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July 13, 1988 88-110

Wrap-Up
Teen pregnancy funding dispute
highlight of high court term By Stan Hastey

WASHINGTON (BP)--Although the U.S. Supreme Court disposed of more than two dozen church-state disputes in its recently concluded 1987-88 term, the decision likely to have the most lasting impact was a last-day ruling upholding a federal law that provides tax dollars to religious organizations to fight teen-age pregnancy and abortion.

In a 5-4 decision that could be a precursor to future rulings on direct assistance to parochial schools and other religious institutions, the high court held June 29 that the Adolescent Family Life Act of 1981 does not violate separation of church and state. This is true, the court ruled, despite the law's provision of federal funds to community-based programs that must include churches in their network of counseling and referral services for young women.

Despite such mandatory participation by religious organizations, the majority ruled in a decision authored by Chief Justice William H. Rehnquist, "there is nothing inherently religious about these activities."

Contending the activities were by definition religious, numerous individual plaintiffs and the American Jewish Congress had challenged the law's constitutionality, maintaining its provisions aiding religion violated the establishment clause of the First Amendment. They were supported by numerous religious groups, including the Baptist Joint Committee on Public Affairs, through friend-of-the-court briefs in the case, Bowen v. Kendrick.

BJC General Counsel Oliver S. Thomas said: "Those of us, who like Jefferson and Madison believe it is 'sinful and tyrannical' to tax people for the support of religion, had hoped the court reached its low point when it upheld direct state aid to religious colleges and universities. Now we are told Congress may subsidize the moral education of children by religious organizations. Even more disturbing is that Justices Kennedy and Scalia, the youngest members of the court, wrote a separate opinion stating they would go even further in removing the barriers to government support for religious institutions.

"Unfortunately, the ultimate loser in the case will be religion. In the mad rush to qualify for federal funding, churches are secularizing their programs and activities. Religious organizations should promote teen chastity and discourage abortion, but they should do it from an explicitly religious perspective, and they should pay for it themselves. Otherwise, we make a mockery of church-state separation."

Although Rehnquist's ruling for the slim majority upheld the constitutionality of the law "on its face," the chief justice sent the case back to a federal appeals panel for further proceedings and a determination if the law as applied thus far has violated the establishment clause. Rehnquist noted in his opinion that the record in the case "contains evidence of specific incidents of impermissible behavior" on the part of numerous recipient religious organizations.

A second case with historic potential for altering the church-state landscape, U.S. Catholic Conference v. Abortion Rights Mobilization Inc., likewise must await a new round of proceedings before finally being settled.

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In an 8-1 decision rendered June 20, the high court held an appeals court was wrong in ruling the U.S. Catholic Church not be allowed to appeal a contempt citation against it for refusing to produce internal church documents in a lawsuit challenging its federal tax exemption. That suit, brought by a New York pro-abortion group against both the church and the federal government, contended the church repeatedly violated the Internal Revenue Code's ban on political endorsements. The church systematically has engaged in a pattern of urging Catholics to cast their ballots based on candidates' positions on abortion, the suit charged.

Underlying the procedural wrangling in the case is what experts consider one of the most important church-state disputes ever -- whether a third party has legal standing to challenge the tax-exempt status of a religious body because the group disagrees with the church's stance on public issues.

Yet another potentially major church-state decision during the recent term was averted when the high court ruled unanimously last Dec. 1 that former leaders of the New Jersey legislature had no legal standing to appeal lower court rulings that struck down the state's "moment of silence" law.

Enacted in 1982 over the veto of New Jersey Gov. Thomas H. Kean, the law required a one-minute period of silence "for quiet and private contemplation or introspection" in the state's public school classrooms at the beginning of each school day. More than 20 states have similar statutes on the books.

After the law took effect, the state attorney general announced he would not defend it should the law be challenged. When several students, their parents and a teacher filed suit, the elected speaker of the General Assembly and president of the state Senate intervened in their official capacities as defendants. But two federal courts struck down the law as a violation of the establishment clause.

The procedural snag in the case, Karcher v. May, developed when the legislative leaders lost their positions following elections. By deciding the pair had no standing to appeal, the high court let stand the lower rulings against the law, thereby leaving for another day resolution of the underlying question of whether legislated moments of silence violate the Constitution.

