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REPORT from the Capital

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Aidsand Wright-Riggins to address Religious Liberty Council luncheon at CBF General Assembly in Memphis, Tenn.

The Rev. Dr. Aidsand Wright-Riggins is executive director of National Ministries, American Baptist Churches USA.

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REPORT from the Capital

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INSIDE:

Supreme Court to consider religious monuments case during 2008-09 term

WASHINGTON — It is the Ten Commandments versus the Seven Aphorisms, and it will be coming to the Supreme Court sometime in its 2008-09 term.

The justices agreed March 31 to hear a case involving a 47-year-old monument to the Decalogue in a Utah city park. The justices will consider whether its presence in the park as the gift of a private organization gives a local sect — itself younger than the Judeo-Christian monument — the right to erect a tribute to its own religious code.

In *Pleasant Grove City v. Summum*, the Court will reconsider a lower court's decision. A panel of the 10th U.S. Circuit Court of Appeals said the sect, called Summum, has as much right to erect a monument in the park as the Fraternal Order of Eagles did in the 1960s, when it donated the Decalogue monument.

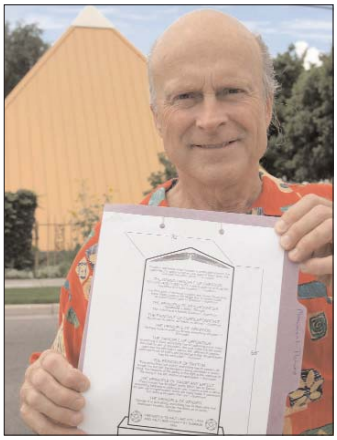
Leaders of the sect asked the city to display the monument to its "Seven Aphorisms of Summum," which the 32-year-old group says were also handed to Moses on Mount Sinai along with the Decalogue. Pleasant Grove officials had earlier adopted a procedure for private groups wishing to donate a monument or statue to the park.

City officials refused the group's request. Summum's leaders sued, and a federal district court ruled in the city's favor. But a three-judge panel of the appeals court reversed the lower court's decision, saying it was discriminatory to allow the Fraternal Order of Eagles monument but to deny Summum the same privilege.

City officials appealed for a re-hearing, but the full 10th Circuit deadlocked on the question, meaning the three-judge panel's decision stood.

The city, with the help of the American Center for Law and Justice, appealed the decision to the Supreme Court, arguing that forcing Pleasant Grove to allow the monument meant other government entities would also have to allow all sorts of monuments on public land.

"Effectively, a city cannot accept a monument posthumously honoring a war hero without also being prepared to accept a monument that lampoons that same hero. Nor may a city accept a display that positively portrays Native American culture unless it is prepared to accept another that disparages that culture," said attorneys for the city, in their brief asking the high court to review the 10th Circuit's decision.



Summum founder Corky Ra died in January at age 63. His remains are undergoing mummification in the Summum pyramid in Salt Lake City. ***RNS photo***

Unlike many other cases regarding such monuments, however, this one does not turn on the First Amendment's bans on government endorsement or suppression of religion. Instead, it is a free-speech question that animates the case.

Pleasant Grove officials contend in their brief for the case that the city has the right to discriminate between monuments. The Decalogue statue and other monuments in the park, they reason, have become government speech — even though they were donated by private entities.

But other 10th Circuit judges and attorneys for Summum said that argument is off base because the city originally considered the monuments private speech and treated them as such. Therefore, they said, the appeals panel ruled against the city on the basis of the facts of the case and its own policy allowing other private groups to erect monuments.

Pleasant Grove City v. Summum (No. 07-665) will be heard by the court after it begins its 2008-09 term in October. — ABP

Parents plead not guilty in daughter's death

OREGON CITY, Ore. — A couple who tried to heal their dying daughter with prayer walked hand in hand into a crowded courtroom March 31 and pleaded not guilty to charges of manslaughter and criminal mistreatment.

Carl Brent Worthington, 28, and Raylene Marie Worthington, 25, are the first parents prosecuted since Oregon cracked down on faith-healing deaths nearly a decade ago. If convicted, they could spend more than six years in prison.

