(BP) BAPTIST PRESS
News Service of th Southern Baptist Convention

460 James Robertson Parkway
Nashville, Tennessee 37219
Telephone (615) 244-2355
W. C. Fields, Director
Jim Newton, Assistant Director

REGIONAL OFFICES
ATLANTA Walker L. Knight, Editor, 161 Spring Street, N.W., Atlanta, Georgia 30303, Telephone (404) 523-2593
DALLAS Editor, 103 Baptist Building, Dallas, Texas 75201, Telephone (214) RI 1-1996
WASHINGTON W. Barry Garrett, Editor, 200 Maryland Ave., N.E., Washington, D.C. 20002, Telephone (202) 544-4226
BUREAU
BAPTIST SUNDAY SCHOOL BOARD Lynn M. Davis Jr., Chief, 127 Ninth Ave., N., Nashville, Tenn. 37203, Telephone (615) 254-1631

June 11, 1968

Criswell Challenges First,
Dallas, to Reach All Races

DALLAS (BP)--The newly elected president of the Southern Baptist Convention has called on his own church to renew its welcome to men of all races.

W. A. Criswell, pastor of the 15,000-member First Baptist Church here, said in his first sermon after his election to the SBC presidency, "The First Baptist Church is now and forever a Philadelphian church of the open door."

"Anybody can come (to the First Baptist Church, Dallas)," he said. "And God bless him as he comes."

J. C. Cantrell, chairman of deacons at the church, said of the pastor's sermon, "The response from members who expressed themselves to me was very, very favorable. His message was right and timely. I was completely in agreement with him."

At a press conference in Houston following his election to head the eleven million-member denomination, he acknowledged that his congregation had only three Negro members.

Criswell called on his congregation, largest in the Southern Baptist Convention, to be a lighthouse to all men, regardless of color.

The statement to the Dallas church was made on the national day of mourning for Senator Robert F. Kennedy.

Criswell said, "All of us personally and corporately would express to the Kennedy family our sympathy in this hour of tragic bereavment. And for our part, we would rededicate ourselves to a nation committed to law and order."

He added a warning that strife, murder and anarchy are tearing America apart.

"Today," he said, "we would rededicate ourselves to a rebirth in America."

-30-

High Court Opens Doors
To Test Aid To Religion

6/11/68

WASHINGTON (BP)--The U. S. Supreme Court in a landmark case opened doors that could affect future church-state relations in America. It ruled that taxpayers under certain circumstances have a right to challenge acts of Congress on grounds of violation of the religion clause of the First Amendment.

Heretofore, on the basis of a 1923 court ruling in Frothingham v. Mellon, taxpayers had little or no standing in a federal court to challenge the constitutionality of federal expenditures.

Chief Justice Earl Warren delivered the opinion of the court. Justice John M. Harlan was the lone dissenting voice.

The new ruling of the court (Flast v. Cohen) did not nullify the Frothingham d ctrine against taxpayers suits challenging federal spending, but it did say that this ruling does not prohibit some cases in which the establishment and freedom of religion are involved.

As if to warn the advocates of open court challenges to federal spending in areas affecting church-state relations, the Supreme Court on the same day ruled that a New York state law providing for the loan of textbooks at public expense to parochial school pupils does not violate the Constitution.

So while loosening the rules on First Amendment court cases, the Supreme Court made it clear that it felt that government could provide public services to students in all schools without thereby furnishing aid to church schools or agencies.

-more-

The Flast case arose in New York when a group of citizens challenged the use of federal funds for programs and services in certain parochial schools. At issue are guidance services and instruction in reading, writing and other subjects. Included are the purchase by federal funds of textbooks and other instructional materials in such schools.

A three-judge New York District Court ruled (2-1) that those bringing the suit had no legal standing to bring the case. The question was appealed to the Supreme Court and was argued there in March of this year.

Agreement was reached on both sides of the controversy that the sole issue to be decided at this time was whether or not citizens and taxpayers have a right in federal courts to challenge laws on the ground that they violate the First Amendment.

The issue now goes back to the New York Federal Court where the constitutionality of certain federal expenditures in parochial schools will be debated. Whatever decision is reached there, it will no doubt be appealed to the Supreme Court.

The 23-page decision of the Supreme Court in the Flast case is a philosophical discussion of the jurisdiction of Federal Courts. The effort appears to be at the same time both to reverse and retain the doctrine of Frothingham. Lawyers will study this case a long time in the attempt to understand its full impact on constitutional law.

The clearest statement of the issue in this case was made by a concurring opinion by Justice Potter Stewart. He said that he understood that the new ruling of the court holds "only that a federal taxpayer has standing to assert that a specific expenditure of federal funds violates the establishment clause of the First Amendment."

He explained, "because that clause plainly prohibits taxing and spending in aid of religion, every taxpayer can claim a personal constitutional right not to be taxed for the support of a religious institution."

The report of this decision in the Washington Post said that it would "provide new impetus for a bill sponsored by Sen. Sam J. Ervin, Jr. (D., N.C.)....Channeling such suits to the Federal Court in Washington."

