-1 to overturn a lower court's establishment of floating zones, 15 feet in all directions, which move with those entering or leaving a clinic, saying they "burden more speech than is necessary to serve the relevant governmental interests."

Only associate justice Stephen Breyer dissented.

As expected, the court, by a 6-3 vote, upheld the lower court's placement of 15-foot buffer zones around clinic doorways, driveways and driveway entrances.

and city governments have complained about the law's effect, often citing an extra burden caused by a variety of religious claims made by prisoners.

The challenge to RFRA arrived at the high court in the case of *City of Boerne v. Flores*, a dispute involving the proposed expansion of the St. Peter Catholic

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### Justices skeptical of assisted suicide

The Supreme Court, pondering one of the most hotly debated issues of recent years, greeted calls for legalizing physician-assisted suicide with some apparent doubt in oral arguments Jan. 8.

Justices from across the ideological spectrum seemed to express skepticism about upholding lower court rulings striking down state bans on assisted suicide during two consecutive hours of arguments.

A decision in the case is not expected before June. The Ninth Circuit case is *Washington v. Glucksberg*. The Second Circuit case is *Vacco v. Quill*.

The unusual, back-to-back arguments of two cases on the same issue resulted from highly controversial decisions by federal appeals courts last year. In March, the U.S. Ninth Circuit Court of Appeals in California overturned a Washington state law, saying there is a "constitutionally protected liberty interest in determining the time and manner of one's own death." In April, a three-judge panel of the Second Circuit Court struck down New York's law prohibiting physician assistance in a suicide, ruling there is no difference between the prescribing of drugs for a suicide than the withdrawal of artificial life support.

The Second Circuit based its opinion on equal protection rights in the Constitution's 14th Amendment, rejecting the Ninth Circuit's rationale, which found a right to commit suicide in the 14th Amendment's due process clause.

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## Religious freedom challenged

By Richard D. Land

A serious threat to America's religious liberty has surfaced in legislation proposed by Sen. Harry Reid, D.-Nev. The bill would exempt prisoners from the protections Congress enacted in the Religious Freedom Restoration Act (RFRA) in 1993. In making RFRA the law of the land by overwhelming bipartisan majorities in both houses, Congress sought to rectify the devastating damage done to our religious liberty by the Supreme Court's *Employment Division v. Smith* decision in 1990. In the *Smith* decision the Supreme Court struck down its own long-standing "compelling interest" test, which had required the government to demonstrate a "compelling interest" before it overrode the religious free exercise right of a citizen.

Sen. Reid's bill would remove prisoners from RFRA protection, and that should alarm all people of religious faith across the nation. Freedom denied to anyone today can be freedom denied to everyone tomorrow. If we allow the government to suspend or deny the religious freedoms of prisoners, who will be next?

Chuck Colson, the founder of Prison Fellowship Ministries, has expressed his grave concern over Sen. Reid's proposal this way: "The effort to remove prisoners from these protections strikes at the very heart of our effort to bring the Gospel into the most needy places in our society — the prisons."

Research has clearly demonstrated that participation in religious programs in prison is the best guarantee of lasting rehabilitation back into society. This research illustrates what Christians already knew — the Gospel of Jesus Christ changes men forever. Can government possibly believe that the administrative convenience of not having to "bother" with prisoners' religious requests is worth denying prisoners the one real hope for lasting change in their lives?

What has RFRA done since its enactment in 1993? It has protected the rights of Jews to wear yarmulkes, Muslims to observe Ramadan, Catholics to attend Christmas Mass and Baptists to participate in Bible studies. RFRA has placed the burden of proof on government when it seeks to restrict religious free exercise, and that is where it should be. Removing prisoners from RFRA's protection would place the burden of proving their right to free exercise of their religious beliefs on prisoners, and that is both wrong and un-American.

Prison Fellowship volunteers and others who minister to prisoners' religious needs all too frequently encounter indifference or hostility. How much worse would it be without RFRA protections? If you are troubled by this bill, I urge you to contact your two senators and urge them to reject this dangerous legislation.

Even more troubling than Sen. Reid's bill is the fact that on Feb. 19 the Supreme Court heard oral arguments in *City of Boerne v. Flores*, in which the court is being asked to strike down RFRA. If the court strikes down RFRA, all Americans will have lost significant religious liberty. The acting solicitor general, Walter Dellinger, told the court that minority religious groups would be constantly discriminated against without RFRA protection.