The Worthingtons, members of Oregon City's Followers of Christ Church, barely spoke a word as Judge Kathie Steele explained the charges. In subdued voices, they answered "yes" and "yes, your honor" to acknowledge they could face prison time, then dodged television cameras as they left the courtroom.

They remain free on $250,000 bonds. A trial is set for mid-June.

Their 15-month-old daughter, Ava Worthington, died at home March 2 from bacterial bronchial pneumonia and a blood infection. Both conditions could have been treated with antibiotics, according to Dr. Christopher Young, a deputy state medical examiner.

Ava's breathing was further compromised by a benign four-inch cyst on her neck that had never been medically addressed, Young said.

The Followers of Christ, a non-denominational congregation with roots in the 19th-century Pentecostal movement, came under state scrutiny in the late 1990s after several church children died from medically treatable conditions. The deaths prompted state lawmakers to remove religious shield laws for parents who treat gravely ill children solely with prayer.

A spokeswoman for the Christian Science Church, which lobbied for Oregon's original faith-healing shield laws, acknowledged that the church has been following the Worthington case but declined to comment.

Between 1999, when the new law took effect, and the Worthington case, prosecutors found no incidents of significant medical neglect among Followers of Christ Church members.

A grand jury brought two charges: second-degree manslaughter and second-degree criminal mistreatment. The parents' "failure to provide medical care caused the death of their daughter; that's what the grand jury's charged them with," explained Greg Horner, the chief deputy district attorney.

The Worthingtons reportedly also have another young daughter.

On March 31, a pair of defense attorneys representing the Worthingtons said they were waiting to see reports and evidence in the case and would not comment on the charges.

"They're presumed innocent at this time, and we ask that no one prejudge them," said attorney John Neidig, who represents Raylene Worthington. "They have not had the time to breathe properly since this tremendous tragedy, and we hope to provide them with a little privacy and respect."

— RNS

Adams delivers third annual Shurden Lectures

Speaking of the many ways the Church is called to be God's instrument of hope and of the importance of church-state separation to protect religion's role as guardian and guarantor of human rights, one of the nation's most prominent ministers and a longstanding Baptist Joint Committee board member delivered the third annual Walter B. and Kay W. Shurden Lectures at Wake Forest University Divinity School. The Rev. Dr. Charles G. Adams, pastor of Hartford Memorial Baptist Church in Detroit, Mich., delivered three lectures in the series April 14-15. As it does each year, the BJC co-hosted the event.

Adams

In 2004, Dr. Walter B. Shurden and Dr. Kay W. Shurden of Macon, Ga., made a gift to the BJC to establish an annual lectureship on the issues of religious liberty and the separation of church and state. The inaugural lecture was held in 2006 on the campus of Mercer University.

Using Psalm 137 as the text for his first lecture, Adams focused on the role of preaching, like music, as a transformative means in society and God's use of many means to love the world

In the second presentation, "Preserve Religious Liberty," Adams said the independence of churches reminds us that the government is not the only power that exists. Freedom of religion is preserved by church-state separation and it is the basis for maintaining other freedoms. He then urged the audience to resist efforts that would try to control religion, saying, "God needs no help from government to remain God."

During the question and answer session following the lecture, Adams warned of an overemphasis on the religious statements of candidates in the presidential election, noting there is more to religion than talking. In fact, he said, where there are loud professions, there may also be real omissions of what it means to be Christian. He said he would rather candidates "run on fruits instead of faith."

The final lecture, "All Things Are Yours" was based on 1 Corinthians 3:21-23 and served as the centerpiece sermon during the Divinity School's regular "Worship in Wait Chapel."

— *Holly Hollman*

REFLECTIONS

J. Brent Walker
Executive Director

Personal faith may court political controversy

On April 4 — the 40th anniversary of the assassination of Dr. Martin Luther King, Jr. — three of the Baptist Joint Committee's affiliated bodies (Progressive National Baptist Convention, Inc., National Baptist Convention of America, Inc., and National Missionary Baptist Convention, Inc.) released a press statement addressing the relationship between prophetic preaching and politics. The statement was prompted by the recent and, unfortunately, continuing controversy over the sermons and writings of Sen. Barack Obama's former pastor, Dr. Jeremiah Wright. But the statement also addresses the right of Sens. Hillary Clinton and John McCain to choose their own church and worship as they please without paying a political price for what their spiritual leaders, present and former, might say from the pulpit and in newsletters.

