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91-75

CLC files Amicus brief
to revise Lemon Test

By Louise Moore & Tom Strode

N-CLC

WASHINGTON (BP)--In an historic action, the Southern Baptist Christian Life Commission is asking the United States Supreme Court to revise a central element in its Constitutional analysis on religious freedom, known as the Lemon Test, to accommodate religious pluralism in public schools in this country.

In an amicus brief filed May 14 at the Supreme Court, the CLC argues Lemon, which has been for the past 20 years the Court's litmus test for Establishment Clause cases, has created a hostile, artificially secular public school environment when what has been needed was an acknowledgement and accommodation of religious pluralism in this country.

"One of the values which public schools should transmit is respect and tolerance for the religious choices of others," says the CLC's brief. "Pluralism is promoted by exposing children and adults to differing religious beliefs and practices in a community, in a respectful, accommodating way.

"When school officials show respect and tolerance for the religious diversity of the community, they promote this public value," the brief says. "This enriches the educational experience and builds understanding and respect. Just as racial harmony cannot grow in the soil of racial segregation, neither can religious harmony spring up in a system of 'religious apartheid.' "

The brief was filed May 14 in Lee v. Weisman. That case resulted from two lower court rulings that said a rabbi's invocation and benediction mentioning God at a junior high school commencement exercise in Providence, R.I., formed an unconstitutional establishment of religion. The Court is expected to hear the case this fall or winter.

A cornerstone in the CLC's brief argues the ceremony was voluntary and thus did not violate the students' right to freedom of religious expression.

At issue in the Court case and in the CLC's brief is the so-called Lemon Test, delineated in the Lemon v. Kurtzman decision of 1971, as a basis for deciding whether a government activity violates the First Amendment's prohibition of establishment of religion.

The CLC's brief says the Lemon Test is flawed and should be replaced with a new formula that both protects against the establishment of any official religion while at the same time allowing freedom of religious expression.

Lemon has been praised by some who support the separation of church and state while others who also support the separation of church and state contend it has been irresponsibly used to strip the public arena of religious expression.

Lemon "will always favor those of no belief over those who do believe" said Richard D. Land, executive director of the CLC. "I have heard more than enough about the Lemon test as a longstanding bulwark of church-state separation," he said. "It's been around 20 years -- only 20 years -- and that's 20 years too long."

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J. Brent Walker, associate counsel of the Baptist Joint Committee on Public Affairs, said his organization will file a brief supporting the lower courts' rulings. The BJC's brief "will not defend Lemon per se" but "certainly the principle of neutrality imbedded in Lemon," Walker said. "We disagree with the Christian Life Commission's interpretation of the First Amendment," he said. "We oppose casually discarding the time-honored Lemon Test for a water-weak standard of non-coercion. Lemon does not promote secularity in our society; it promotes religious neutrality in our government. And that's good for religion, not bad. Churches and synagogues do better when Caesar stays out of the precincts of religion. When Caesar comes in - even when trying to help - religion usually loses."

The CLC calls on the Supreme Court to replace the Lemon Test with one it proposes accommodates the "religious beliefs of the student community" but does not endorse "one form of religious belief over another." The CLC's proposed replacement is tougher than one proposed by U.S. Supreme Court Justice Anthony Kennedy and endorsed by U.S. Solicitor General Kenneth Starr, Land says, but more accommodating to religion than the Lemon Test. Some critics have said Kennedy's proposal endorses nonpreferential promotion of religion by the state.

"We're fearful that the Kennedy test is indeed a 'picket fence' that might easily be blown over by the strong winds of those who would seek an establishment or neo-establishment of religion," Land said.

The CLC's brief suggests the Court replace Lemon with a standard based on the following guidelines adapted from a law review article by University of Chicago Law School professor Michael McConnell:

-- "Does the official accommodation facilitate the exercise of religious beliefs and practices, adopted through private, family, church and community influences, independent from State influence, rather than inducing or coercing beliefs and practices acceptable to the government?

-- "Does the accommodation interfere with the religious liberty of others by forcing them to participate in religious observance?

-- "Does the accommodation favor one form of religious belief over another?" The Lemon Test requires any government practice survive a three-part standard to avoid being an establishment of religion:

-- It must have a secular purpose;

-- It can neither promote nor restrain religion;

-- It must avert excessive entanglement with religion.

"The very formulation of the Lemon test seems to obscure the value of religious liberty," says the brief, written by CLC General Counsel Michael Whitehead. "Insisting on a secularizing purpose, and permitting only secular effects makes the test inherently hostile to religious liberty. "Relentless secularism also violates the Establishment Clause," the brief says.

