REPORT from the Capital

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INSIDE:

Charles Johnson urges RLC to challenge 'uncivil religion'

American Christendom has become infected with a disease, and free and faithful Baptists hold the cure, Texas pastor Charles Johnson told a group of Baptist Joint Committee for Religious Liberty supporters July 1.

Johnson addressed the annual meeting of the BJC's Religious Liberty Council during the Cooperative Baptist Fellowship annual meeting in Grapevine, Texas. Johnson, pastor of Trinity Baptist Church in San Antonio, said proponents of a creeping "uncivil religion" are trying to politicize churches and sanctify politicians—but such tactics are at odds with the principles of Christ's kingdom.

"The goal of uncivil religion is not to recognize God in our civil life but to represent God," Johnson said. "God has been kidnapped, co-opted for political ambitions. Houses of worship have been turned into precincts of partisanship, and the goal of uncivil religion is for government to make converts, not citizens."

Johnson pointed to a news article from earlier in the week in which a coalition of conservative Christian activists—including former Alabama Chief Justice Roy Moore—announced plans to try to get 100 new displays of the Ten Commandments posted in government buildings across the country. The campaign is in response to a recent Supreme Court decision, which ruled that some such displays violate the First Amendment's religious liberty provisions.

The Rev. Charles Johnson said proponents of a creeping "uncivil religion" are trying to politicize churches and sanctify politicians.

"We are all for the display of the Ten Commandments—far more displays and postings of God's law than the misdirected mind of an Alabama judge can possibly conceive," Johnson said. "We just want them put where God says to put them—on human hearts that cannot be corrupted by powers and principalities, not on the courthouse lawns."

Johnson also criticized those who support President Bush's so-called "faith-based initiative" of providing government funds directly to churches and other houses of worship to perform social services. He compared churches' decision to take the money to Jesus' temptation while he wandered in the wilderness.

"The devil offered Jesus a voucher system, and he didn't take it. If Jesus had wanted us to build his kingdom with the government's support, he would have taken the devil's option," Johnson said. "Jesus knew that you can't take the blessings of God and the buy-out of government at the same time."

While the news about religious liberty may seem discouraging, Johnson said, he sensed "great power" in the room waiting to storm the gates of hell with a gospel of freedom.

"The gates of hell are shaking because of you, you powerful men and women," he told the luncheon crowd of about 500. "God has claimed you to build his kingdom of love, and no high priests and false prophets of demagoguery can deter you from that."

In other business, Religious Liberty Council members—any individuals who contribute to the Baptist Joint Committee—approved minor alterations to the group's constitution and bylaws and elected officers.

RLC members re-elected Reginald McDonough of Tennessee and Sharon Felton of Texas as co-chairs. They elected Henry Green, pastor of Heritage Baptist Church in Annapolis, Md., as secretary.

They also elected three new representatives from the RLC to the Baptist Joint Committee board and re-elected two more. Bob Stephenson, a member of NorthHaven Baptist Church in Norman, Okla.; and Robert Beckerle, a member of First Baptist Church in Mobile, Ala., were elected to three-year terms. Barbara Baugh of Texas and Reba Sloan Cobb of Kentucky were re-elected to three-year terms. Additionally, Johnny Heflin, a member of Second Baptist Church in Little Rock, was elected to fill the remaining two years of a term.

—Robert Marus, ABP

Supreme Court issues split decision on Ten Commandments cases

In a split decision on a divisive church-state issue, the U.S. Supreme Court declared June 27 that displays of the Ten Commandments in Kentucky courthouses are unconstitutional, while a monument carved with the biblical laws outside the Texas Capitol passes constitutional muster.

Justice David Souter, writing for a 5-4 majority in the Kentucky case, found "no legitimizing secular purpose" for the courthouse displays. At the same time, Chief Justice William Rehnquist, also writing for a 5-4 majority in the Texas case, said the capitol monument is "far more passive" than the commandments on schoolhouse walls that were struck down by the high court in 1980.

Taken together, the decisions indicate the justices' determination that there are instances—taken on a case-by-base basis—where the biblical laws may be placed in a government context.

Brent Walker spoke to reporters outside the Supreme Court, arguing that government should remain neutral toward religion—neither advancing or inhibiting it.

In their separate opinions, Souter and Rehnquist both pointed out the frieze in their courtroom that depicts lawgivers, including Moses holding the Ten Commandments.

"Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause," Rehnquist wrote.

The closely watched cases ended the high court's term with "the perfect compromise," said Michael Barkun, professor of political science at Syracuse University's Maxwell School.

"Context was essential," Barkun said in an interview. "It's not simply the text here, but what does the text mean in a particular setting. Clearly, the text has a quite different significance inside a courtroom—in the presence of the judges, litigants and attorneys—than it might on the lawn."

After legal challenges were filed against the Kentucky displays, officials who had installed them in the courthouses added other documents, such as the Declaration of Independence, to bolster their claim that these were not religious displays but rather an affirmation of the documents' role in shaping national history.

Souter, however, agreed with lower courts that the purpose of the displays was religious, not educational. In a concurring opinion, Justice Sandra Day O'Connor said the courthouse displays sent "an unmistakable message of endorsement to the reasonable observer."

Even if some agree with that endorsement, she said, that's not how the Constitution works.

"It is true that many Americans find the Commandments in accord with their personal beliefs," she said. "But we do not count heads before enforcing the First Amendment."

In the Texas case, the high court considered the appropriateness of a 6-foot granite monument placed outside the state Capitol in 1961 that declares "I am the Lord Thy God" in large letters. The monument is placed alongside other markers to Texas history as part of a 22-acre campus.