The statement aptly concludes: "Freedom of religion, freedom of worship, freedom to hear whomever a person chooses is a fundamental right of all Americans. Attempts to make a candidate's religious affiliation relevant to the candidate's fitness for office should be viewed with skepticism."

The National Baptists' statement commemorating King's assassination is helpful for at least two reasons. First, it highlights the close connection between religious liberty and civil rights. Our "first freedom," religious liberty, is the source of all rights. Both religious liberty and civil rights are grounded in notions of fair dealing and respect for others — fundamental precepts in Baptist life and American democracy. King was not only a prophetic voice for civil rights, he — as a Baptist — understood the importance of religious liberty and church-state separation.

Moreover, the statement also helps us think more clearly about a candidate's religion and how that faith commitment affects one's fitness for the highest office in the land. The statement rightly points out that Article VI of the Constitution bans any religious test for public office. Although that provision addresses only legal disabilities based on religion and in the voting booth, citizens can and do take religion into account, we should make every effort to live up to the spirit as well as the letter of Article VI.

Learning something about candidates' faith helps us to get to know who they are, understand what makes them tick, and examine what their moral code is like. A free and fluid discussion in the public square about a candidate's religious convictions is not out of bounds and can enrich the public discourse during election season.

But it can also serve as a cudgel.

It is vitally important that the discussion about a candidate's religion goes somewhere. It is not at all helpful — and is often hurtful — to have a theological discussion isolated from policy and governance. There must always be an inquiry launched and close connection made about how candidate's religious views impact his or her public policy position or leadership style. Otherwise an examination of a candidate's religion is little more than spiritual voyeurism and violates the spirit if not the letter of the clause banning religious tests.

So, the question of where one worships and whose preaching someone has sat under in the past are not irrelevant. However, I think the firestorm created by the statements in sermons and articles by Obama's former pastor has gone way too far.

In my lifetime I have been a member of seven Baptist churches and sat under the preaching of 12 pastors. Every one of them has said in sermons and written in articles things I disagreed with — sometime vociferously. If a preacher is doing his or her job — preaching prophetically — their words can be controversial and sometimes seem outrageous. That does not mean that I agree with or embrace everything that I heard; but it also does not mean I leave the church every time something controversial is spoken from the pulpit.

The same is true with Sen. Obama. He has stated clearly his disagreement with the sometimes inflammatory remarks that Wright made. However, to make him suffer a political penalty for refusing to repudiate Wright himself — one who served as spiritual leader for years, married the senator and his wife and baptized their children — is to expect too much. And the same goes for present and former pastors of Sens. Clinton and McCain.

Our National Baptist friends said it right. While not unimportant, one's religious beliefs should not qualify or disqualify a candidate for office. All the more when we are tempted to tell a candidate where not to go to church.

Florida voters to decide whether to alter church-state separation

By Claire Hughes

A pair of proposed changes to Florida's Constitution promise to open the door to increased state public financing of religious service providers and, in particular, of parochial schools.

Florida voters will decide this year whether to remove an amendment to the state's constitution known as its "no-aid provision" that currently prohibits taxpayers' money from going to religious groups, and to add new language that would prevent the state from using religion as a basis for excluding organizations from offering public programs. And a state commission will discuss whether voters should also consider a constitutional change that would expressly authorize public funding for private providers of health care, education and other services.

The proposals come two years after a Florida Supreme Court struck down a school voucher program that had been heralded by then-Gov. Jeb Bush. An intermediate level state court had relied on the no-aid provision— also known as a Blaine Amendment — in striking down the voucher program, which included religious schools. That provision prohibits public funding of religious entities. The state Supreme Court did not address whether the voucher program violated the no-aid provision and instead ruled against the Opportunity Scholarship Program as being in violation of the Florida Constitution's so-called "education provision," which requires the state to provide a "uniform ... and high quality system of free public schools."