The brief says the Lee v. Weisman ruling "poignantly serves up the sour fruit which the Lemon tree has borne. This Court is now presented with a compelling occasion, not to just revise and sweeten Lemon, but to uproot and replace it with an Establishment Clause doctrine which will promote religious liberty rather than obliterate it."

Land said, "We believe the test we propose is a hurricane fence that will allow the fresh breezes of students' free exercise to waft through but, strong as steel and anchored deep in cement, will repel even the most aggressive prowler seeking to gain access for an establishment of religion."

"We believe our suggested test will maintain a separation of the institutions of the state and the church while allowing the acknowledgement of the religious and pluralistic nature of our public school population," he said.

"Our suggested tripartite test guarantees freedom for free exercise for students, while at the same time protecting them from the intrusion of state-sponsored religion or irreligion."

The BJC's Walker said, "The no-establishment clause is there to protect the rights of the minority, not to enforce the will of the majority. We are as interested as the CLC in accommodating religious speech. But the best way to do that is for each person to offer up a private prayer of blessing for the class or to hold a voluntary baccalaureate service at a church. After all, wasn't it Jesus who condemned 'practicing piety before men' and told us 'to retire to our closets to pray.'

"Under the CLC's test, new agers, Satanists and every stripe of sectarian lunacy would have an 'equal opportunity to participate' in state-sponsored religious exercises," Walker said. "Is this what we want? Will this help straighten out our schools?"

Whitehead said the Court should restore "coercion as the primary evil and religious liberty and expression as the primary good" in First Amendment cases.

"We're not asking for tolerance," Whitehead said. "We're asking for respectful accommodation. I think the government can be, as one justice said, 'benevolently neutral'."

In Lee v. Weisman, a Jewish rabbi delivered both prayers during the June 1989 graduation at Providence's Nathan Bishop Middle School. Daniel Weisman, whose daughter, Deborah, was involved in the ceremony, brought suit. The district court issued a permanent restraining order prohibiting such prayers. The First Circuit Court of Appeals concurred with the opinion.

The content of such prayers should be controlled by the person chosen to deliver them, not by the school, the CLC contends. "Non-sectarian" prayers are rejected in the brief as well.

"It does not promote religious pluralism for government to permit speech only about a generic 'brand-X' God," the brief says. "If a Baptist preacher is prohibited from praying 'in the name of Jesus Christ,' or a rabbi prohibited from praying to 'Jehovah,' the state has gone too far, and now truly infringes on religious conscience.

"The value of religious pluralism must neither be sacrificed on the altar of merely civil religion or abandoned in the arid, hostile desert of stifling secularism." Religious speech should not be "relegated to some lower standard" than other free speech, the brief says. The district judge's ruling that the rabbi's prayers were permissible except for the use of "God" apparently means "religious speech at a public function is a sort of 'super-obscenity,' which is unprotected by the Free Speech Clause."

In his decision, the lower court district judge said, "Since the landmark 1962 decision of Engel v. Vitale ... God has been ruled out of public education as an instrument of inspiration or consolation ... [I]f Rabbi Gutterman had given the exact same invocation ... with one change -- God would be left out -- the Establishment Clause would not be implicated.

"The Constitution as the Supreme Court views it does not permit (school-sponsored prayer) ... Those who are anti-prayer thus have been deemed the victors. That is the difficult but obligatory choice this Court makes today."

Land and Whitehead say the judge's own words indicate why the Supreme Court urgently needs to replace Lemon.

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Baptist medical team enters Iraq;
more badly needed

By Terry McMahon

N:SMB

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5/16/91

ZAKHO, Iraq (BP)--Burned out cars and broken glass litter the wide, paved streets of Zakho, a town in northern Iraq. Its schools and houses are deserted and its factories idle.

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Zakho, once a nice place to live, crumbled in the face of Saddam Hussein's army and her residents, mostly Iraqi Kurds, fled into the nearby mountains.

Now, an area of northern Iraq which includes Zakho has been declared a "safe haven" by U.S.-led coalition forces, and a huge complex of blue and white tents has been built near the town to house and feed those Kurds who can be coaxed out of the mountains. In the last few weeks, life has slowly returned to Zakho. Coalition forces have established a command center at the town's grain storage facility -- the silo, as the soldiers refer to it.

A few kilometers east of town, the United Nations has assumed responsibility for the refugee camp, although U.S. forces maintain it.

Non-governmental organizations -- NGOs in military jargon -- are beginning to take over the medical chores involved in screening thousands of refugees who arrive at the camp each day. Nearly 10,000 have been processed thus far, and it is estimated between 200,000 and 300,000 remain in the hills.

Southern Baptist volunteers Kerfoot and Marietta Crowder Walker, public health physicians from Tyler, Texas, are used to seeing malnourished children and the effects of disease and poor sanitation -- but not the sheer numbers.