Two other church-state cases, both involving claimed religious rights by Native Americans, also were decided during the past term.

One of them, Oregon Department of Human Resources v. Smith -- testing whether the ceremonial smoking of the hallucinogenic drug peyote is protected by the First Amendment's free exercise of religion clause -- was sent back to the Oregon Supreme Court. That panel now must decide if the practice violates Oregon law. In the earlier proceeding, the Oregon high court held two state employees, both Native Americans, were entitled to unemployment compensation benefits following their firing for smoking the drug during religious ceremonies.

Ironically, the pair had been employed by a county alcohol and drug abuse agency that fired them after learning of the incidents.

In the other case, Lyng v. Northwest Indian Cemetery Protective Association, the high court ruled April 19 that the federal government may complete a stretch of roadway through a section of northwestern California held sacred by three American Indian tribes. Completion of the disputed six-mile, two-lane highway will enable private logging companies to harvest timber in the area, sometimes called the California "high country."

Setting aside the free exercise claim of the Yurok, Karok and Tolowa tribes that completion of the highway would destroy their religion, the high court held the constitutional guarantee of free exercise of religion did not apply in the case. Justice Sandra Day O'Connor, who wrote the 5-3 majority opinion, stated, "The free exercise clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government."

Because the government owns the disputed land, O'Connor wrote, the high court had no choice but to overturn two lower courts' rulings in favor of the Native American claims.

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Rejection of Crowder suit
Topped other court actions By Stan Hastey

WASHINGTON (BP)--Besides issuing formal written decisions in five church-state cases during its recently completed term, the U.S. Supreme Court also disposed of several other significant disputes in the field, including some of particular interest to Baptists.

In each of these, the high court let stand lower court rulings. Nearly all were announced in one-line orders without further comment.

Topping the list was the court's rejection of a challenge by four messengers to the 1985 annual meeting of the Southern Baptist Convention in Dallas seeking relief from what they claimed were parliamentary irregularities by then-SBC President Charles F. Stanley. Both a U.S. district judge in Atlanta and the 11th Circuit Court of Appeals, also in Atlanta, earlier had ruled against the disaffected messengers, citing the Constitution's mandate for separation of church and state.

Were federal courts to intervene in such an internal church dispute, those panels held, they would be violating both religion clauses of the First Amendment -- "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The high court's Feb. 22 action refusing to review the lower rulings brought to an end a suit initiated by Robert S. and Julia J. Crowder, who along with co-plaintiffs H. Allan McCartney and Henry C. Cooper, had sought to have secular courts overturn Stanley's refusal to allow a substitute slate of nominees to the SBC Committee on Committees.

Control of that presidentially appointed panel -- which nominates members of the Committee on Nominations -- has been the focal point of a decade-long struggle between conservative and moderate factions in the SBC. The Committee on Nominations in turn nominates trustees to the 20 SBC agencies and institutions.

By electing conservative presidents over the past 10 years, conservatives thus have gained virtual control of the denomination.

The Crowder suit further polarized the denomination at a key juncture in the struggle, with many Southern Baptists on both sides condemning the suit for defying a New Testament injunction to keep church disputes out of secular courts. (87-1088, Crowder v. Southern Baptist Convention)

In another case with heavy Baptist undertones, the high court let stand a lower panel's ruling that churches must comply with registration and disclosure requirements contained in a Tennessee law regulating political activity in referendum campaigns.

The court thus rejected an appeal from 13 Jackson, Tenn.-area churches, nine of them Southern Baptist, that ran into trouble in the summer of 1984 for taking out paid radio, television and newspaper ads urging voters to reject liquor-by-the-drink sales in Madison County. Put to voters as a referendum question, liquor-by-the-drink lost on a vote of 6,514-6,474.

Attorneys for the churches failed to convince the high court the Tennessee law amounted to a violation of the free exercise guarantee of the First Amendment. (87-317, Bemis Pentecostal Church v. Tennessee)

In another case from Tennessee, this one involving textbook content, the high court declined to review a federal appeals court ruling that parents do not have a free exercise right to teach their children at home when required reading texts offend their religion.