In that case, Rehnquist ruled that the monument could be seen as "passive" in part because the man who challenged the monument, Thomas Van Orden, waited six years to file suit after he first encountered it. But in a dissenting opinion, Justice John Paul Stevens wrote that it is incorrect to view the Texas Capitol monument as a "passive acknowledgment of religion."

"This nation's resolute commitment to neutrality with respect to religion is flatly inconsistent with the (Supreme Court) plurality's wholehearted validation of an official state endorsement of the message that there is one, and only one, God," he wrote.

—RNS

Bush offers conservative but popular judge to replace O'Connor on Supreme Court

Following Justice Sandra Day O'Connor's resignation from the Supreme Court on July 1, President Bush nominated federal appellate judge John Roberts to replace her.

Roberts, 50, has been a member of the United States Court of Appeals for the District of Columbia Circuit since 2003. Previously, he served in private law practice in Washington, as well as stints in the administrations of Bush's father and President Ronald Reagan.

Introducing Roberts to the nation in a prime time address from the White House on July 19, President Bush noted the gravity of the moment. "One of the most consequential decisions a president makes is his appointment of a justice to the Supreme Court," he said. "When a president chooses a justice, he's placing in human hands the authority and majesty of the law. The decisions of the Supreme Court affect the life of every American."

Roberts' nomination now moves to the Senate. Bush has said his goal is to have the new justice in place by the time the Supreme Court begins its 2005-2006 term on Oct. 3.

While Roberts is considered a conservative, he is well-known and well-liked in Washington circles, including among Democrats. He developed a strong reputation as a private attorney and in the Reagan and Bush administrations as a brilliant litigator.

Chip Lupu, a church-state expert and professor at George Washington University Law School, said his research assistants had not yet found any cases on which Roberts had ruled as a judge that involved religious liberty issues. Therefore, he said, it's nearly impossible to tell if Roberts would rule as a judge in accordance with the views reflected in his previous work as a government attorney.

Roberts was born in New York and raised in Indiana. He is a graduate of Harvard University and Harvard Law School. He and his wife, Jane, have two young children and reside in Bethesda, Md., just outside Washington.

—ABP

REFLECTIONS

J. Brent Walker
Executive Director

Justice O'Connor leaves a legacy of religious protection

The retirement of Justice Sandra Day O'Connor leaves a vacancy on the Supreme Court that could tip the balance of the Court's church-state jurisprudence.

As with other issues, Justice O'Connor was often the swing vote on cases calling for the interpretation of First Amendment's religion clauses. Over the past 24 years, she has exhibited a profound understanding of the importance of religious liberty and the necessity for keeping government out of religion. She was bent on upholding both no establishment and free exercise values and committed to ensuring robust religious speech in the public square. She typically rendered thoughtful, centrist opinions that were closely tailored to the facts of the case. In short, she was a very good justice.

I sometimes disagreed with the results of her decisions. For example, although she had written that "any use of public funds to promote religious doctrines violates the Establishment Clause," (*Bowen* 1988) she upheld the constitutionality of a voucher program that included parochial schools. (*Zelman* 2002) Moreover, her refusal to condemn the government's building of a logging road through a sacred burial site—thereby having, even in her words, "devastating effects on traditional Indian religious practice"—was off base. (*Lyng* 1988)

But most of the time she was right. Concerning religious expression, she penned the now-classic formulation: "[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." (*Mergens* 1990) Accordingly, she upheld the constitutionality of the Equal Access Act recognizing the right of public school students to organize and attend voluntary Bible clubs.

With regard to the free exercise of religion, she railed against the judicial activism that resulted in the elimination of any meaningful free exercise protection in the Native American peyote case. Quoting Justice Robert Jackson, she reminded us in that case that "[t]he very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities ... and to establish them as legal principles to be applied by the courts. One's right to ... freedom of worship ... and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." She concluded that the traditional test, requiring government to demonstrate a compelling interest before burdening religious practice, best protects religious liberty in our pluralistic society. (*Smith* 1990)

Her concurring opinion in the recent Kentucky Ten Commandments case is as fine a statement of the importance of religious liberty and church-state separation as I have seen from the Court. In three and a half pages she captured the pith of both our history and constitutional landscape as she condemned governmental endorsement of a religion. Her full opinion can be read on the BJC Web site. Here is a sampling of her words:

- "At a time when we see around the world the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish."
- "Those who would renegotiate the boundaries between church and state must ... answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly?"
- "Voluntary religious belief and expression may be as threatened when government takes the mantle of religion upon itself as when government directly interferes with private religious practices."
- "It is true that the Framers lived at a time when our national religious diversity was neither as robust nor as well recognized as it is now. ... But they did know that line-drawing between religions is an enterprise that, once began, has no logical stopping point. ... The Religion Clauses ... protect adherents of all religions, as well as those who believe in no religion at all."

The imminent debate about Justice O'Connor's successor will be as much about the continuation of religious liberty as we know it in this country as any other issue the Court will address. I pray the President and the Senate get it right.

[Justice Sandra Day O'Connor] has exhibited a profound understanding of the importance of religious liberty and the necessity for keeping government out of religion.

Dunns donate $100,000 to endow Moyers Scholar program

A family relationship fostered under extraordinary circumstances more than 50 years ago has led two stalwarts of religious liberty, James and Marilyn Dunn, to establish a scholar program in honor of their friends, Bill and Judith Moyers.

Beginning in the spring of 2006, graduate students at Wake Forest University Divinity School in Winston-Salem, N.C., may apply for the Moyers Scholar program, which entitles one recipient per year to a semester internship at the Baptist Joint Committee for Religious Liberty in Washington, D.C. The BJC is a 70-year-old organization whose mission is to defend and extend religious liberty for all.

The Dunns donated $100,000 to the endowment fund, which will be managed by the divinity school at Wake Forest University with the proceeds going to the scholar program at the BJC.