Together, the proposed constitutional changes would invalidate both provisions that blocked the voucher program from going forward. For either proposal to ultimately become law, at least 60 percent of Florida voters must approve of them.

On March 25, the state Taxation and Budget Reform Commission voted 17-7 to put the proposed change to Florida's no-aid provision before voters. The proposal was put forth by commission member Patricia Levesque, who is also executive director of the former governor's education policy organization, the Foundation for Florida's Future, a proponent of school vouchers.

Supporters of the proposed constitutional change say it would protect the state's use of religious providers for all sorts of government-funded programs, including education, health and social services. Current programs provided by faith-based organizations with public dollars are vulnerable to lawsuit, they say, especially because the lower court ruling in the school voucher case was not overturned.

"Fundamentally, we are concerned about the existence of the discriminatory language and we believe that it should not be there," Mike McCarron, executive director of the Florida Catholic Conference, said of the state's no-aid provision. "Many government-sponsored programs have as their end a secular purpose, yet if a religious group is involved in it ... they run the risk of it being declared unconstitutional."

Opponents claim the measure is a dangerous move toward government promotion of religion. David Barkey, an attorney with the Florida chapter of the Anti-Defamation League, said he fears the proposed constitutional change will permit public dollars to finance overtly religious programs and organizations that discriminate against people who do not share their beliefs.

"I read it as constitutionally mandating a Florida faith-based initiative without any antidiscrimination or government-entanglement safeguards," Barkey said.

Howard Simon, executive director of the American Civil Liberties Union of Florida, said those who favor removing the Blaine Amendment from the Constitution often falsely argue that all religiously operated social service programs in the state face the threat of elimination by lawsuit. But he said programs like Catholic Charities, Lutheran Social Services, and Jewish Family Services are not threatened because they operate like secular nonprofits: They do not proselytize, do not discriminate in whom they serve, and do not give preference to members of their own faith when hiring.

"What is threatened (by the Blaine Amendment's existence) is a religious provider that wants to require participation in religious programs as a condition of delivering aid to the poor or the troubled. Or a religious social service program that wishes to only serve members of their parish. Or a religious social service program who wants to discriminate on who's hired," Simon said. "That is a radically different proposal than is at issue here, not the decades-and-decades-old contractual arrangements with religiously affiliated social service programs who agree by entering into the contract to serve the community on a secular basis."

The proposed change to the no-aid provision would strike the following language from the state's constitution: "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution."

That language was added to the state's Constitution in 1868, amid a national wave of anti-Catholic sentiment that fueled the addition of similar amendments in state constitutions throughout the country.

The amendments, named after a U.S. senator from Maine

who tried but failed to get similar language added to the U.S. Constitution, erect a higher wall of church-state separation than required by federal law.

In addition to removing the Blaine Amendment, the proposed change would add the following sentence to Florida's Constitution: "Individuals or entities may not be barred from participating in public programs because of their religion."

According to a Taxation and Budget Reform Commission staff analysis, the proposed changes might protect from lawsuits government programs that provide funds to religious organizations, and also result in the use of more faith-based organizations to provide government services.

J. Robert McClure III, president and chief executive of the Florida-based James Madison Institute, an advocate of limited government, provided testimony to the commission on the effect that the proposed change might have on the service market.

"We felt like the change would allow for more competition, as opposed to a government monopoly" on social services, McClure said in a telephone interview with the Roundtable on Religion and Social Welfare Policy. "When government is the only source of a service, you have greater inefficiency, lower quality service and greater cost and waste."

Florida Taxation and Budget Reform Commission Chairman Allan G. Bense also sits on the James Madison Institute's board.

If the state's Blaine Amendment remains in place, it does leave uncertain whether some current state-funded scholarships, which can be used at religious universities, are legal, said Ira C. Lupu, a law professor at George Washington University and co-director of legal research for the Roundtable on Religion and Social Welfare Policy.

And Florida's Blaine Amendment currently stops the state from funding its faith-based prison program, which now depends on volunteers, Lupu said.