The Christian Life Commission joined a friend-of-the-court brief filed by a 60-member coalition of groups defending RFRA before the court. I urge you to pray for the Supreme Court justices as they deliberate. We must appeal to a higher power than the court by praying to God with the certainty that "the king's heart is in the hand of the Lord . . . He turneth it whithersoever He will" (Proverbs 21:1).

## They said it

*"What we need in this state is a reverse inquisition. We burn the religious kooks at the stake. That's what we need. Clean up this society and get to a secular reality."*

— **Assisted suicide practitioner Jack Kevorkian**, according to the Feb. 24 issue of *The Kansas City Star*.

*"Cloning 'has the potential of giving women complete control over reproduction . . . a stunning possibility that could, carried to its logical extreme, eliminate men altogether.'" — Ann Northrop, a columnist for LGNY, a New York homosexual newspaper, according to the March 6 issue of USA Today.*

*"Don't young people read newspapers? Don't they know that, thanks to President Clinton, they could have chosen to have a doctor suck their baby's brains out, and Delaware would not have chosen to charge them with murder?" — Columnist George Will in the Nov. 24, 1996, issue of The Washington Post on the two 18-year-olds who are charged with killing their newborn son.*

*"There's no group in Congress that suffers more than pro-life Democrats." — Rep. Glenn Poshard, D.-Ill., a Southern Baptist, commenting on retribution from party leaders for anti-abortion votes by him and other pro-life Democrats, according to the Aug. 28, 1996, issue of The Weekly Standard magazine.*

*"What we have is two important values in direct conflict: Freedom of speech and our desire for healthy campaigns in a healthy democracy. You can't have both." — Rep. Richard Gephardt, D.-Mo., House of Representatives minority leader, according to the Feb. 3 issue of Time magazine.*



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President: Richard D. Land. Editor: Tom Strode. Contributors: Jeff Carter, Will Dodson.

# Keeping our perspective

**By Jeff Carter**

**Director of Citizenship Concerns**

*"As a Christian and American citizen, you are obligated to become a part of America's political process."*

We have heard this statement or its equivalent more times than we can count. As director of citizenship concerns for the Christian Life Commission, I find myself expressing this sentiment. It is a good statement, a true statement and a statement wholly in line with biblical principles.

There is, however, a danger inherent in this statement that is often overlooked and that is compounded with its every repetition. The danger is not that we will follow this admonition, but that, in doing so,

we may misplace our hope for cultural change. We may begin to believe on some level that the political process is the solution to the moral problems facing our nation today. To the contrary, the Psalmist states, "It is better to take refuge in the LORD than to trust in man. It is better to take refuge in the LORD than to trust in princes" (Psalm 118:8-9, NASB).

Too often when we take action, even if we begin that action in reliance upon God, we transfer our reliance to ourselves, other human beings or to a process or system. "If only Suzanne could be elected," we sigh, "then things would really change for the better." This may be true, but its utterance may reveal more faith in Suzanne and the political process than in God.

It is good that Suzanne is running for

office; it is good that we may vote for her; and it is good that she may help bring about moral change to our culture. This is part of the political process with which we have been blessed in America. To place too much faith in what Suzanne can do, however, may demonstrate a shifting of our place of refuge from God to "man" or to "princes."

As we continue to expand our understanding and exercise our rights and responsibilities as citizens of both Heaven and America, let us examine ourselves to make sure that our trust is being placed in the Lord. Our hope for change rests in Him and in the hope offered by His Son, Jesus Christ. Placing our hope in the Lord and taking refuge in Him will bring an unshakable foundation to our necessary participation in America's democratic process.

## Congress has right, RFRA backers say

*(Continued from Page 1)*

Church building in Boerne, Tex. The city refused a permit for such work, citing the building's location in a historic district and the building's distinctive architecture.

A federal judge ruled in the city's favor, but the Fifth District Court of Appeals upheld RFRA.

The Christian Life Commission signed onto a brief filed by a 60-member coalition defending RFRA's constitutionality.

In the oral arguments, several justices seemed concerned about Congress' action, with associate justice Anthony Kennedy appearing to be fearful RFRA might violate the establishment clause.

Doug Laycock, attorney for the Catholic diocese and a law professor at the University of Texas, told the justices, "Congress has always understood it has the power" to extend constitutional rights beyond what the court says is protected.

When asked by associate justice Sandra Day O'Connor about the many claims of inmates, Laycock said, "We all know prisoners file frivolous claims."

RFRA is Congress' "attempt to apply

### Join CLC on-line

Subscribers to SBCNet, the Southern Baptist Convention's data communications network, may receive information on ethics and religious liberty issues from the Christian Life Commission. The CLC posts various items in the General Ministry B Forum of SBCNet, which may be accessed through CompuServe.