"The name 'Moyers' has become a part of speech for all aware Americans," James Dunn said. "To suggest that someone is a 'Moyers' means that he or she is informed on theology, infused with integrity, and in speaking truth to power, fortified with courage."

In 1958, while standing in a hospital waiting room after having just learned that his fiancée, Marilyn, had survived a car accident where her step-sister was killed, James Dunn was approached by Ruby Moyers.

Wade Stokes, Director of Development for Wake Forest Divinity School, and Brent Walker accept the gift of James and Marilyn Dunn at the RLC luncheon in Grapevine, Texas.

"The lady said, 'You're staying at my house tonight,'" James Dunn recalled. In fact, Dunn stayed at the Moyers' house two or three nights while visiting Marilyn in the hospital in Marshall, Texas, which was three hours from Southwestern Baptist Theological Seminary in Fort Worth, where he was in school.

At the time, Ruby's son, Bill Moyers, was a fellow student at Southwestern. Thus, a friendship with Moyers that had begun a few years earlier was solidified that day and has now lasted more than 50 years.

James Dunn, who served as executive director of the BJC from 1980-1999, is the president of the organization's endowment and a resident professor of Christianity and public policy at Wake Forest Divinity School. Dunn, a recipient of eight honorary degrees, earned a bachelor of arts degree from Texas Wesleyan College and bachelor of divinity and doctor of theology degrees from Southwestern Baptist Theological Seminary.

Marilyn Dunn is the daughter of Edwin and Polly McNeely, both longtime professors at Southwestern. She is a lyric soprano who participates extensively in various musical events in Winston-Salem and throughout the region.

In his long career in broadcast journalism, Bill Moyers has won more than 30 Emmys, two prestigious Golden Baton awards and nine Peabody awards.

Moyers served as a founding organizer of the Peace Corps and was press secretary for President Lyndon Johnson before becoming the publisher of *Newsday* in 1967. He served as a reporter and anchor for public television before moving to CBS, where he was senior news analyst for the CBS Evening News.

Moyers earned a bachelor's degree in journalism from the University of Texas in 1956 and a bachelor of divinity degree from Southwestern.

Bill and Judith Moyers currently collaborate with Public Affairs Television Inc., an independent production company founded by Bill and headed by Judith. Before their retirement in 2004, Judith Moyers was executive editor and Bill Moyers was managing editor and anchor of *Now with Bill Moyers*.

Judith Moyers has been recognized for her work as an advocate for children by groups such as the Girl Scouts of America and the National Council of Churches. She has served as a United States Commissioner to UNESCO, a member of the White House Commission on Children and member of the National Governors' Association Task Force on Education and Economic Development.

Born in Dallas, she is a graduate of the University of Texas, earning a bachelor of science degree.

Bill Leonard, dean of Wake Forest Divinity School, said the Moyers Scholar program "will forge bonds with the Baptist Joint Committee, help us recruit students interested in pursuing church-state studies and honor two great Americans.

"It is a grand gift from two people who have claimed our hearts and our consciences across the years," Leonard said.

Brent Walker, James Dunn's successor as executive director of the Baptist Joint Committee, said: "The BJC anticipates a lasting partnership with Wake Forest and looks forward to welcoming our first Moyers Scholar. This gift memorializes an already pervasive Dunn legacy and honors the Moyers' support of the BJC at the same time."

Memorial Gifts

In memory of Sara Rutherford
Charlotte Beltz

In memory of Rudy Hall
Adrian and Mary Ann Ashley

In honor of James M. and Marilyn Dunn
Grover and Peggy Mims

In memory of Henlee Barnett
Larry and Carolyn Dipboye

In memory of the Rev. John Tubbs
Mary and F. Lawson Pankey

From: Bill Moyers

Thank You

On July 2 at the American Baptist Churches Biennial in Denver, Colo., veteran reporter and ordained Baptist minister Bill Moyers was given the Lifetime Achievement Award. Accepting the award on his behalf was family friend, James M. Dunn. Dunn read a portion of Moyers' acceptance speech, which contained reflections on freedom of conscience and church-state separation.

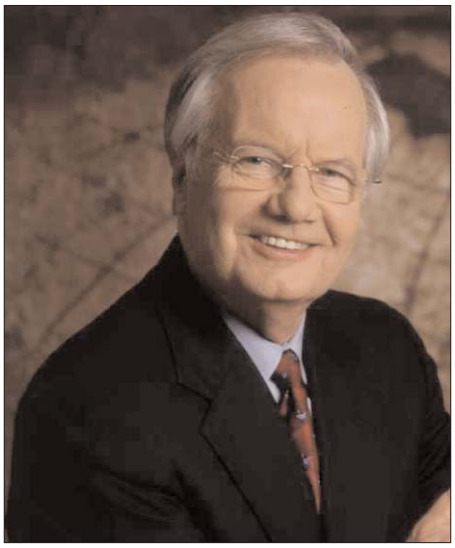


Photo by Robin Holland

I do not deserve this award. On the other hand, I have arthritis and I don't deserve that, either. So thank you from the depth of a grateful heart.

I wish that I could have made it. I would like to be with you in person. There is no one I would rather accept this award for me than my soul-brother James Dunn. Actually, he and Howard Moody truly deserve this honor.

There could not be a more timely moment for you to be proclaiming once again freedom of conscience as the well-spring of our faith and our freedoms. The militant rhetoric of holy war echoes around the globe and, sadly, from the precincts and pews of our own country.

Who among us does not wince at the Republican congressman who said that "Democrats cannot help but demonize Christians."

Or Pat Robertson speaking of liberal America doing to evangelical Christians "what Nazi Germany did to the Jews," and of non-Christians as "termites destroying institutions that have been built by Christians."

