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February 9, 1966

**Brief Attacks Grants  
To Church Colleges**

By Gainer E. Bryan Jr.

ANNAPOLIS, Md. (BP)--A Maryland Trial court erred in finding that the state may grant aid to a part of a church-related school without aiding the school as a whole, attorneys for the Horace Mann League of the United States of America, Inc., and 12 citizen plaintiffs charged in a brief filed with the Maryland Court of Appeals here.

For this and other reasons, matching grants by the State of Maryland to four church related-colleges for construction purposes are unconstitutional, the brief says. Chief counsel for the appellants and primary author of the brief is Leo Pfeffer, chief counsel for the American Jewish Congress.

The brief is an appeal from the decision of Judge O. Bowie Duckett of the Circuit Court of Anne Arundel County, Maryland, in March, 1965.

The Horace Mann League is an organization of public school administrators. Maintenance of church-state separation is a primary objective of the group. It hopes, through this test case, to outlaw grants to church-related schools both by the state and the Federal governments.

At issue in the suit is the constitutionality of construction grants totaling \$2.5 million awarded to two Catholic and two Protestant colleges by the Maryland legislature in 1962 and 1963. The Catholic schools are St. Joseph's at Emmittsburg and Notre Dame of Maryland at Baltimore. The Protestant schools are Western Maryland at Westminster, a Methodist institution, and Hood College, Frederick, affiliated with the United Church of Christ.

The grants were for construction of science, dormitory and dining hall facilities. Private, church-related colleges have traditionally been included in such grants in Maryland.

The appellants challenge, among other things, the legal test used by Judge Duckett in determining the constitutionality of the Maryland legislative enactments under the United States Constitution. This test, taken from the Abington School District v. Schempp (school prayer) case of 1963, states: "If either the legislative purpose or the primary effect of the enactment advances or suppresses religion, the legislation is invalid; otherwise it is valid."

Applying this test, the court upheld each of the challenged statutes on the ground that, since the buildings to be erected were not to be used for religious worship, neither the primary purpose nor the effect of the grants was to advance or inhibit religion.

"The court below decided erroneously on both counts," say the attorneys for the Horace Mann League in their brief.

"To say that the State of Maryland is not financially aiding St. Joseph or Western Maryland because the money is going to be used only to build dormitories or classrooms is like saying that a dentist does not aid his patient because his efforts are aimed exclusively at the patient's teeth. To say that it was neither the purpose nor the primary effect of the grants here in issue to advance religion is like saying the same thing of a similar grant to a church earmarked for the repair of its furnace," the attorneys said.

The brief continues: "The crux of the matter is that the dormitories, dining rooms, classrooms and science buildings here, like the furnace in the church, are not ends themselves but means to an end, and any financial grant that aids the means advances the ends. The dormitories and other buildings are parts of defendant colleges, and the colleges are aided by the grants."

The document argues that money granted to Notre Dame, for example, by the State goes into its general treasury and cannot be distinguished from funds received from other sources.

"What the colleges get from the State frees them to spend other moneys on other functions, including religious instruction."

The brief argues: "If a primary purpose of a college is to advance religion, then a primary effect of a grant to that college is to advance religion. The trial court recognized this but held that the colleges here are entitled to the grants because they have failed to fulfill their stated purposes."

The brief terms this conclusion "a terrible indictment" and contends it is erroneous. The conclusion "is overwhelmingly contradicted by the testimony of the defendant's own witnesses," says the brief. It notes that accreditation of the schools is a certification that they are fulfilling their stated objectives, including their religious objectives.

The trial court also erred in distinguishing between the financing of religious colleges and religious elementary and secondary schools, so far as state aid is concerned, the brief holds.

The brief by defendant attorneys is due in March. A hearing of the case by the Maryland Court of Appeals is expected soon thereafter. Attorneys for both sides originally promised to take the case all the way to the Supreme Court.

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Reschedules Hearings  
For Judicial Review

2-9-66

WASHINGTON (BP)--Hearings on a bill authorizing "judicial review" to test the constitutionality of certain acts of Congress have been rescheduled by the Senate subcommittee on constitutional rights. The new dates are March 8-10 and 15-17.

Sen. Sam J. Ervin (D., N.C.) is chairman of the subcommittee. He and Sen. Wayne Morse (D., Ore.) are co-sponsors of the bill.