It's not likely, however, that the Blaine Amendment stands in the way of continued funding for secular charitable organizations that are affiliated with religious groups, such as Catholic Charities or Jewish Family Services, Lupu said.

"I don't think those programs are really in jeopardy," he said.

Nor would its removal allow the flow of taxpayer funds to religious elementary or secondary schools, he said. The proposed amendment to the state's education provision would need to pass in order to clear the way for such funding.

The commission has yet to decide whether voters will consider that additional constitutional change. Proposed language to be considered by the commission in April would permit public financing of privately operated services, including educational services, and eliminate other constitutional limits placed on that funding, "without regard to the religious nature of any provider or participant." Two-thirds of the commission's members must approve the proposed amendment in order for it to be placed on the ballot in November.

Mark Pudlow, a spokesman for the Florida Education Association, a teachers' advocacy group, called the combination of proposed constitutional amendments "the latest attempt to blow out the public school system entirely."

Pudlow described the appointed commission members as "pro-business" and "extraordinarily right wing."

"They are trying to achieve things that they couldn't do in the legislative process," Pudlow said.

Though the proposal to be considered by the commission does not officially remove the Blaine Amendment from Florida's Constitution, it does effectively remove the barriers to funding imposed by the no-aid provision, Lupu said. But it would not accomplish everything in the amendment already slated to go to voters this fall, he said.

That amendment expressly removing the no-aid language would also eliminate some discretion otherwise afforded to states to exclude religious entities from participation in government programs, Lupu said. In the 2003 decision in *Locke v. Davey*, the U.S. Supreme Court upheld the state of Washington's right to exclude theology students from a state-financed scholarship program. The proposal to be considered, on the other hand, would leave this kind of discretion intact.

But fears that the proposed change would allow direct funding of overtly religious services are probably unfounded, Lupu said. Even if Florida's Blaine Amendment were eliminated, such funding would be prohibited by the Establishment Clause of the U.S. Constitution's First Amendment, which states "Congress shall make no law respecting an establishment of religion." Recent court interpretations of that clause state that while government funds may go directly to overtly religious organizations, the money cannot be spent on activities that are religious. So the money must serve some secular purpose and be spent only on secular activities designed to achieve that purpose.

"The proposal would end state-based restrictions on funding of religious entities — elementary and secondary schools aside — and it would reduce or eliminate state discretion to disfavor religious individuals or entities in their pursuit of state benefits," Lupu said. "But it would not in any way alter existing federal constitutional limits on the use of state funds."

Barkey, of the Anti-Defamation League, said he is nonetheless uncomfortable with removing the state's Blaine Amendment and relying on the U.S. Constitution's Establishment Clause to ensure separation of church and state in Florida.

"We don't understand why the state of Florida does not want to have a say in its relation between church and state, for one," Barkey said. "Two, as far as federal Establishment Clause jurisprudence, it's a moving target. It's changed greatly in recent years. We don't know what the standard will be in another 20 years."

The Taxation and Budget Reform Commission was created in the 1980s and charged with convening every 20 years to consider laws that effect taxation, budget and government services, according to Kathy Torian, the commission's deputy executive director. Its 25 members were appointed by the governor and legislative leaders in February 2007. They met for the first time in March 2007, and must conclude by May 4, with all proposed constitutional changes forwarded to the Secretary of State.

Claire Hughes is a correspondent for the Roundtable on Religion and Social Welfare Policy.

K. Hollyn Hollman
General Counsel

Where is the Workplace Religious Freedom Act?

Legislation known as the "Workplace Religious Freedom Act" (WRFA) has been proposed for many congressional sessions, long predating my time at the BJC. Supported by a diverse coalition of religious organizations and drawing bi-partisan leadership, such as Sens. Orrin Hatch, R-Utah, and John Kerry, D-Mass., the effort to strengthen rights of employees in the workplace has broad appeal. In addition to detailing the BJC's support for the measure in this space, our office has worked closely with the WRFA coalition, receiving various levels of attention from Congress through the years.