Who does not remember Lieutenant General William G. "Jerry" Boykin, deputy under-secretary of defense in 2003, declaring that George Bush had been elevated to the presidency by a "miracle" and who said, speaking of his encounter with a Somali warlord, "that I knew my God was bigger than his. I knew that my God was a real God and his was an idol."

Ten years ago, when then Rep. Charles Schumer of New York held a special hearing on violence and harassment by militia groups, his office was deluged with hate calls and faxes, many stamped with the hot fury of religious anger. One message warned him: "You should make no mistake that you are a conceited, arrogant [expletive]. You will suffer physical pain and mental anguish before we transform you into something a bit more useful ... a lamp shade or wallets or perhaps soap."

There could not be a more timely moment for you to be proclaiming once again freedom of conscience as the well-spring of our faith and our freedoms.

Ten years ago Arlen Specter, the moderate Republican Senator from Pennsylvania, ran for his party's nomination for President. His avowed purpose was to save the party of Lincoln from extremism. He described what he called "a continuum from Pat Buchanan's declaration of a 'holy war' at the Republican National Convention to Randall Terry calling for 'a wave of hatred' to 'the guy at Pat Robertson's law school who says murdering an abortion doctor is justifiable homicide to the guys who are pulling the triggers.'" When Senator Specter spoke out against the radical agenda of the religious right at the Iowa Republican convention, he was booed and jeered.

That was the time Thomas Kean, the former governor of New Jersey, tried to warn his fellow Republicans against giving control to dogmatists.

He, too, was booed—and then announced that he would not run for the Senate because it had fallen under the grip of the radical religious right.

What was anticipated a decade ago has now been realized. ➪

➪To be furious in religion, said the Quaker William Penn, "is to be furiously irreligious."

Over my long life I have traveled a long way from home, but I have never left the ground of my being. At the Central Baptist Church in Marshall, Texas, we believed in a free church in a free state.

My spiritual forbearers did not take kindly to living under theocrats that embraced religious liberty for themselves but would deny it to others. "Forced worship stinks in God's nostrils," thundered the dissenter Roger Williams as he was banished from Massachusetts for denying the authority of Puritans over his conscience. Baptists there were only a "pitiful negligible minority," but they were denounced as "the incendiaries of the commonwealth" for holding to their belief in the priesthood of believers. For refusing tribute to state religion Baptists were fined, flogged and exiled. In 1651 the Baptist Obadiah Holmes was given thirty stripes with a three-corded whip after he violated the law in taking communion with an elderly and blind Baptist in Lynn, Mass. Holmes refused the offer of friends to pay his fine so that he could be released. He refused the strong drink they said would anesthetize the pain. Sober, he endured the ordeal; sober still, he would leave us with the legacy that "it is the love of liberty that must free the soul."

Over time and at great struggle, the First Amendment has made of America "a haven for the cause of conscience." It checked what Thomas Jefferson called "the loathsome combination of church and state" which had been enforced in the old and new world alike by "weapons of wrath and blood" as human beings were tormented on the rock or in the stocks for failing to salute the prevailing orthodoxy. It put an end to the subpoena of conscience by magistrates who ordered citizens to support churches they did not attend and recite creeds that they did not believe in.

The Constitution of the new nation would take no sides in the religious free-for-all that liberty would make possible and human nature would make inevitable. It would neither inculcate religion nor inoculate against it. For my Baptist ancestors, this delicate balance between faith and freedom encourages neither atheism nor animosity toward religion. We learned that Americans can be loyal to the Constitution without being hostile to God.

I confess that I do not understand the new breed of our co-religionists who invoke the separation of church and state to protect themselves against encroachment from others but denounce it when it protects others against encroachment from them; who use it to shelter their own revenues and assets from taxation but insist that taxes paid by others support private sectarian instruction in pervasively religious schools; who loath any government intrusion into their sphere but are laboring mightily to change federal tax laws so that churches may intrude upon government; who stand foursquare behind the First Amendment when they exercise their own right to criticize others—sometimes with a vengeance and often with vitriol, as when Jerry Falwell circulated videos implicating President Clinton in murder; but who when they are challenged or criticized, whine and complain that they are being attacked as "people of faith."

Make no mistake about it. The language of religion has been placed at the service of a partisan agenda. God is being invoked to undermine safeguards for public health and the environment, to demonize political opponents, to censor textbooks, to ostracize "the other," to end public funding for the arts, to cut taxes on the rich, to misinform and mislead voters.

The fact is: Jesus has been hijacked. The very Jesus who stood in his hometown and proclaimed, "The Lord has anointed me to preach the good news to the poor." The very Jesus who told 5,000 hungry people that all people—not just those in the box seats—would be fed. The very Jesus who challenged the religious orthodoxy of the day by feeding the hungry on the Sabbath, who offered kindness to the prostitute and hospitality to the outcast, who raised the status of women, and who treated even the despised tax collector as a citizen of the Kingdom. The indignant Jesus who drove the money changers from the temple has been hijacked and turned from a friend of the dispossessed into a guardian of privilege, a militarist, and a hedonist, sent prowling the halls of Congress like a Gucci-shod lobbyist, seeking tax breaks and loopholes for the powerful, costly new weapon systems, and punitive public policies against people without power or status.

God is neither liberal nor conservative, Republican nor Democrat. To see whose side God is on, just go to the Bible.

The struggle for a just world goes on. It is not a partisan affair. God is neither liberal nor conservative, Republican nor Democrat. To see whose side God is on, just go to the Bible. It is the widow and the orphan, the stranger and the poor who are blessed in the eyes of the Lord; it is kindness and mercy that prove the power of faith and justice that measures the worth of the state. Kings are held accountable for how the poor fare under their reign. Prophets speak to the gap between rich and poor as a reason for God's judgment. Poverty and justice are religious issues, and Jesus moves among the disinherited.