That panel had ruled the Hawkins County school board was not obligated to provide the alternative reading-at-home arrangement for pupils whose parents objected to a Holt, Rhinehart and Winston reading series. The appellate ruling followed a trial in the east Tennessee county two years ago in which seven sets of parents presented their objections on religious grounds to required reading assignments, including such classics as "Hamlet," "The Wizard of Oz" and "The Diary of Anne Frank."

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Although U.S. District Judge Thomas G. Hull refused to go along with parents' demands that the school board provide alternative reading texts in the classroom, he did order school officials to release the students for home instruction in reading. But the appeals court overturned that ruling, setting the stage for the final -- and unsuccessful -- appeal to the nation's high court. (87-1100, Mozert v. Hawkins County Public Schools)

The high court also rejected another home schooling case brought by an Ohio couple claiming a free exercise right to educate their children at home.

Although Ohio law allows home schooling with permission of the local superintendent of public schools, Richard and Pamela Schmidt refused to enroll their oldest child, Sara, in either a public or private school or to obtain the necessary permission to teach her at home. To do so, they contended, would be to abdicate their obligation to God by submitting to a human authority.

Before their case was rejected by the high court, the Schmidts had lost three proceedings in Ohio courts. (87-62, Schmidt v. Ohio)

In other significant actions, the high court:

-- Let stand an Illinois law exempting religious daycare centers from state regulation. (87-1829, Pre-School Owners Association of Illinois v. Illinois)

-- Refused to hear an independent Baptist congregation's appeal of unfavorable lower rulings that mandatory participation by church employees in Social Security does not deprive churches of free exercise of religion. (87-902, Bethel Baptist Church v. U.S.)

-- Declined to review lower decisions penalizing the Church of Scientology for income tax deficiencies and late-filing penalties assessed for tax years 1970, 1971 and 1972, thereby leaving in place the Internal Revenue Service's revocation of the sect's tax exemption. (87-1377, Church of Scientology v. Commissioner of Internal Revenue)

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NOTE TO EDITORS: This story is a companion piece to the Supreme Court wrap-up, "Teen pregnancy funding dispute highlight of high court term."

Crowder suit defense
costs SBC $280,000

Baptist Press
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NASHVILLE (BP)--Defending a series of lawsuits filed by Mr. and Mrs. Robert S. Crowder of Birmingham, Ala., and others will cost the Southern Baptist Convention about $280,000, reported SBC Executive Committee President Harold C. Bennett.

Crowder and his wife, Julia, along with Henry C. Cooper of Windsor, Mo., and H. Allen McCartney of Vero Beach, Fla., filed suit Dec. 5, 1985, in federal district court in Atlanta, claiming their rights had been violated by parliamentary rulings during the 1985 annual meeting of the SBC in Dallas.

Robert Hall, judge of the U.S. Court for the Northern District of Georgia, ruled against the Crowders May 5, 1986, saying the courts could not become involved in internal governance of churches. The Crowders appealed to the 11th Circuit Court of Appeals in Atlanta, and that court ruled against them Sept. 28, 1987.

The Crowders then appealed their case to the U.S. Supreme Court, which, on Feb. 22, 1988, declined to review the decisions, thus upholding the rulings of the lower courts.

A parallel lawsuit was filed Jan. 23, 1986, in Superior Court of Fulton County in Atlanta by five other plaintiffs: Katherine F. White, Atlanta; Lucy Azlin, Alexandria, La.; Betty Ann L. Upshaw, Winston-Salem, N.C.; Terry Black, Louisville, Ky.; and Jim B. Black, Lewisville, Texas. It was "voluntarily dismissed" following the May 5, 1986, ruling in federal court.

Bondurant, Mixson and Elmore of Atlanta represented the plaintiffs in all four courts.

Guenther and Jordan of Nashville and King and Spaulding of Atlanta represented the SBC.

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In a statement released soon after the Supreme Court's rejection of the suit, Crowder reported an organization named Baptists Committed to Fairness had collected contributions of $51,505.65 to pursue the lawsuit. Crowder said the lawfirm "honored their original commitment to put a cap on their legal fees of $50,000," and reported Bondurant, Mixson and Elmore had been paid $51,248.81.

Jane F. Vehko, an attorney with the Atlanta firm, told Baptist Press such an arrangement is "not unheard of but is not common." She added the firm did not bill all of the time spent on the case because the firm "felt it was a worthy case and that it was important these people be given representation for their point of view."

