(BP) -- BAPTIST PRESS
News Service of the Southern Baptist Convention

NATIONAL OFFICE
SBC Executive Committee
460 James Robertson Parkway
Nashville, Tennessee 37219
(615) 244-2355
Wilmer C. Fields, Director
Dan Martin, News Editor
Craig Bird, Feature Editor

BUREAUS
ATLANTA Jim Newton, Chief, 1350 Spring St., N.W., Atlanta, Ga. 30367, Telephone (404) 873-4041
DALLAS Thomas J. Brannon, Chief, 103 Baptist Building, Dallas, Texas 75201, Telephone (214) 741-1996
NASHVILLE (Baptist Sunday School Board) Lloyd T. Householder, Chief, 127 Ninth Ave., N., Nashville, Tenn. 37234, Telephone (615) 251-2300
RICHMOND (Foreign) Robert L. Stanley, Chief, 3806 Monument Ave., Richmond, Va. 23230, Telephone (804) 353-0151
WASHINGTON Stan L. Hastey, Chief, 200 Maryland Ave., N.E., Washington, D.C. 20002, Telephone (202) 544-4226

July 8, 1983 83-101

States Signal Move Toward
Constitutional Convention By Larry Chesser

WASHINGTON (BP)--Actions by the Missouri and Michigan legislatures this summer have sent new signals the United States is moving rapidly toward the nation's first convention called for the purpose of amending the Constitution.

In late May, despite opposition by Missouri Baptists and their director of Christian moral concerns, Ira Peak, Missouri became the 32nd state to call for a constitutional convention to consider a balanced budget amendment, leaving the eight-year-old drive for a constitutional convention only two states shy of the necessary 34. A few weeks later, Michigan narrowly averted a chance to become the 33rd state when it rejected--on a tie vote--a motion to discharge the proposal from committee.

With constitutional convention proposals pending in several state legislatures and voter initiative drives underway in two western states, the only certainty about the situation is that a 34-state-call for a constitutional convention would doubtless force Congress and the courts to deal with a host of procedural, legal and constitutional questions.

While two methods for constitutional amendments are specified in the Constitution, only the congressional method has been used. The uncertainties surrounding the constitutional convention method may explain why it has never been tried.

The uncertainties exist because the Constitution offers no guidance on the convention method. Among the questions left unanswered are:

-Can a constitutional convention be limited to the subject for which it is called (a balanced budget amendment in this case), or would it be open to any changes or additions to the Constitution?

-What constitutes a valid call by a state legislature for a constitutional convention, and can a state rescind its call?

-How long is a state's call valid?

-Does a state's call for a constitutional convention have to be for a specific amendment, or must it be for a general convention?

-How would delegates be elected, and how many votes would each state be assigned?

-What role would Congress play in the process, and what jurisdiction would courts have to settle disputes arising anywhere in the process?

Legislation pending in Congress proposes some answers to these questions but some constitutional scholars doubt final answers can be provided by mere legislation.

Thus, the surrounding confusion leaves many opponents of a constitutional convention highly concerned. Many in the religious community are specifically concerned such a convention would pose a threat to the religious freedom guarantees of the First Amendment.

"Regardless of the reasons for its convening," said Baptist Joint Committee on Public Affairs Executive Director James M. Dunn, the calling of a constitutional convention "puts at risk the freedoms guaranteed by the Constitution and the Bill of Rights."

-more-

Noting the BJCPA and the Southern Baptist Convention have adopted recent statements opposing the idea, Dunn said a constitutional convention would "open to a chaotic and situational revision the venerable and historically tested documents that have served us well for 200 years." The SBC and BJCPA statements warn a constitutional convention "could easily become a 'runaway' body which could propose alterations to the entire Constitution and the Bill of Rights."

Opponents of the constitutional convention proposal note fully half of the state legislatures to call for a convention held no hearings on the subject and six legislatures took no roll-call votes.

"That typifies the cavalier way some state legislatures have dealt with politically explosive issues," said BJCPA General Counsel John W. Baker. "Some states did not understand the ramifications of their actions."

That concern was underscored by Linda Rogers Kingsbury, executive director of Citizens to Protect the Constitution, a broad coalition of organizations and individuals opposed to a constitutional convention, including the BJCPA.

"To most people, the U.S. Constitution is second only to the Holy Scripture when it comes to being a document that is revered," she said, adding legislative bodies should be "very, very careful" when "tinkering" with it.

Citing the financial clout of organizations pushing the constitutional amendment such as the National Taxpayers Union and the National Tax Limitation Committee, and the appeal of a buzz word like "balanced budget," Kingsbury offered no solid hope of heading off the movement. "It's up for grabs, to be honest," she said.

Nonetheless, she indicated some states may consider withdrawing their calls next year, a move certain to raise further questions about the untested process.

-30-

Federal Appeals Court Dismisses Sexual Discrimination Suit

By Craig Bird

Baptist Press 7/8/83

CINCINNATI (BP)--A sexual discrimination suit against the Southern Baptist Brotherhood Commission filed in 1981, has been dismissed by the 6th U.S. Circuit Court of Appeals.