This is the Jesus who challenges the complacency of all political parties. He drove the money changers from the temple of Jerusalem; I believe today he would drive them from the temples of democracy.

It is this Jesus you honor by your faithfulness to the greatest of all Baptist principles—our belief that we are most likely to hear God's eternal call to love and justice and redemption in the still small voice of the soul.

Thank you for that fidelity, for the work you do and the witness you render—and for the recognition that you have bestowed on me.

GUEST VIEW

Ken Massey
Senior Pastor
First Baptist Church
Greensboro, N.C.

Our courts cannot exclude sacred texts without simultaneously endorsing one religion

Church-state battles have been heating up, and now a local skirmish has erupted in our fair city of Greensboro, N.C. Some Muslims want to donate copies of the Quran to our courts so they can place their hands on their very own holy Scripture when they are sworn in as witnesses. As I've been turning this over in my own mind, I confess that I don't know much ... but I suspect a lot.

I suspect, for instance, that our current statute about using "holy Scripture" can be interpreted broadly to include all sacred texts. The Bible was certainly the Scripture in mind when the law was written, but it can also be said that muzzle-loaders were the "arms" in mind when the Second Amendment was adopted. Those empowered to broaden the interpretation of this courtroom statute should do so without the agitation of litigation.

I suspect that giving preference to the Bible or excluding other sacred texts in this courtroom ceremony would be ruled unconstitutional if considered by the Supreme Court (no matter who is confirmed to fill the vacancy). Government can't endorse one religion over others, and the Bible is clearly the sacred text of one specific religion and not religion in general. Our courts cannot exclude other holy texts without simultaneously endorsing one religion.

I suspect that having courts accept donated Scripture is not an acceptable solution. Courts should not become repositories for all the sacred texts of our citizens. On the other hand, I don't see why witnesses cannot bring their own sacred text for swearing if this would promote their own truth-telling. Witnesses already have the option of affirming without a Bible. Doesn't the First Amendment grant religious freedom and responsibility to citizens rather than the state? Allowing witnesses to bring their own sacred texts frees the court from making decisions that are expressly religious.

I also suspect that "swearing on bricks" is a red herring. I doubt that someone standing in the presence of a judge would choose to swear on the latest edition of *Sports Illustrated* or on a copy of *Mein Kampf*. If I were on a jury, such a choice would tell me something important about the witness. A court official could ask a witness who brings her own Scripture: Does your sacred text instruct you to speak the truth? If the answer is "yes," the witness could place her hand on that text and swear to tell the truth, the whole truth and nothing but the truth.

I suspect that the point of swearing-in rituals is not to affirm the truth of the sacred text used in the ceremony but to compel the truth-telling of the witness. If truth-telling is the goal, let the swearing ceremony be true. It would not be true for me to swear upon the Quran or for a Muslim to swear upon the Gospels. A hypocritical oath cannot promote honesty or symbolize truth. Any swearing-in process that falls short of the truth, the whole truth, and nothing but the truth has no place in our justice system.

I suspect that those who oppose the use of other sacred texts in the courtroom are forgetting something about their own freedom. The same Constitution that limits the role of government in religion protects our individual and congregational freedom to accept or reject any sacred text of our choosing. This is the freedom denied to, but desired by, millions. We should stop whining about the limits of civil religion and celebrate our unique religious liberty!

Any swearing-in process that falls short of the truth, the whole truth, and nothing but the truth has no place in our justice system.

Lastly, I suspect that if this issue is decided through litigation, the final ruling will exclude the use of any religious texts in our courts. Such a step may be perceived as a tragic and unnecessary exclusion of free and appropriate religious expression in public life.

The BJC invites you to submit a "Guest View" for possible publication in Report from the Capital. *For more information, contact us at bjc@BJConline.org.*

Federal Strings Attached to Faith-Based Grants

Let the acceptor beware! With the acceptance of federal grant money through the Faith-based Initiative, churches and other religious organizations enter a quagmire of government regulation. Former government attorney J. Kent Holland, Jr., Esq., outlines some of the legal implications for accepting a federal grant based on his personal experience as a grant appeals board member.

By J. Kent Holland, Jr., Esq.

With the acceptance of federal grant funding comes an obligation to meet the government's strict rules regarding grant management and financial principles. As a Christian and an attorney with years of experience in federal grants law, including several years as a Standing Member (quasi-judge) on the former Environmental Protection Agency (EPA) grant appeals board, I am gravely concerned that with federal grants, faith-based grantees will receive more harm than good. I wrote many appeal decisions holding that EPA grantees (counties, municipalities and utility districts) must return their funding to the EPA because they lacked written documentation to prove they properly expended the funds. Legal action was taken against grantees that refused to pay the funds back to the agency. If this can happen to large cities, how much more common will it be for small charitable organizations that lack experience with the requirements?

An organization that signs a grant agreement accepts government oversight of their program, including reviews and audits to determine whether the government's rules for running grant programs have been satisfied. One such rule is for an organization that performs both social services and religious activities, which must be separated from each other either in time or location.

When audited, a grantee must present evidence, including contemporaneous written documentation, to prove it spent the federal funds on costs that the government agrees were "allocable" (necessary) to the program and that were reasonable and otherwise allowable under the federal cost principles for grants.

