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June 26, 1992

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Supreme Court rules against prayers at school graduations

By Larry Chesser

WASHINGTON (ABP) -- Prayers by clergy at public school graduation and promotion ceremonies are unconstitutional, a sharply divided U.S. Supreme Court declared June 24.

The 5-4 ruling upheld lower-court rulings against the Providence, R.I., school district's practice of including clergy-delivered invocations and benedictions at the ceremonies.

The Supreme Court declined the request by the U.S. Justice Department to use the case, Lee vs. Weisman, to reconsider the three-part test formulated in 1971 to weigh establishment clause violations. That test, announced in Lemon vs. Kurtzman and known as the Lemon test, requires government practices to have a secular purpose, neither advance nor inhibit religion and avoid excessive entanglement between government and religion.

Writing for the majority, Associate Justice Anthony Kennedy said Providence's commencement-prayer policy violated the First Amendment's ban against a state establishment of religion because the prayers involved were state-directed and coercive.

Kennedy was joined by Associate Justices Harry Blackmun, John Paul Stevens, Sandra Day O'Connor and David Souter.

In a strongly worded dissent, Associate Justice Antonin Scalia, joined by Chief Justice William Rehnquist and Associate Justices Byron White and Clarence Thomas, accused the majority of ignoring "a tradition that is as old as public-school graduation ceremonies themselves, and that is a component of an even more longstanding tradition of non-sectarian prayer to God at public celebrations generally."

The Providence policy was challenged by Deborah Weisman, a student at Nathan Bishop Middle School, and her father, Daniel Weisman. In affirming lower-court rulings that sided with the Weismans, the high court majority called government's involvement in the religious exercises "pervasive, to the point of creating a state-sponsored and state-directed religious exercise in a public school."

School officials decided, the majority said, that prayers would be included in the ceremony and who would deliver the prayers and then "directed and controlled the content of the prayer" by issuing guidelines and advising

the minister that the prayers should be non-sectarian.

Citing the high court's landmark 1962 and 1963 decisions barring state-sponsored religious exercises in public schools, the majority noted that "prayer exercises in public schools carry a particular risk of indirect coercion. The concern may not be limited to the context of schools, but it is most pronounced there."

Kennedy and the majority rejected claims that no coercion is involved because attendance at the ceremony was not required to receive a diploma.

"The undeniable fact is that the school district's supervision and control of a high-school graduation ceremony places public pressure, as well as peer pressure, on attending students to stand as a group, or at least, maintain respectful silence during the invocation and benediction," Kennedy wrote.

"This pressure, though subtle and indirect, can be as real as any overt compulsion."

The level of school involvement, Kennedy wrote, "made it clear that the graduation prayers bore the imprint of the state and thus put school-age children who objected in an untenable position."

In his dissent, Scalia argued that direct coercion, not merely subtle and indirect pressures, is required to violate the First Amendment's establishment clause when the religious activity involved is non-sectarian. "There is simply no support for the proposition that the officially sponsored non-denominational invocation and benediction read by Rabbi (Leslie) Gutterman -- with no one legally coerced to recite them -- violated the Constitution," Scalia wrote.

The Justice Department had asked the high court to replace the Lemon standard with a new test that would permit government involvement in religion as long as coercion is not present.

Kennedy said the court need not reconsider the Lemon decision because the courts' earlier school prayer decisions "compel the holding" that the Providence practice is unconstitutional.

Scalia nonetheless argued that in basing its ruling on the earlier school prayer decisions, the court "demonstrates the irrelevance of Lemon by essentially ignoring it...and the interment of that case may be one happy byproduct of the court's otherwise lamentable decision."

A federal district court decision, later upheld by the 1st Circuit Court of Appeals, held that the commencement prayers violated the second prong of the Lemon test by creating "an identification of the state with a religion, or with religion in general."

Blackmun, in a concurring opinion joined by Stevens and O'Connor, reiterated his support of the court's past church-state separation rulings, including the Lemon test.

"The court holds that the graduation prayer is unconstitutional because the state 'in effect required participation in a religious exercise,'" Blackmun wrote. "Although our precedents make clear that proof of government coercion is not necessary to prove an establishment clause violation, it is sufficient."

In another concurring opinion, Souter, joined by Stevens and O'Connor, wrote that the establishment clause does not permit government sponsorship of non-sectarian religious practices and that the state does not have to go as far as coercing religious conformity to violate the establishment clause.

"On balance, history neither contradicts nor warrants reconsideration of the settled principle that the establishment clause forbids support for religion in general no less than support for one religion or some," Souter wrote.

BJC, CLC offer varying views
of commencement-prayer ruling

By Mark Wingfield and Larry Chesser

WASHINGTON (ABP) -- Differences between the Baptist Joint Committee and Southern Baptist Christian Life Commission came into clearer focus as spokesmen for each agency responded to the U.S. Supreme Court's June 24 decision barring prayers by clergy at public-school graduation ceremonies.

