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## eSalt Volume 6 Issue 8 2005



Bringing you IMPORTANT news from our nation's capitol

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The rule change that Senator Frist as majority leader is almost certainly going to call for is not an end to the filibuster in its totality. You can still use the filibuster to require a super-majority for a piece of legislation. You cannot apply it to judicial nominees if the change takes place. Using the filibuster, the Democratic minority in the Senate has blocked nearly one-fifth of President Bush's appellate court nominees. When those who are opposed to the nominees say that they have confirmed over 200 of George W. Bush's judicial

nominees, those were federal district judges. When it comes to appellate judges, they have blocked nearly 20 percent of the President's judicial nominees to the appellate courts. And all 10 of the people that they have blocked for confirmation had enough votes to be confirmed, but not enough votes to reach 60 and break a filibuster. Many of them were criticized for their pro-life rulings and even for their pro-life views. President Bush has resubmitted seven of the nominees—the seven who would allow themselves to be re-nominated—and the Democrats have said that once again they will use the filibuster to block them. Let's be clear about this. The Constitution delineates in every case where a super-majority is required for something to happen—more than 50 percent. The filibuster is not in the Constitution. It is a Senate rule.

**Dr. Richard Land**  
President, SBC Ethics & Religious Liberty Commission

**ERLC no longer supports church free-speech bill** The Ethics & Religious Liberty Commission has pulled its support for a bill it says no longer protects the free speech rights of churches.

**House votes to outlaw interstate abortions for minors** The House of Representatives approved April 21 by a large margin a bill to prevent interstate abortions on minors without parental notice.

**Senate panel OKs two; filibuster showdown may be near** The Senate Judiciary Committee approved April 21 two female nominees whose consideration by senators could trigger a showdown over judicial filibusters.

**HHS works to prevent live-birth abortions** The Department of Health and Human Services appears to be getting serious about preventing live-birth abortions.

**High court lets ban on sidewalk counseling stand** The Supreme Court dealt another defeat to the side of sidewalk counselors who try to change the minds of women seeking abortions.

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**ERLC no longer supports church free-speech bill**

The Ethics & Religious Liberty Commission has pulled its support for a bill it says no longer protects the speech rights of churches.

The ERLC announced April 25 it would not back the latest version of the Houses of Worship Free Speech Restoration Act, H.R. 235, because of revisions it says increase the likelihood of government intervention in churches and other religious bodies.

Unlike previous versions sponsored by Rep. Walter Jones, R.-N.C., the version he introduced in this Congress does not allow political views expressed by religious leaders or members to be distributed beyond those attending at the service in which they are made. H.R. 235 also has new language saying such banned dissemination would include a "mailing that results in more than an incremental cost to the organization or any electioneering communication," according to federal law.

Those changes potentially open churches up to government intrusion, according to the ERLC.

ERLC President Richard Land called the new version a "grotesquely bad idea."

"We supported the original Jones bill, because, while we believe that churches shouldn't endorse candidates, we also believe that it should be a church decision, not a government decision," Land said.

"Under the new bill, the government would permit churches to endorse a candidate but then would allow government investigators to come in and determine when the church has exceeded the government's parameters of permission," he said. "It gives the government foxes a hunting license to enter the church hen houses, and we all know what happens when foxes get into hen houses—hens get killed, and foxes get fat."

As in versions Jones introduced in the last two Congresses, the latest Houses of Worship bill would amend the Internal Revenue Code to prevent the tax-exempt status of churches and other religious organizations from being affected by the "content, preparation or presentation" of sermons or other addresses during religious services or meetings. Under a 1954 congressional measure, churches and other tax-exempt organizations are prohibited from participation in an election campaign or intervention on behalf of any candidate.

With one qualification, the ERLC endorsed the bills Jones sponsored before this session. The ERLC supports the legislation to prevent the government from defining the church's mission, but it remained committed to encouraging Baptist churches to refrain from endorsing candidates, Land said.

The latest version's provisions limiting dissemination of viewpoints and requiring mailings not exceed an "incremental cost" were added to gain the support of Sen. John McCain, R.-Ariz., according to the ERLC.

The ERLC hopes Jones will reintroduce his original version.

**[Back to Top](#)****House votes to outlaw interstate abortions for minors**

The House of Representatives approved April 27 by a large margin a bill to prevent interstate abortions for minors without parental notice.

The House voted 270-157 for the Child Interstate Abortion Notification Act, which would outlaw the transportation of a minor by a non-parent or non-guardian to another state for an abortion when the girl's home state requires parental notification or consent.