The three-judge panel of Cornelia Kennedy, Nathaniel Jones and Paul Weick affirmed a ruling June 18, 1982, by Judge Odell Horton of the United States District Court for the Western District of Tennessee, that "a complete and binding settlement agreement has been negotiated am ng the parties in this cause."

Barbara (Mrs. Robert) Minor, 45, a nine-year employee of the Brotherhood Commission, filed suit April 9, 1981, against the commission, three of its executives and the Southern Baptist Convention, charging sexual harassment and defamation of reputation. She asked for $3 million in damages.

Horton ruled an Aug. 4, 1981, agreement whereby Minor would receive eight months salary, up to $1,000 for medical expenses and $5,000 for legal expences, was to be enforced. All of the settlement was paid by the Brotherhood Commission.

Barbara Minor had signed the agreement, but her attorney had never mailed a copy of the signed agreement to the Brotherhood Commission attorney, Ernest Kelly.

When Minor received the proposed settlement, which contained a general release clause of all claims, and after discussing the proposal with her husband, Minor, "decided she did not want to settle the case in accordance with the terms outlined in the letter which she had signed two days previously," court records state.

When Minor refused to honor the agreement, the Brotherhood Commission filed a motion for enforcement of the settlement agreement with the district court.

-more-

The 6th Circuit Court said, "The facts indicate (Minor) knowingly and voluntarily consented to the settlement terms that were presented in the letter...There is no basis upon which we can conclude that the lower court abused its discretion in deciding to enforce the settlement agreement."

Kelley said the settlement could be completed, "within a matter of days" after Minor indicates there will be no more legal action. The only two options left in the case are to appeal to the 6th Circuit Court for a rehearing or to ask the United States Supreme Court to r view the case.

The 6th Circuit Court was ruling only on whether the agreement was binding and all participants in the case remain under a permanent injunction by Horton to refrain from making any public statement on the merits of the case.

In h r suit, Minor contended Haney (then a director of the Baptist Men's division but no longer with the Brotherhood Commission) declined to promote her to a division level secretary in 1980 after she refused to respond to what she described as a request for sexual favors on behalf of an associate.

-30-

NEWS ANALYSIS

High Court Actions Blur Church-State Separation

By Stan Hastey

Baptist Press 7/8/83

WASHINGTON (BP)--In a term marked by one blockbuster decision after another, the U.S. Supreme Court has rearranged the lines of demarcation between church and state in the United States.

Although instant analysis of the high court's work is often risky, it is safe to say, in its just-completed 1982-83 term, the court moved the nation yet further away from Thomas Jefferson's view of a "high and impregnable wall of separation" between the two realms and closer to what has been called an increasingly "blurred line" between church and state.

What is also clear is that some of this year's actions will intensify divisions in American society along religious lines, a prospect that cannot be welcomed by any except those who benefit from religious warfare.

A review of the court's more significant church-state actions, especially since late May, shows why.

On May 23, a unanimous court held for the first time that, "Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system," a conclusion fundamentally at odds with a 1971 holding in a property tax exemption case. The May 23 decision, written by Justice William H. Rehnquist, came in a case challenging preferential treatment given veterans' organizations by the Internal Revenue Service by allowing them to engage in "substantial" lobbying activities without endangering their tax exempt status or th ir donors' right to deduct contributions. Other nonprofit groups enjoy both privileges only if they do not lobby substantially.

While church-state observers generally have not quarreled with the court's reasoning regarding preference to veterans' groups, many are alarmed with the finding that tax exemption and deductibility are now to be considered governmental "largesse," as Rehnquist put it. Only a short legal and logical step beyond that, they reason, is the conclusion that other forms of g vernmental subsidy are constitutionally permissible (81-2338, Regan v. Taxation with R presentation).

That fear was substantiated June 29, when a badly divided court upheld a Minnesota law providing tuition tax deductions for parents of children in parochial schools. The 5-4 decision, also written by Rehnquist, cited other Minnesota tax deductions, such as those for charitable contributions and medical expenses, as examples of subsidies not different in kind from those enjoyed for tuition paid to sectarian schools.

-more-

Because of the logic--or lack thereof--in the Minnesota ruling, little question remains that a federal law allowing tuition tax credits and patterned after the Minnesota plan would likewise be found acceptable. This does not necessarily mean, however, President Reagan's present version of a tuition tax credit bill would be upheld because, unlike the Minnesota law, the Reagan proposal applies only to parents of parochial school children. The Minnesota law provides the credit for parents of all school children, despite the fact that only a relative handful of public school children attend schools which charge tuition. And the law also allows other, smaller deductions for items such as notebooks, pencils and gym clothes.

Nevertheless, the ominous note struck in the Minnesota case is that the high court has now rejected its previous reasoning that the First Amendment ban on an establishment of religion will not tolerate subsidies for sectarian schools in the form of tuition relief (82-195, Mueller v. Allen).