Free SBCNet membership kits are distributed by the Baptist Sunday School Board. They are available in DOS, Macintosh and Windows and may be ordered at 1-800-325-7749.

the compelling interest test across the board," Laycock said.

Walter Dellinger, acting U.S. solicitor general, said the case "does not require the court to break any new ground."

Without RFRA, minority religious groups will be constantly discriminated against, Dellinger said. He said the legislative record shows 800 pages of testimony from marginal groups that had difficulty in getting accommodations for their religious exercises.

Opponents of RFRA slammed Congress' initiative.

"This case is not about religious liberty; it is about federal power," Marci Hamilton, attorney for Boerne, told the justices. RFRA is a "brazen attempt to reinterpret the free exercise clause."

After the arguments, Laycock told reporters a high court rejection of RFRA would mean for the average person "that every religious liberty claim becomes vastly more complicated to litigate. You have to examine everything the city has done in all sorts of comparable situations to try to prove discrimination. It would be more expensive for everybody. It would be harder to win."

Hamilton said RFRA "forces every government in this country, local, state or federal, to accommodate every religious believer. It is a privileging that is unconstitutional under the establishment clause."

Laycock told reporters in response to Hamilton, "There's a constitutional right to freely exercise your religion. She wants to take that away. She wants churches to be pervasively regulated in the same way that auto dealers are pervasively regulated."

In addition to the CLC, others in the coalition defending RFRA include the National Association of Evangelicals, the Baptist Joint Committee, the ACLU and the Christian Legal Society.



# Court ponders assisted suicide

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The CLC signed onto friend-of-the-court briefs opposing assisted suicide and filed in both cases by the U.S. Catholic Conference.

The justices voiced many of their concerns to Kathryn Tucker, the attorney for assisted suicide advocate Harold Glucksberg, a Washington physician.

Associate justice Antonin Scalia, a leading conservative on the high court, asked Tucker in the opening hour why assisted suicide would be "limited to those on the threshold of death?"

"I hate to tell you, but the dying process for all of us has begun," Scalia said. It seems the "person facing 10 years of pain" has a stronger argument than someone near death, he told her.

Isn't it possible, asked liberal associate justice Ruth Bader Ginsburg, a person in pain could say for several days he wants to die but doesn't receive help in committing suicide and later says, "I'm glad I didn't" get help?

She is asking the high court to overturn the state laws of all 50 states except one, associate justice Anthony Kennedy told Tucker. Oregon voters approved physician-assisted suicide in

1994, but the law is being contested.

William Williams, senior assistant attorney general of Washington, said the state has a three-fold interest in opposing assisted suicide: The protection of life; the prevention of abuse and undue influence, and the regulation of the medical profession. The state has an interest in keeping "a clear line between physicians as healers . . . and as instruments of death . . ."

Associate justice David Souter asked Williams and acting U.S. Solicitor General Walter Dellinger to help him

determine how to weigh the concerns expressed that legalizing assisted suicide will result in involuntary deaths.

"No American jurisprudence has ever recognized physician-assisted suicide" as legal, said Dellinger, who argued for the Clinton administration in opposition to assisted suicide in both cases.

Steve McFarland of the Christian Legal Society said after the arguments, "I'm cautiously optimistic that there are at least five votes, maybe seven, for upholding the right of states to prohibit the killing of terminally ill people."

## Voices against assisted suicide

Here are comments made by some opponents of assisted suicide Jan. 8 in front of the Supreme Court building after oral arguments in two cases on the issue:

**"Compassion is coming alongside and caring for someone when they're in pain, when they're hurting. Giving someone a lethal injection – that doesn't take compassion. Anybody can do that."**

– David Stevens, executive director of the Christian Medical and Dental Society

**"People with disabilities know that there is a very real problem in a culture which says, 'We aren't going to give you a right to health care, but we will give you a right to assisted suicide.' We know where that leads. It's already been proven in The Netherlands that what starts out as voluntary assisted suicide for the terminally ill becomes involuntary euthanasia for people with disabilities who are not terminally ill."**

– Diane Coleman, cofounder of Not Dead Yet, a disability rights organization

**"I really think one of the concerns I have is that in order to win their argument the proponents seem determined to convince the American public that their only choice is to die some horribly, exquisitely painful death or die prematurely. That's just not true."**

– Nancy Dickey, chairman of the board of the American Medical Association

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of the Southern Baptist Convention  
901 Commerce, #550, Nashville, TN 37203-3696