According to Executive Committee records, as of May 30, the SBC had spent $242,981.20 for the defense. Of that amount, King and Spaulding was paid $176,381.28 to represent the SBC in the four courts. Guenther and Jordan received $66,036.66, and miscellaneous expenses amounted to $563.26.

James P. Guenther, the SBC's counsel and partner in the Nashville lawfirm, said: "It was my judgment the SBC should be represented by the highest quality legal counsel available. King and Spaulding, led by Griffin Bell, had the experience, the Atlanta connections, the trial ability and the capacity to produce the highest quality work."

Bell, who headed up the SBC legal team for King and Spaulding, was attorney general for the United States during the presidency of Jimmy Carter.

In order to provide a defense, the SBC had to borrow money because reserves were not sufficient to draw on, Bennett said. The Executive Committee authorized a loan in June 1986. As of May 31, interest had amounted to $29,923. By the time the total is repaid, Bennett estimated, the cost of the defense will amount to about $280,000.

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Peace Committee chair affirms group's efforts

By Lynn P. Clayton

Baptist Press 7/13/88

ROANOKE, Va. (BP)--Charles Fuller, who led the Southern Baptist Convention Peace Committee from the day of its birth until its dissolution, still believes handling matters by "process rather than option" is the best way for the denomination to deal with its problems.

"Process is more enduring and has more to contribute," said Fuller, pastor at First Baptist Church of Roanoke, Va., who chaired the SBC Peace Committee during its three-year life.

Messengers to the recent Southern Baptist Convention annual meeting unanimously approved a committee recommendation that the group be dismissed. The committee was formed in 1985 to help resolve the ongoing theological/political controversy within the SBC. Its report of findings and 10 recommendations was adopted overwhelmingly at the 1987 SBC meeting. One recommendation continued the committee for up to three years to observe the response of SBC entities to the report.

Following dismissal of the committee, Fuller told the Baptist Message, Louisiana Baptists' weekly newsletter, he believes the committee's process has allowed leaders of a "new middle" to emerge in Southern Baptist life.

"These men are not different theologically from those presently in leadership, but they are not involved in machinery or counter-machinery politics. While they have very strongly conservative theological stances, their contribution will be in spirit and attitude."

Although he would not name the emerging leaders and said he does not believe any of them will become a candidate for the SBC presidency during the next five years or so, Fuller said he believes they will "help people have a good feeling about Southern Baptists."

"They have some allowance for -- mutual respect for -- a broader spectrum and share a positive accent on things. They will help people recover," he noted.

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"They have finally found a place where they can put in their boat."

Fuller admitted, "I would find that will be a refreshing development."

He also said he has been asked "numerous times" if he would be willing to consider being a compromise candidate for SBC president, but added: "I've not had a chance to think about it. We are in a major building program (at his church) for the next two years, and that is going to receive my full attention."

Looking back over the three-year work of the committee, Fuller recalled accepting the challenge of committee chair with the realization of the extreme difficulty of the task.

"I knew from the start that it was going to be time consuming, and, to a certain degree, a no-win situation," he said. "But my wife told me, 'Maybe this is the contribution you are to make to Southern Baptists because of who you are.'

"My spirit is cooperative with genuine respect -- I love those who differ from me."

He said he feels the Peace Committee, far from being a failure, accomplished two main tasks: "We served as a shock absorber over those years. And we provided a platform, a forum, for people to express themselves, and that has been healthy. Southern Baptists felt someone was set aside to hear them."

The committee came to believe at its last meeting that it was time for the convention to move beyond what the committee offered, he said, noting, "You have to turn to what is now the ongoing process, the trustee process."

The process of the controversy has broadened the involvement of more people in the trustee structure of convention agencies, he added: "We are using more different people. In the process, obviously, we're going to have to remember that trustees bring to the institution and agencies areas of strength. And we definitely need to focus on what they can contribute. I think these different folks can be taught, but they must bring the expertise."

In leaving the Peace Committee work to history, Fuller expressed deep appreciation for the support of the members and staff of the church where he has been pastor for 26 years.

"I have not taken this (committee work or controversy) into the pulpit. The only way it has been mentioned is to pray for the work of the committee," he said.

"And we have a great church staff of longevity. We have two who have been with us 20 and 22 years, and others who have been with us 10 to 12 years. There is a great trust level."

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