Though we are not there yet, it would be wrong to assume that this effort is doomed. Often legislation evolves through various drafts over years or even decades before a sufficient consensus is reached for passage. Moreover, religious freedom legislation involves taking into account the immense depth and breadth of religious needs in this country and the competing interests of others, including some of our usual allies in the civil rights community. Building a coalition and addressing concerns of dissenters takes tremendous care and effort. Negotiations in recent weeks demonstrate that such legislative efforts require a painstaking process of listening, drafting, responding, redrafting and determining what compromises can be made without giving up the bulk of what was intended in the first place.

"Despite the current absence of federal legislation, there is a growing recognition that religion should be accommodated in the workforce."

At issue is the right of employees to be accommodated in the workplace based upon religious needs. Religion has long been one of the categories protected against discrimination by our nation's federal civil rights laws, alongside race, sex and national origin. Covered employers cannot hire or fire employees because they belong to a particular faith. But what if an employee's religious beliefs and practices conflict with the employer's business operations? Do employers have an obligation to give employees time off from work to observe the Sabbath or other holy days? Must an employer make an exception to its dress code for an employee whose religion requires a particular kind of clothing? Should an employer excuse an employee from a particular assignment based upon a religious objection?

In 1972, Congress amended federal law to address these questions. It defined religious discrimination as including the failure "to reasonably accommodate an employee's religious observance unless such accommodation would impose an undue hardship on the employer's business." Congress did not define or offer examples of what constitutes an undue hardship, leaving that job to the courts.

Judicial interpretations have been uneven at best. Many rulings have severely limited the rights of employees. Beginning with a Supreme Court decision in 1977, courts have found that anything more than a minimal (de minimus) economic cost to an employer amounts to an undue hardship, often relieving the employer of the duty to accommodate the employee.

As a result, many employers today believe they can comply with the law while offering few if any accommodations to their religious employees. With the deck seemingly stacked against them, some employees do not even bother to request religious accommodation. Thus, under current law, employees understandably may choose to compromise their beliefs to avoid risking their jobs.

WRFA was proposed as a sensible response to this problem. It would put some teeth into the requirement that employers reasonably accommodate an employee's religious observances. It defines an undue hardship as one that requires significant difficulty or expense. Criteria for determining the standard include the identifiable cost of the accommodation and the size and financial resources of the employer.

In this Congress, WRFA was introduced (H.R. 1431) by Reps. Carolyn McCarthy, D-N.Y., and Mark Souder, R-Ind. A hearing on the legislation held in February explained that WFRA is not intended to, and would not require that an employer grant every request for accommodation. In many cases, however, it would give employers an incentive to remove unnecessary burdens on religious employees, whose practices are too easily ignored under current law. Led by the American Jewish Committee and the General Conference of Seventh-day Adventists, the WRFA coalition continues to include a broad array of supporters.

Despite the current absence of federal legislation, there is a growing recognition that religion should be accommodated in the workforce. In 2002 New York enacted legislation that very closely tracks the proposed WRFA. That law has proven to be effective, far from the nightmare predicted by some WRFA opponents. In fact, religious discrimination claims have dropped in New York in four of the past five years. New Jersey enacted a package of similar laws this month.

The New York experience demonstrates that religious pluralism and efficient workplace practices are not mutually exclusive. As consensus around this principle continues to build, it is likely that lawmakers will build on the groundwork laid over the past decade and ultimately take the necessary steps to pass WRFA. In the meantime, the BJC will continue to be active in working to eradicate religious discrimination from America's workplaces and find sensible legislative solutions.

Former Intern Spotlight

Fall 2000 intern represents Mississippi District 111

A Fall 2000 Baptist Joint Committee intern, Brandon Jones, was elected to the Mississippi House of Representatives in 2007. Jones works as a general practice attorney at the Law Offices of W. Harvey Barton in his hometown of Pascagoula, Miss.

During his short time in the House, Jones has been a strong advocate for District 111 in Jackson, pushing for projects that will bring economic opportunity and meaningful insurance reform to the Gulf Coast. Jones is the vice-chairman of the House Insurance Committee in addition to serving on the Education; Judiciary B; Judiciary En Banc; Oil, Gas and Other Minerals; Ports, Harbors and Airports; and Transportation committees.