Southern Baptist conservatives, who now control the denomination's political process, long had criticized the Baptist Joint Committee for its stand against government-sponsored school prayer. Because of that and other concerns, the SBC recently cut its longstanding ties with the religious-liberty coalition and gave a new religious-liberty assignment to the denomination's Christian Life Commission.

As the Supreme Court considered the Lee vs. Weisman case, the CLC used its new position to do what the Joint Committee never would -- publicly take up the fight for school-sponsored prayer. The CLC filed a brief asking the court to uphold the Providence, R.I., school district's commencement prayers and adopt a new standard that would allow government to sponsor religious practice as long as coercion is not involved.

The Baptist Joint Committee joined a coalition in a brief urging the court to maintain the principle of government neutrality embodied in the so-called Lemon test. That brief opposed the school-sponsored prayer found in the Lee vs. Weisman case but not every conceivable type of school prayer.

Not surprisingly, the high court's 5-4 decision once again prohibiting government-sponsored prayers in public schools drew sharply different appraisals from the two agencies.

Spokesmen for the Baptist Joint Committee generally were pleased with the decision, claiming "watered-down, lowest-common-denominator, state-sponsored religion is worse than worthless." Spokesmen for the CLC criticized the decision as "outrageous" and further evidence of America's slide into secularism.

At issue was more than the constitutionality of the Providence district's commencement-prayer practice. The U.S. Justice Department had asked the high court to replace its strict standard for deciding establishment-clause cases with a more lenient coercion standard, similar to the one endorsed by the CLC brief.

The existing standard embodied in the Lemon test requires government practices to have a secular purpose, neither advance nor inhibit religion and avoid excessive entanglement with religion.

But the high court majority declined to reconsider the Lemon standard, and instead based its decision on the precedents set in the landmark 1962 and 1963 decisions that banned state-sponsored religious exercises in public schools.

"I sympathize with those who see in this decision the awesome specter of religion being banned from public life," said James Dunn, executive director of the Baptist Joint Committee. "However, I cannot imagine why anyone would defend rituals that divide, trivialize and balkanize. I don't hanker to protect and perpetuate 'non-religious prayers.' What an oxymoron!

Oliver Thomas, Joint Committee general counsel, said the court's ruling "should not be interpreted as mandating a naked public square or banning religion from public life. The court has simply reiterated that it is none of the business of government to sponsor and promote religious exercises in public schools."

CLC Executive Director Richard Land called the high court's decision "outrageous" and said it "is one more giant step in the

encroachment of the secular state upon a religiously pluralistic society."

"Once again, the court has confused secularism with religious pluralism." Land pledged to "continue to fight for the freedom for religious expression guaranteed by the First Amendment to the Constitution until we prevail."

CLC General Counsel Michael Whitehead said the court majority seems worried that objecting students "will get the message the state is approving of religion."

"The majority does not seem to worry that the average student may get the message that our legal system finds religion to be not just irrelevant to public life but illegal to practice in public school," he said.

Despite their disagreement, spokesmen for both agencies pointed to constructive responses Baptists can make to the decision.

"I hope pastors, priests and rabbis will see the ruling as a positive development, an opportunity for public witness," Dunn said. "We can advance ecumenical cooperation, promote voluntary baccalaureate services, celebrate shared values and demonstrate the faith we profess. The Baptist Joint Committee will try to lead the way."

Although disappointed with the decision, Whitehead said Baptists should realize the decision is limited to the specific facts of the Providence case. "School officials made the decision to have prayer, made the invitation to the rabbi and otherwise controlled the prayer and the program," he said. This case does not prohibit student-initiated, student-led prayers or religious expression, at commencements or other school functions."

He encouraged school officials to "keep working with parents and students to develop plans which let students do the deciding or inviting or praying."

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Court strikes airport solicitation
but not literature distribution

WASHINGTON (ABP) -- Government officials may ban in-person solicitation of funds but not distribution of literature in airport terminals, a sharply splintered U.S. Supreme Court ruled June 26.

At issue were bans on both activities that transportation officials sought to impose at the New York City area's three major airports. The regulations were challenged by members of the Hare Krishna faith.

The court voted 6-3 to uphold the ban on solicitation imposed by the Port Authority of New York and New Jersey, while voting 5-4 to strike the port authority's ban on the distribution and sale of literature.

The case hinged on whether airport terminals are considered public forums where free-speech activities can be restricted only for compelling reasons.

Five justices, led by Chief Justice William Rehnquist, held that airport terminals are not public forums and local officials needed to show only that their regulations were reasonable and not designed to suppress a particular viewpoint.

Rehnquist, joined by justices Byron White, Sandra Day O'Connor, Antonin Scalia and Clarence Thomas, held that the regulation imposed by New York airport officials "reasonably limits solicitation."