The Walkers, from Green Acres Baptist Church in Tyler, were among the first medical personnel to respond to urgent requests from Texas Baptist Men and the Southern Baptist Foreign Mission Board for assistance in refugee aid coordinated by Global Partners, a London-based relief clearinghouse.

Also responding were Robert Mann, a pediatrician and member of Fielder Road Baptist Church in Arlington, Texas; Terry Elder, trauma physician and member of Second Baptist Church in Corpus Christi, Texas; Shaun Shorrosh, a student at Southwestern Baptist Theological Seminary, Fort Worth, Texas, who speaks Arabic; Brian Shilhavy from Armitage Baptist Church, Chicago, who speaks Turkish; and Dale and Frances Stroope of Lake Pointe Baptist Church, Rowlett, Texas, who volunteered to do "whatever is needed" to round out the team.

Many frustrating delays -- including a change in location of the relief site and tedious travel and customs formalities -- cut into the team's time to work, but their efforts have set the stage for successors to continue. Those successors, especially medical personnel, are needed desperately. Interested persons may contact the Foreign Mission Board's medical volunteer enlistment office at 804-353-0151.

The team arrived in Zakho about 5 p.m. May 6 and had less than two hours to unload their truck and set up their tents before darkness set in. They drove the last tent pegs into the soft ground in the glow of flashlights.

The team's next concern was preserving the dozens of cases of perishable vaccines that would quickly go bad in the heat of the Iraqi spring where daytime temperatures could easily reach into the 90s. They set up a kerosene-powered refrigerator in one of the tents, and several hours later it was stuffed to capacity with the badly needed medicine.

When the immediate tasks had been accomplished, thoughts began to turn to food. "What's for dinner?" volunteer Stroope asked his wife, only half in jest. "I wish I could tell you!" came the reply.

Just when everyone had resigned themselves to a meal of peanut butter crackers and granola bars, they learned that the army mess tent across the compound would provide morning and evening meals for all NGO groups.

Even if the turkey and dressing was a peculiar square shape, and the cranberry sauce was served in a one gallon tin, it was nonetheless an exquisite meal. During the next 24 hours, the team often would express their gratitude for the support rendered by the men and women of the coalition military forces in Zakho.

The Walkers were assigned to a large tent along with a half dozen military nurses, corpsmen and clerks. He gave the exams and determined the physical condition of the families, some including 12 or more people. She took charge of the inoculations that would be given to all children from ages 1 to 10 years old. The immunizations would help stave off measles, mumps and chicken pox and were the first shots many of the children had ever received. Their loud reactions were fairly predictable.

In another tent, interpreter Shorrosh worked with a military doctor who was interviewing each family, while Mann gave inoculations, playing "the bad guy" role, as he termed it. He has in his career seen as many as 100 patients a day. Today he would reach that number by lunch time.

After the first few youngsters expressed their strong disagreement with the inoculation process, Mann found his personal "Walkman," loaded with a cassette of Kurdish folk music, provided all the tranquilizer he needed for his young patients.

The Dutch corpsmen who were assigned as his "holders" were amazed at how easy their jobs suddenly became.

Elder and others boarded a military helicopter earlier in the morning and set out for the city of Dahuk, to the east, to assess the medical needs there even as the coalition forces weighed the possibility of expanding the "safe haven" to include what had been the Kurdish capital of northern Iraq.

Elder and Mann would begin their journey back to the States early the next morning. If they were disappointed they could not spend more time in actual medical relief work, they felt a degree of satisfaction that they were a part of establishing the first Southern Baptist presence inside Iraq.

The Walkers extended their stay an additional week and returned May 16. "We're going to need more doctors ... every few weeks ...," Walker said before they left. "Our churches can find physicians among their membership who can, with a little notice, leave their practices for a week or two and come out here to give of their time and their talents."

At the camp, endless lines of people move slowly through the necessary red tape of registering families and insuring that the occasional case of serious illness is treated before it has a chance to infect the rest of the camp.

The faces of the Kurdish refugees reflect their relief that, at least for now, their ordeal is over ... they are safe.

Their children can play -- freed from the ravages of cold and starvation, and the terrifying pursuit of a madman's army.

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Terry McMahon is part of a Southern Baptist Foreign Mission Board communications team covering the Kurdish relief program.

(BP) photos mailed to state Baptist newspapers by Richmond bureau of Baptist Press

SBC Forum set for
June 3 in Atlanta

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ATLANTA (BP)--The eighth annual meeting of SBC Forum will take place Monday, June 3, at Atlanta's Wieuca Road Baptist Church. The meeting will convene at 2:00 p.m.