In another historic decision, the court applied its subsidy logic in holding religious schools with biased admissions policies are not entitled to federal tax exemption or to tax deductible contributions. Although Rehnquist was the lone dissenter in that 8-1 ruling, his objection dealt not with the constitutional rationale of the decision but with his belief the question should be decided by Congress rather than the court.

Bob Jones University and Goldsboro (N.C.) Christian Schools argued unsuccessfully the IRS exceeded its statutory authority and violated their free exercise of religion by revoking or d nying tax exemption on the "public policy" ground that racial bias will not be rewarded with tax subsidies. The court rejected the schools' arguments.

Religious leaders concerned about escalating IRS incursions into the internal affairs of churches and their affiliated organizations found themselves in the uncomfortable position of defending Bob Jones and Goldsboro while at the same time condemning their racial views. Bob Jones, the fundamentalist Greenville, S.C., institution, admits blacks but only if they sign a pledge not to date or marry those of other races. Goldsboro Christian Schools admits no blacks.

Chief Justice Warren E. Burger, author of the opinion, cited English common law in reaching the conclusion that tax exemption must be conditioned on compliance with "fundamental public policy," the reason cited by IRS for its 1970 move to deny tax exemption to all private schools practicing race discrimination.

In addition, Burger expressed a view he first announced in a decision last year that "not all burdens on religion are unconstitutional.... The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest" (81-3, Bob Jones University v. U.S.; 81-1, Goldsboro Christian Schools v. U.S.).

Applying its newly discovered logic that government may subsidize religion without violating the ban on an establishment of religion, the court held on the next-to-last day of the term that state legislatures may pay their chaplains from public funds. In a 6-3 ruling upholding the practice, Burger wrote maintaining publicly-paid chaplains "is simply a tolerable acknowledgment of beliefs widely held among the people of this country."

Senior Associate Justice William J. Brennan Jr., in a politely-stated dissent, accurately noted while upholding the practice would do no irreparable harm to separation of church and state, the court was nevertheless "carving out an exception to the Establishment Clause."

And Justice John Paul Stevens, who during his seven years on the high court has proven again and again to be a staunch defender of separation, perceptively noted the fact state legislative chaplains all come from mainline denominations. "I would not expect to find a Jehovah's Witness or a disciple of Mary Baker Eddy or the Reverend Moon serving as an official chaplain in any state legislature," he observed (82-23, Marsh v. Chambers).

For Baptists, that point simply cannot be rebutted with a casual "So what?" attitude when they remember that the ban on an establishment of religion was forged largely because of intense Baptist political pressure at a time when they were a despised religious minority themselves.

-more-

However it is applied, the notion that government may subsidize religion at public expense remains what Jefferson called it in 1786, "sinful and tyrannical."

Equally dangerous to religious liberty over the long sweep would be granting a blank check to governmental taxing authorities to penalize churches for failing to bow to prevailing public policy.

Among other church-state actions taken during the term, the high court:

-Ruled Massachusetts violated the establishment clause with a law giving churches veto power over the licensing of taverns in their immediate vicinity (81-878, Larkin v. Grendel's Den, Inc.);

-Left in place a Louisiana blue law exempting grocery and drug stores but not hardware stores from Sunday closing laws (81-2299, Harry's Hardware, Inc. v. Parsons);

-Declined to review a policy by the Lubbock, Texas school district permitting students to gather on school premises before or after schools for religious purposes, a policy earlier struck down by a federal appellate court (Lubbock Independent School District v. Lubbock Civil Lib rties Union);

-Rejected the appeal of a Pennsylvania public school teacher who lost his job for conducting classroom devotional exercises (82-1269, Fink v. Board of Education of Warren County Schools);

-Decided not to review a North Dakota law requiring state accreditation of teachers in sectarian schools (82-1374, Rivinius v. North Dakota);

-Turned down an appeal from an independent Baptist congregation in Ohio objecting to lower court rulings that it pay workers' compensation to its employees (82-549, Victory Baptist Temple, Inc. v. Industrial Commission of Ohio);

-Refused to disturb a lower court decision reinstating with back pay a Seventh-day Adventist nurse's aide who lost her job for refusing to work on the Sabbath (82-243, North Shore University Hospital v. State Human Rights Board);

-Let stand state court rulings in California that a defrocked Worldwide Church of God minister was entitled to severance pay from the church (82-1216, Worldwide Church of God v. Superior Court of California);

-Announced it would not review the Federal Communications Commission's refusal to renew a California church's TV license after the congregation's pastor allegedly engaged in fraudulent fund raising over the air (82-867, Faith Center, Inc. v. FCC);

-Rejected an appeal from a member of the Ethiopian Zion Coptic Church that the ritual use of marijuana is mandated by his faith (82-900, Middleton v. U.S.), and

-Turned aside a McLean, Va., woman's effort to block payment of salaries to chaplains of the U.S. Senate and House of Representatives (82-112, In re Anne Neamon).

-30-