Jones

As a student at Mississippi College, Jones served as president of the Student Government Association and earned a B.A. in History and English. Mississippi College inducted him into the Mississippi College Hall of Fame. After Mississippi College, Jones attended Wake Forest University Divinity School where he was elected president of the Student Government Association and earned a Master of Divinity degree. Following divinity school, Jones enrolled at Mercer University School of Law where he was elected Moot Court Board Chairman, won the Lawson competition for oral advocacy and earned a law degree.

Jones and his wife, Laurie, have one child, Ellen. They are active members of the First Presbyterian Church of Pascagoula where Brandon teaches Sunday school.

Praying football coach is rebuffed by federal appeals court

EAST BRUNSWICK, N.J. — A decision by East Brunswick's football coach to bow his head and kneel during student-led pregame prayers represents an endorsement of religious activity at a public school event, a federal appeals court ruled April 15.

Marcus Borden, who has coached the Middlesex County team since 1983, found himself in the center of an intense debate about prayer and school athletics in 2005 after parents complained to the district that he prayed with students at pasta dinners on Friday afternoons and in the locker room before games.

Borden quit his coaching job amid the controversy, then rescinded his resignation and vowed to fight new district policies that targeted employees' involvement in prayer.

Borden's lawyer vowed to petition the U.S. Supreme Court to hear the case after the three appeals court judges unanimously overturned a lower court ruling in Borden's favor, but issued three separate reasonings.

"The Supreme Court should hear this case because so far there have been four judges who rendered an opinion that's different from the others' decisions," attorney Ronald Riccio said. "This is primed for the Supreme Court."

The case began in November 2005 when Borden filed a federal lawsuit arguing that the district's regulations were overly broad. He won a district court ruling in July 2006 deeming those rules unconstitutional.

But the 3rd U.S. Circuit Court of Appeals panel overturned that decision and ruled that by bowing his head and going down on one knee while students prayed, Borden, 53, was endorsing religion.

"We find that based on the history of Borden's conduct with the team's players, his acts cross the line and constitute an unconstitutional endorsement of religion," the three-judge panel wrote in the ruling. "Although Borden believes that he must continue to engage in these actions to demonstrate solidarity with his team ... we must consider whether a reasonable observer would perceive his actions as endorsing religion, not whether Borden intends to endorse religion."

The East Brunswick Board of Education had pursued the appeals court ruling, arguing Borden's decision to kneel and bow his head when students prayed before games constituted an endorsement of religion whether he mouthed the words with his players or not. The school board's appeal was joined by Washington-based Americans United for Separation of Church and State.

"East Brunswick Public Schools is very pleased with today's unanimous ruling ... upholding as reasonable the district's policy against employees participating in prayer," Superintendent Jo Ann Magistro said in a prepared statement.

— RNS

California Court of Appeal will reconsider home schooling case

The California Court of Appeal agreed March 25 to reconsider a decision that essentially outlawed home schooling by parents who are not certified as teachers.

"Parents have a fundamental right to make educational choices for their children," said Alliance Defense Fund Senior Counsel Gary McCaleb, according to the ADF Web site. "Because this ruling impacts all Californians, we believe the case deserves a second look."

The court initially ruled against a child enrolled at Sunland Christian School, a private home schooling program, and decided that parents who home-school their children could face criminal charges in California.

Public school enrollment is generally required unless a child is enrolled in a full-time private school or tutored by a credentialed person. A lower court did not order such schooling based on a belief that the parents had a constitutional right to home-school.

James Dobson, founder of Colorado-based Focus on the Family, had called the initial ruling "an all-out assault on the family" and "an imperious assault on the rights of parents."

However, in the initial 18-page decision, Associate Justice H. Walter Croskey wrote that the problem is that "the children were taught at home by a non-credentialed person."

"We are pleased that the Court of Appeal has decided to re-hear the ... case, and we are hopeful that the fundamental rights of these parents ... will be honored," Brad Dacus, president of Pacific Justice Institute, said on the company's Web site. "Home schooling parents should be treated as heroes — not hunted down or harassed by their own government."

— RNS