Program leaders will include Dan Martin, former news editor of Baptist Press and now pastor of Ledger Baptist Church in Bakersville, N.C.; John Hewett, pastor of First Baptist Church of Asheville, N.C., Forum president and newly-elected moderator of Cooperative Baptist Fellowship; Carolyn Cole Bucy, outgoing president of Southern Baptist Women in Ministry and youth minister at Lake Shore Baptist Church in Waco, Texas; and Jerry Naff, minister of music at Smoke Rise Baptist Church in Stone Mountain, Ga.

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Participants will receive a proposal from the Forum steering committee recommending the dissolution of SBC Forum, Inc. and the transfer of assets to Cooperative Baptist Fellowship to assist in funding its annual convocation.

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SBC Annuity Board not involved in
New Orleans hospital problem

Baptist Press
5/16/91

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DALLAS (BP)--"The Annuity Board of the Southern Baptist Convention is in no way related to any benefit problems of any retired employee of the Southern Baptist Hospital of New Orleans," said Thomas E. Miller Jr., senior vice president of the Annuity Board.

Southern Baptist Hospital in New Orleans, at one time related to the Southern Baptist Convention, is now an independent corporation. Their retirement plan is not with the Annuity Board of the Southern Baptist Convention.

In a news release dated May 2, 1991, the hospital reported it had purchased group annuities from Executive Life Insurance Company of California to provide for retirement benefits.

Recently, the California Insurance Commissioner has placed Executive Life under court supervised control and payment of its obligations is in doubt.

"The Annuity Board has never purchased or considered purchasing products from the failed Executive Life Insurance Company of California," said Miller. "Nor do we have any investment in First Capital Insurance Company which was seized by California regulators on May 14," he said.

"The Annuity Board, with the assistance of our outside Fixed Fund advisor, continues to make placements with only the highest quality issuers, paying particular attention to junk bond and non-performing real estate exposure of each insurance company and bank that we invest with," said Miller.

"We regret that some people have apparently linked the annuity payment problems of the New Orleans Hospital with the Annuity Board. No annuitant receiving benefits from us need have any fear about our ability to meet every obligation," said Miller.

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East and West German Baptists
tie the knot

By Stanley Crabb

N-FMS

Baptist Press
5/16/91

SIEGEN, Germany (BP)--Two thousand Baptists from former East and West Germany stood in silence as their elected leaders signed their official unification document May 10. Then, with tear-filled eyes and hearts full of emotion, their voices united to sing "Blest Be the Tie That Binds."

The 22-year separation, forced on them by the loathsome Berlin Wall had finally ended. A reunited German Baptist Union was formed, and the Baptist Unions of the former German Democratic Republic and the Federal Republic of Germany were no more.

"That which just a short time ago would have been unthinkable," someone said in a public prayer, "has now been accomplished. It is a miracle, and we are grateful." More than 1,500 persons from East and West registered for the Unification Conference, May 8-12, were at a loss for words. "Wonderful!" exclaimed many in the futile attempt to find adjectives sufficient for the occasion.

"In spite of all these years of separation," said Walter Zeschky following the signing, "a strong sense of unity continued to live in our hearts." Zeschky, former president of the West German Union, and Wolfgang Lorenz, former vice-president, were elected to similar offices in the now united German Baptist Union.

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Prior to the signing ceremony, separate sessions were held in which 210 delegates from the East and 609 from the West voted by secret ballot to endorse the unification. Remarkably, only two persons withheld their vote, making the final tally virtually unanimous. The newly formed union consists of 940 autonomous churches with 85,000 members.

Forty-four Brethren Assemblies and 11 Elim Pentecostal churches in the former East German Union decided against unification, choosing instead to join their denominational bodies in the West. In all, 13,500 members in 165 churches in the East united with the Western churches in Siegen.

"The whole world is divided, but German Baptists are uniting," declared Denton Lotz, general secretary of the Baptist World Alliance. "You have provided an example for Baptists throughout the world."

"This unification has been brought about by the Lord," said Manfred Sult. "It's a miracle. Before the changes (brought about by the fall of the Berlin Wall), we couldn't even think of such a thing, but now it's a reality." Sult and Ulrich Materna were president and general secretary respectively in the East Union. In the new union, they have the title of director, along with former West German Baptist directors Eckhard Schafer and Gerd Rudzio.

The Berlin Wall divided Germany from August 13, 1961, until it was breached on November, 19, 1989.

After the wall was constructed, the Baptist Union of Germany tried to remain united. It gradually became clear that economic, political and social restrictions in the East made such unity no longer possible. The Union of Baptist Churches in the German Democratic Republic was created in 1969.

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Stanley Crabb is director of European Baptist Press Service, based in Ruschlikon, Switzerland.