Information from the staff of the subcommittee is that the hearings were postponed from Feb. 1-3 and 8-10 until the Senate settled the issue of repeal of section 14b of the Taft-Hartley Act. This issue has engaged the Senate in a lengthy filibuster and has slowed progress on other legislation.

Since the Senate refused to end debate on 14b, the question was raised by Baptist Press as to how this would affect the rescheduled dates for the hearings on judicial review. The subcommittee staff answered that since the new dates were a month away, it was assumed that the Senate would dispose of 14b by that time.

A question in Washington circles about these hearings is whether or not this is a serious effort on the part of Congress to enact a constitutional judicial review bill. Informed opinion is that that hearings will be largely for political purposes and in fulfillment of promises made last year during the debate on the Elementary and Secondary Education Act of 1965.

During the debate on the education bill, unsuccessful attempts were made to include constitutional review. Sen. Morse, in order to assure quick passage of the bill as it stood, opposed such amendments but promised that he would introduce a separate judicial review bill affecting both this and other education acts.

The proposed bill would provide for constitutional judicial review of seven major acts of Congress plus "any other act which is administered by the department of health, education, and welfare and was enacted after Jan. 1, 1965."

Some of the reasons Washington observers give for doubting the passage of a constitutional judicial review bill are: (1) it is assumed that Congressmen think their acts are in keeping with the Constitution and that they would not enact another law to authorize the courts to decide whether or not they stayed within the Constitution; (2) the doctrine of the "separation of powers" (judicial, legislative and executive) would not make it mandatory for the courts to hear any case designated by the legislative branch; (3) it is already possible for cases involving tests of constitutionality on the basis of the first amendment to reach the highest courts.

The Baptist Joint Committee on Public Affairs, along with other religious and civil

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liberties groups, is scheduled to present testimony at the hearings on constitutional judicial review.

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#### Baptist Colleges Get Federal Building Loans

WASHINGTON (BP)--Two Baptist schools are among 14 church-related colleges and universities to receive grants and loans under the Higher Education Facilities Act of 1963, according to a report from the United States office of education.

Furman University, Greenville, S.C., has been approved for a loan of \$1,267,000 to apply on the construction of a science building. Total development cost of the project is \$2,595,800.

Earlier Furman University had been approved for a grant of \$611,898 from the federal government. However, the South Carolina Baptist Convention voted disapproval of the grant and pledged a campaign to raise the amount from special gifts.

Loans from the federal government were not disapproved by the South Carolina Convention. The convention's General Board approved last fall the \$1.2 million loan request by Furman.

The other Baptist school, Morris College, is a Negro institution at Sumter, S.C., established by the State Baptist Education and Missionary Convention of South Carolina. The amount of the loan is \$157,000 to apply on a building for general instruction. The total cost of this project is \$361,605.

Of the other church-related colleges, the Roman Catholics led with three grants and three loans for a total of \$3,328,876. Methodist schools were second with three grants and two loans for a total of \$1,229,343.

The other church schools were Lutheran and Mennonite-Brethren.

The church-related schools were among 40 colleges and universities approved for a total of \$423,139,909 in grants and loans to help build or remodel classrooms, laboratories and libraries.

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#### Charleston Pastor Named For Courier Promotion

2-9-66

GREENVILLE, S. C. (BP)--J. B. McCaskill, Baptist pastor from Charleston, S.C., has been named director of promotion for the Baptist Courier, official publication of the South Carolina Baptist Convention, effective April 1.

McCaskill will be responsible for working closely with the 1,500 Baptist pastors and churches in South Carolina, showing them "the wisdom of having the state Baptist paper in the church budget for every family," said John E. Roberts, himself recently elected as editor of the Courier.

In assuming this responsibility, McCaskill will fill a position which has been vacant for almost two years.

For the past four years, McCaskill has been pastor of the Highland Park Baptist Church in Charleston, located in a rapidly growing Charleston subdivision near the campus of the new Baptist College at Charleston. Previously he was pastor of First Baptist Church, Kershaw, S. C.

He is a graduate of Wingate College, Wingate, N.C., Furman University, Greenville, S. C., (both Baptist) and Southeastern Baptist Theological Seminary, Wake Forest, N. C.

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