Government Recovery of Disallowed Costs

Disallowance of costs could result for any number of reasons, such as the grantee's failure to expend the funds on allocable costs for the specific grant purpose. An example of misspent funds would be for items or costs that are not necessary for the grant program. Even something that is necessary for the grant program, however, may be disallowed if it is found to be an unreasonable cost. Buying the most expensive, high-end refrigerator or microwave oven for a child care center might be questioned—especially if it is purchased without competition and price comparisons. Compensation paid to executives or employees that is excessive in comparison to what prudent persons would have paid may likewise be disallowed as an unreasonable cost. Some cost items are unallowable for federal grant funding no matter how reasonable they may appear. Lobbying efforts, for example, cannot be paid for with grant funds.

The burden of proof to show that the money was spent properly falls on the grantee. If the grantee cannot present adequate written documentation, the federal agency is within its rights to presume that the funds were misspent. The federal agency is not required to prove any wrongdoing on the part of the grantee. Instead, the grantee must prove that it did everything in strict accordance with all the federal program regulations and cost principles.

As explained by the Department of Health and Human Services (HHS) Grants Administration Manual (Chapter 1-105-60), "[I]f a determination is made that a cost is unallowable, the Action and Approving Officials do not have the authority to 'waive' (forgive) collection of the disallowance. These disallowances constitute claims by the Government, and may be waived or reduced only under the limited conditions prescribed in the Federal Claims Collection Act." This means that the government will take action to recoup money from the grantee. In one case involving a grant to a religious organization, the HHS Grant Appeals Board directed the grantee to sell real estate that had been purchased under the grant for use as a child development center. *Oakwood Child Development Center, Inc.* (DAB No. 1092)

What Are the Rules?

The federal regulations for agencies regarding faith-based entities state that grantees may not engage in inherently religious instruction or proselytization as part of the programs or services funded with grant money. To the extent such activities are conducted by an organization, they must be offered separately in time or location from the federally funded programs or services, and participation must be voluntary. All eligible activities under an HHS grant, for example, must be carried out "in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of Department-funded activities." 45 CFR 87.1 (c) (e) and (f)

The consequences of failing to document that every dollar is spent consistent with federal requirements could be devastating.

All grant recipients are required to maintain financial management systems that provide "accurate, current and complete disclosure of the financial results of each HHS-sponsored project or program in accordance with the reporting requirements" of the HHS regulations. This includes maintaining "written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the grant" and "accounting records, including cost accounting records, that are supported by source documentation." 45 CFR 74.21 (b) Nonprofit grantees are also required to meet all the federal cost principles set forth in Office of Management and Budget Circular A-122.

A grantee may feel that because it accomplished its program objectives the government should be kind, patient and understanding when it comes to auditing the grant. This is not the case. In fact, the HHS Grants Administration Manual specifically admonishes the HHS grant officials as follows: "In determining whether a cost is allowable or unallowable, factors such as the good faith of the organization, its successful accomplishment of program objectives or its ignorance of the provisions of the awards, although important for other purposes, shall not be used as a basis for allowing costs which are unallowable under the provisions of the awards. The organization's ability to make restitution also has no bearing on the allowability of a cost. ..."

A Judge's Perspective on the Grantee's Burden of Proof

When EPA grantees appealed the adverse audit decisions, it was my responsibility as a member of the grant appeals board to determine whether the grantee had met its burden of proving that the questioned costs were "allowable" and properly expended for the allocable grant purposes. This had to be accomplished with written documentation showing that the grantee satisfied the EPA program regulations and the relevant cost principles. In most cases that came before me for review and decision, I found in favor of the EPA against the grantee. This was so even though virtually every grantee had accomplished the basic grant purpose of building a project to improve water quality.

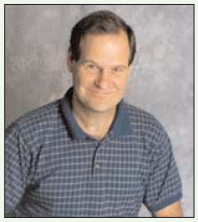
There were cases that I decided against a grantee for the sole reason that the grantee did not maintain proper paper documentation to prove how the funds were expended and that they were used for allocable and allowable costs. It did not matter that I believed the project worked great and accomplished its intended purpose. It did not matter that I personally believed the mayor and city personnel acted with integrity and honesty in managing their grant. It did not matter that I thought the EPA and its auditors were being unduly demanding and perhaps interpreting and applying the regulations in an overly strict manner.

It is impossible to overemphasize the extent of the burden on the grantee for showing compliance with government rules. To avoid an adverse decision, the grantee must prove the federal agency acted arbitrarily and capriciously in disallowing the questioned costs. On review to an appeals board, the only question is whether the grantor agency decision was reasonable, not whether it was the only decision that could have been reached or even the best decision. This same standard applies if a grantee files suit in court against the federal grantor agency. The court will only review the administrative record to determine whether the agency acted within its legal discretion. There will be no jury trial and no witnesses testifying.

Conclusion

When an organization accepts federal grant funds, it must know the regulatory requirements and be prepared to prove with written documentation that religious services were kept strictly apart from the social services funded under the grant. They also will need to be able to prove where, how and why the funds were spent and that they were spent only on necessary, reasonable and allowable costs. This may not be an easy task, but it is too important not to do it right. The consequences of failing to document that every dollar is spent consistent with federal requirements could be devastating. In the event the grantor agency demands to recoup its grant funds, for example, and the grantee lacks liquid funds to make payment, it is conceivable that the government could obtain a judgment and then sell-off physical property (perhaps church buildings) belonging to the grantee organization in order to recover the debt.

Faith-based organizations are well advised to carefully weigh the requirements and the risks before accepting federal grant funds!



Kent Holland is an attorney with more than 25 years of experience in federal grants law. He is completing a Master of Divinity degree at the John Leland Center for Theological Studies in Arlington, Va.

K. Hollyn Hollman
General Counsel

Making sense of the Ten Commandments cases

By now, much has been written about the Supreme Court's two decisions on government displays of the Ten Commandments. The decisions are indeed long (137 pages total, plus pictures) and unwieldy (10 different opinions, with shifting alliances). They failed to produce a rule that will eliminate litigation in similar disputes. But perhaps that was too much to expect.