Other observers in Washington, however, opined that the pending Judicial Review bill, passed by the Senate and pending in the House, is less necessary now. Possibly, they continue, a new Judicial Review bill may be needed to channel such cases through the Federal Court of the District of Columbia. This might discourage a flood of cases throughout the nation which could paralyze many federal programs.

Justice William O. Douglas in his concurring opinion hit at efforts of Congress to enact Judicial Review bills. He said, "I would certainly not wait for Congress to give its blessing to our deciding cases clearly within our Article III jurisdiction. To wait for a sign from Congress is to allow important constitutional questions to go undecided and personal liberty unprotected."

Douglas indicated that he did not fear an "inundation of the Federal Courts if taxpayers' suits are allowed." He pointed out that the court justices would be capable of deciding what cases, how many, they would consider.

The court made it clear that at this stage it was expressing no opinion on the merits of the claim of the New York taxpayers that federal spending in parochial schools violates the constitution.

"In fact," the court concluded, "it is impossible to make any such judgment in the present posture of this case. The proceedings in the court below thus far have been devoted solely to the threshold question of standing, and nothing in the record bears upon the merits of the substantive questions presented in the complaint."

-30-

Textbooks For Parochial Pupils Upheld By Court 6/11/68

WASHINGTON (BP)--The U. S. Supreme Court in a 6-3 decision upheld a New York law that provides loan of publicly approved textbooks to pupils in both public and parochial schools.

The majority opinion of the court, in Board of Education v. Allen, was delivered by Justice Byron R. White. It declared, "We hold that the law is not in violation of the Constitution."

-more-

Dissenting opinions were expressed by Justices Abe Fortas, Hugo L. Black and William O. Douglas.

The educational law of the state of New York requires local public school authorities to lend textbooks free of charge to all students in grades seven through 12. The books must be either those used in public schools or approved by boards of education.

The chief argument relied on by the court in its decision was made in a 1947 case (Everson v. Board of Education) in which payment from public funds for bus transportation to parochial schools was held to be constitutional.

The test as to whether or not a law violates separation of church and state, as stated in Abington School District v. Schempp, is: "What are the purpose and the primary effect of the enactment?"

Thus, if a law either advances or inhibits religion, it violates the First Amendment, according to the Supreme Court.

Admittedly, the court continued, "This test is not easy to apply."

The New York law, according to the majority of the court, neither advances or inhibits religion. Rather, the decision said, "The law merely makes available to all children the benefits of a general program to lend school books free of charge."

The majority of the court concluded that "books are furnished at the request of the pupil and ownership remains, at least technically, in the state." "Thus," it said, "no funds or books are furnished to parochial schools, and the financial benefit is to parents and children, not to schools."

Justice Fortas in his dissent declared that the majority ignored a vital aspect of the case. He pointed out that in fact "public funds are used to buy, for students in sectarian schools, textbooks which are selected and prescribed by the sectarian schools themselves."

Even though the child makes the request for the textbooks, neither he nor the public authorities have a voice in their selection, other than approval by the school board, Fortas continued.

Thus, he said, "This statute calls for furnishing special, separate, and particular books, specially, separately, and particularly chosen by religious sects or their representatives for use in their sectarian schools."

Justice Black was most caustic in his dissent. He charged that the law upheld by the majority "is a flat flagrant, open violation of the First and Fourteenth Amendments which together forbid Congress or state legislatures to enact any law 'respecting an establishment of religion.'"

He said that although the New York law does not yet formally establish a state religion, "it takes a great stride in that direction and coming events cast their shadows before them."

Black charged, "The same powerful sectarian religious propogrndists who have succeeded in securing passage of the present law to help religious schools carry on their sectarian religious purposes can and doubtless will continue their propoganda, looking toward complete domination and supremacy of their particular brand of religion."

He predicted that the same arguments used to uphold the textbook law could and would be used to provide public funds for sectarian schools in the purchase of property, erection of buildings and payment of salaries.

Black asserted that already the Higher Education Facilities Act "apparently allows for precisely that."

He further predicted that "the court's affirmance here bodes nothing but evil to religious peace in this country."

Board of Education v. Allen reached the Supreme Court after a rocky course in New York's courts. In August 1966 the New York Supreme Court declared the textbook law unconstitutional. In December of that year the Appellate Division reversed the lower court and said a local school district lacks jurisdiction to challenge the law.

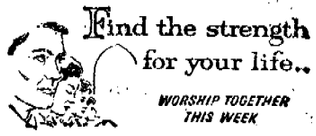
In June 1967, however, the Court of Appeals, in a 4 to 3 ruling, gave the local school board the right to file suit in the matter, but declared the law to be constitutional under both state and federal constitutions.

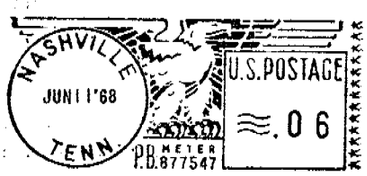
The case was argued before the Supreme Court in April of this year.

-30-

BAPTIST PRESS

460 James Robertson Parkway
Nashville, Tennessee 37219





DAVIS C. WOOLLEY MD
HISTORICAL COMMISSION
127 NINTH AVE. N.
NASHVILLE, TENN. 37203