More than one-fourth of House Democrats joined most of the Republicans to pass H.R. 748. Among

Democrats, 54 voted for the bill, while 145 opposed it. Only 11 GOP members voted against the measure while 216 Republicans favored it.

The legislation is expected to face a more difficult test in the Senate. The House has approved similar legislation three previous times – 1998, 1999 and 2002 – without the Senate ever voting on it. This year House action was a 10-vote gain from 2002.

President Bush has said he will sign the legislation.

ERLC President Richard Land said enactment of the bill is "long overdue."

"This is a victory for unborn babies; it's a victory for underage mothers, and it's a victory for parents," Land said. "This is one more example of every Congress becoming more pro-life than the last Congress. And one of the many evidences we will see that elections do matter."

The House version has a mandate not included in previous versions. It requires an abortion doctor in a state without a parental notification law to inform a parent before he performs an abortion on a minor girl who lives in a different state. Exceptions exist when the girl has received a judicial bypass in her home state when she qualifies in cases of abuse or medical emergencies.

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#### **Senate panel OKs two; filibuster showdown may be near**

The Senate Judiciary Committee approved April 21 two female nominees whose consideration by the Senate could trigger a showdown over judicial filibusters.

The committee voted 10-8 for the nominations of Priscilla Owen to the Fifth Circuit Court of Appeals and Janice Rogers Brown to the District of Columbia Circuit Court of Appeals. The vote was along party lines with Republicans in the majority.

Democrats blocked confirmation votes for both nominees during the first administration of President Bush and have said they will filibuster both women again in an effort to prevent them from gaining the seats which they have been nominated. When the filibuster is utilized successfully with Owen, Brown or another nominee, Majority Leader Bill Frist is expected to lead a Republican effort to change the rule, which will require only a majority vote. If it is successful, nominees will need only majority approval for confirmation.

Under the Senate's rules, 60 votes are needed to end a filibuster. Previously, Owen, Brown and other Bush nominees have gained majorities but have been unable to achieve the 60 votes required to bring a halt to the Democrats' delaying tactics.

Democrats used the filibuster in Bush's first four years to block 10 of his 52 appellate court nominees. In 2004, he re-nominated this year all seven of the filibustered nominees who remained as candidates for the posts.

While Democrats have accused the filibustered nominees of being outside the judicial mainstream, at least some of their opposition appears to be based on the nominees' pro-life rulings and viewpoints.

Owen is a justice on the Texas Supreme Court, while Brown sits on the California Supreme Court.

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#### **HHS works to prevent live-birth abortions**

The Department of Health and Human Services apparently is getting serious about preventing live-birth abortions.

New HHS Secretary Mike Leavitt announced April 22 the department has acted to strengthen compliance with the Born-alive Infants Protection Act, a 2002 law that provides legal protection to fully delivered babies when they are intended to be aborted.

The law clarifies a newborn child fully outside his mother's womb is a person to be protected under federal law. This includes every human infant "born alive at any state of development," according to the law.

The measure especially targeted an abortion method in which newborns who survive are allowed to die. Nurses had testified before a congressional committee that the procedure, known as live-birth abortion, used at Christ Hospital in Chicago. In the method, delivery is induced, and the baby is left unattended if he survives.

In a written statement, Leavitt said he would "vigorously uphold" the principle in the law that all infants are born alive "are entitled to the full protection of the law."

"We took the first of these educational steps today by notifying relevant entities that we aggressively enforce federal laws that protect born-alive infants," Leavitt said. HHS "issued clear guidance that withholding medical care from an infant born alive" may be considered a violation of federal law and the conditions for participating in Medicare, he said.

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#### **High court lets ban on sidewalk counseling stand**

The Supreme Court dealt another defeat to the efforts of sidewalk counselors who try to change the minds of women seeking abortions.

The justices announced April 18 they would not review a lower court ruling affirming a Massachusetts law that bars communication with people within a certain distance of abortion clinics. The First Circuit Court of Appeals had overturned a federal judge's decision blocking enforcement of the law after he ruled it violated the First Amendment of the U.S. Constitution.

The law, enacted in 2000, establishes a six-foot, floating buffer zone around a person approaching an abortion clinic and prohibits the distribution of leaflets, display of signs or oral communication without permission within that restricted space. The floating zone must be within an 18-foot radius of a clinic entrance or driveway.

The measure limits the ability of pro-lifers involved in sidewalk counseling and picketing to communicate with women planning to abort their children.

The law is similar to a Colorado measure establishing a no-communication zone outside abortion clinics. The Supreme Court upheld that law in 2000.

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