The split decisions will lead some to decry them as useless. Another view, however, is that the opinions simply reflect the practical difficulty of protecting against government promotion of religion without relegating all religion to the private realm. For now, the answer to whether it is constitutional to display the Ten Commandments on government property lies between the decisions banning the Kentucky courthouse displays and allowing the monument on the Texas Capitol grounds. A closer look reveals what we won and what we lost.

[T]he opinions simply reflect the practical difficulty of protecting against government promotion of religion without relegating all religion to the private realm.

First, the win. In the Kentucky case, *McCreary County v. ACLU*, Justice David Souter, writing for a 5-4 majority, reaffirmed the principle that the "First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion." In this case, the principle of neutrality, which was explicitly and disturbingly abandoned by the dissent, could not square with the obvious government attempts to advance religion.

McCreary relies on the common (though rarely determinative) requirement that laws have a secular purpose, a requirement that serves to protect against an establishment violation. Under the facts of *McCreary*—where the county government had recently posted the Ten Commandments, passed resolutions showing the religious purpose for doing so, then attempted unconvincingly to disguise that purpose in response to litigation—the secular purpose was hard to find. The evidence of a "predominantly religious" purpose was overwhelming.

This victory was tempered by the decision's strong focus on "purpose," which will inevitably lead to some attempts to obscure religious purposes and thereby skirt the ruling. Where monuments have been longstanding, with little explicit religious history, they are likely to withstand challenge—which leads to what we lost.

In the Texas case, *Van Orden v. Perry*, Justice Stephen Breyer, who had voted with the majority in *McCreary*, switched sides, joining in the judgment that upheld the Texas monument. In his concurring opinion, which is the controlling rule of the case, Justice Breyer acknowledged the various goals of the Establishment Clause and the lack of a singular rule to reach them. He noted that there will inevitably be difficult borderline cases—like *Van Orden*—that require the exercise of legal judgment.

In such a case, legal judgment "must reflect and remain faithful to the underlying purposes of the Clauses, and it must take account of context and consequences measured in light of those purposes." Justice Breyer's flexible approach acknowledges that a slavish adherence to a strict standard in all cases would also "tend to promote the kind of social conflict the Establishment Clause seeks to avoid."

In Texas, the monument at issue had a 40-year history on the state capitol grounds. Recognizing that the Ten Commandments have historical and moral significance, in addition to their obvious religious import, Justice Breyer found that "the context suggests that the state intended the display's moral message—an illustrative message reflecting the historical 'ideals' of Texans—to predominate." The physical setting of the monument—in a large park containing other historical displays—supported this interpretation. The fact that it had long stood unchallenged sealed his conclusion.

Breyer's opinion distinguishes the apparent motives in *Van Orden* from those in *McCreary*, and warns that a "more contemporary state effort to focus attention upon a religious text is certainly likely to prove divisive in a way that this longstanding, pre-existing monument has not." It also notes that removal of the Texas monument (and, by implication, many others) may evince hostility toward religion and stoke the fires of the culture wars. While it grandfathers certain Ten Commandments displays on government property, *Van Orden* cannot be said to open the door to new ones.

Government-sponsored religious monuments are always constitutionally suspect and theologically questionable. Any rule that puts government in the position of making religious decisions threatens the freedom of religion. Those who share the BJC perspective on religious liberty will continue to promote the Ten Commandments (and other scriptural mandates) in a way that the Bible encourages: by writing them on our hearts, as the prophet Jeremiah instructed.

Until the broader public is persuaded that religious freedom requires a rejection of government-sponsored religion, we will continue to oppose attempts to erect unconstitutional displays. As we do so, we will make the most of what we won in these decisions, reluctantly agreeing with Justice Breyer, that our defeat in *Van Orden* may have been necessary to prevent a more destructive backlash.

Conservatives plan second 'Justice Sunday' telecast

A group of religious conservatives announced July 14 they would once again host a telecast, this one aimed at building support for appointing a social conservative to replace Justice Sandra Day O'Connor.

The Family Research Council announced it will broadcast "Justice Sunday II" from Two Rivers Baptist Church in Nashville, a large Southern Baptist congregation, Aug. 14. The telecast is a follow-up to a controversial "Justice Sunday" telecast from a Southern Baptist church in Louisville, Ky., in April.

The event takes its subtitle, "God save the United States and this honorable court," from an invocation the Supreme Court's marshal pronounces every time the court sits. It is designed to highlight the issues important to social conservatives and the opportunity they have to shift the court to a solid 5-4 majority in favor of many of their positions.

The telecast will feature FRC President Tony Perkins along with a host of religious conservative leaders, such as Focus on the Family founder James Dobson, Prison Fellowship founder Charles Colson, and Zell Miller of Georgia, a former Democratic senator turned conservative activist.

—ABP

New resources help churches celebrate freedom without 'civil religion'

Three Baptist organizations are teaming up to provide churches with the tools to celebrate American freedoms "without watering down their devotion to God with civil religion."

First Freedoms Project

The First Freedoms Project—led by Associated Baptist Press, the Baptist Joint Committee for Religious Liberty and *Baptists Today* news journal—has developed resources for churches to use in worship, Sunday school and other settings to celebrate American freedoms, particularly those enshrined in the First Amendment, including religious liberty and freedom of the press.

The original resources include sermon ideas, illustrations, original hymn texts, Sunday school lessons, litanies and readings, historical vignettes and bulletin inserts. All the materials, focused on a theme of "Free to Worship, Free to Know," are available free on a CD and on the group's Web site, www.firstfreedoms.com.

Composer and performer Ken Medema of San Francisco recorded his song "I See America Through the Eyes of Love" especially for this year's celebration. It is paired with a PowerPoint multimedia presentation for use in worship.

The resources also include original hymn texts by David Burroughs, president of Passport Camps and a volunteer editor of the resources, and Daniel Day, pastor of First Baptist Church of Raleigh, N.C.—both written to support the First Freedoms theme. In addition to Sunday school lessons for youth and adults, the materials include a sermon by George Mason, pastor of Wilshire Baptist Church in Dallas, and an address by church historian Walter Shurden of Mercer University.

Mickey Shearon, a Baptist layman from Granbury, Texas, said he was "excited" to learn about the First Freedoms Project and "to know that there are other Baptists out there who feel as I do." Shearon said he is troubled that many Baptist congregations are headed toward a very "civil or nationalistic religion."

The Cooperative Baptist Fellowship sent copies of the resource CD to 1,600 Baptist congregations in early June. "The First Freedoms initiative will be a wonderful opportunity for you to respond with clarity and integrity to the fragile freedoms of our faith and our nation," Bo Prosser, CBF coordinator for congregational life, told the congregations in an accompanying letter.

—ABP

Congressman introduces 'Religious Freedom Amendment' to Constitution

Rep. Ernest Istook, R-Okla., introduced a constitutional amendment in the House of Representatives intended to reverse a recent (June 27) Supreme Court ruling that bars the display of the Ten Commandments in courthouses.

The Religious Freedom Amendment would "preserve the original balance of the First Amendment, protecting religious expression by Americans while preventing the establishment of any official religion," Istook said.

The Religious Freedom Amendment, which has 107 co-sponsors, would need the support of two-thirds of the House and Senate in order to pass as well as ratification by three-fourths of the states in order to become a part of the Constitution. Istook introduced the same amendment in 1998, when it failed to win the required two-thirds majority in the House.

The Religious Freedom Amendment "...would take away church-state safeguards that have given Americans more religious freedom than any people in history."

— Rev. Barry Lynn, on the amendment proposed by Rep. Ernest Istook, R-Okla.

The Rev. Barry W. Lynn, executive director of Americans United for the Separation of Church and State, argued that Istook's proposed amendment would in fact threaten Americans' religious liberties.

"It would allow government officials to meddle in religion, and it would take away church-state safeguards that have given Americans more religious freedom than any people in history," Lynn said.

Lynn said that public school students already are allowed to pray in school and that Istook's proposed amendment would give politicians free reign to "decorate our public buildings like churches."

—RNS

Bill would make White House faith-based office and initiative permanent

Congress is considering a bill that would make President Bush's faith-based office and initiative a permanent White House fixture.

"The Tools for Community Initiatives Act"(H.R. 1054) would make permanent the White House Office of Faith-Based and Community Initiatives and the Centers for Faith-Based and Community Initiatives in 10 federal agencies that Bush created to pursue equal treatment of faith-based groups.

The offices were created to promote government partnerships with faith-based and community organizations in providing publicly funded social services.

—RNS

REPORT from the Capital

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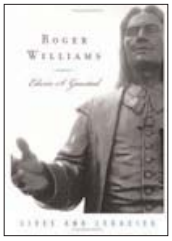
Roger Williams

By Edwin S. Gaustad, Oxford University Press, 2005, 150 pp.

Most of us know the story and proudly claim it as part of our own. Roger Williams was an early American colonist who founded Rhode Island and the First Baptist Church in America after being banished from Massachusetts by Puritan religious persecution.



Edwin S. Gaustad, an acclaimed historian and the foremost expert on Roger Williams, now gives us a brief but vivid biography which helps further our understanding of this daring pioneer of religious liberty. Gaustad, professor of history and religious studies emeritus at the University of California at Riverside, has authored several books on religion in America as well as the most acclaimed biography of Williams, *Liberty of Conscience, Roger Williams in America* (Eerdmans 1991).

The newly revised *Roger Williams* is part of the Oxford University Press Lives and Legacies series. The series aims to give a general audience some basic history, key insights and major contributions from prominent historical figures authored by serious historians. *Roger Williams* does just that. Simple enough for high school students but thoughtful enough to give any reader a deeper understanding of our Baptist forefather, *TIME Magazine* recently rated it a "timely little book" that reminds us of the "enduring foundations of American civilization."

Roger Williams is exceptional in its organization. The first chapter delivers the basic facts and tells the story of Williams' immigration to New England and eventual expulsion from Massachusetts.

The remainder of Gaustad's book is organized around the three major goals of Williams's life: promoting a better understanding and more humane treatment of Native Americans, the preservation and permanent legal standing of the colony of Rhode Island and, most notably, religious liberty and freedom of conscience for all as a call of Christianity.

The author describes the 20 years of self-sacrifice and intense conflict Williams endured before he finally obtained a charter for Rhode Island, declaring "a most flourishing civil state may stand and best be maintained … with full liberty in religious concernments."

It is in his *The Bloudy Tenent of Persecution, for Cause of Conscience: A conference between Truth and Peace*, that we observe the passion for religious liberty that Williams is remembered for to this day. Gaustad devotes two chapters to these beliefs and the final chapter to their lasting influence.

The chapter titled "A New Dispensation" describes Williams' simple yet controversial views on the nature of God's covenant with man. For Christians, Williams argued, the New Testament revealed God's plan to form covenants with individuals through Christ, not through a chosen nation.

A nice addition by the author is the inclusion of primary source documents, mostly excerpts of Williams' own letters, at the end of each chapter.

Organized by subject matter rather than chronological narrative, the later chapters repeat some of the major events of Williams' life.

Still, *Roger Williams* is a short, enjoyable read for anyone who wishes to know more than the basic story of one of our Baptist heroes.

By Stephen K. Reeves, Staff Attorney

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