The majority concluded it is reasonable to find that solicitation activity may be disruptive for airport customers.

While joining the Rehnquist-led majority in holding that airport terminals are not public forums and that New York's solicitation ban is reasonable and constitutional, O'Connor joined the court's four other members

-- Anthony Kennedy, Harry Blackmun, David Souter and John Paul Stevens -- in holding that the ban on literature distribution is unconstitutional.

O'Connor said that "while the difficulties posed by solicitation in a non-public forum are sufficiently obvious...the same is not necessarily true for leafletting."

Noting that airport officials had leased space to banks, restaurants, retail stores and other commercial businesses, O'Connor wrote that the range of activities promoted by airport officials is "no more directly related to facilitating air travel" than those pursued by the Hare Krishna.

"Because I cannot see how peaceful pamphleteering is incompatible with the multipurpose environment of the...airports, I cannot accept that a total ban on that activity is reasonable without an explanation as to why such a restriction 'preserves the property' for the several uses to which it has been put."

In a concurring opinion, Kennedy reached the same results as O'Connor in upholding the ban on solicitation while striking the airport's rule against literature distribution and sales. But unlike O'Connor, Kennedy insisted airport terminals are public forums.

"In my view the airport corridors and shopping areas outside of the passenger security zones...are public forums, and speech in those places is entitled to protection against all government regulation inconsistent with public forum principles," Kennedy wrote.

Kennedy criticized the majority's conclusion that airports are not public forums as "flawed."

"It leaves the government with almost unlimited authority to restrict speech on its property by doing nothing more than articulating a non-speech-related purpose for the area, and it leaves almost no scope for the development of new public forums absent the rare approval of government," he wrote.

A dissenting opinion written by Souter and joined by Blackmun and Stevens agreed with Kennedy that airport terminals are public forums. But the three dissenters would have held that both the solicitation ban and the literature distribution prohibition are unconstitutional.

Souter noted that the court has held the "solicitation of money by charities to be fully protected as the dissemination of ideas."

Rehnquist, White, Scalia and Thomas dissented from the decision to uphold distribution of literature, noting that "leafletting presents risks of congestion similar to those posed by solicitation."

The court's decision affirmed rulings by the 2nd U.S. Circuit Court of Appeals.

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-- By Larry Chesser

High court strikes down
Georgia parade ordinance

WASHINGTON (ABP) -- Fees charged for events such as parades and marches cannot be based upon the whims of local government officials, the U.S. Supreme Court ruled June 18.

In a 5-4 ruling, the high court struck down a Forsyth County, Ga., assembly and parade ordinance because it delegated too much discretion to county administrators to determine when and how much to charge for permit fees, and because it required administrators to base any charge for additional police protection on the amount of hostility likely to be created by the event.

Forsyth officials enacted the ordinance in 1987 after the second of two

civil-rights demonstrations in the mostly all-white county led to more than \$670,000 in police costs. The ordinance permits a charge of up to \$1,000 per day for events such as parades and marches.

In 1989, the Nationalist Movement challenged the ordinance after the county imposed a \$100 permit fee for its planned demonstration in opposition to the federal holiday commemorating the birth of Martin Luther King Jr.

A federal district court upheld the ordinance, but the 11th Circuit Court of Appeals reversed the lower court, holding that the First Amendment's free-speech guarantee is violated by an ordinance charging more than a nominal fee for free speech activities.

Writing for the majority, Justice Harry Blackmun did not address whether fees of up to \$1,000 are considered nominal. Joined by Justices John Paul Stevens, Sandra Day O'Connor, Anthony Kennedy and David Souter, Blackmun wrote that the level of the fee is irrelevant when free speech is regulated on the basis of its content.

"Regulations which permit government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment," the majority opinion states.

"The decision how much to charge for police protection or administrative time -- or even whether to charge at all -- is left to the whim of the administrator.... Nothing in the law or its application prevents the official from encouraging some views and discouraging others through the arbitrary application of fees," the majority stated.

Chief Justice William Rehnquist -- in a dissenting opinion joined by Justices Byron White, Antonin Scalia and Clarence Thomas -- criticized the majority for failing to decide, "if not limit itself to," reviewing the lower courts' finding that the First Amendment bars charging more than a nominal fee for a parade permit.

Rehnquist said the Constitution does not limit such fees to a nominal amount.

Instead of deciding whether parade permit fees must be nominal, Rehnquist said, the majority "concludes that the county ordinance is facially unconstitutional because it places too much discretion in the hands of the county administrator and forces parade participants to pay for the cost of controlling those who might oppose their speech."

These issues were not addressed by the district or appeals courts, Rehnquist said, adding that he would return the case to lower courts for factual findings in these areas.

The case is Forsyth County, Georgia vs. The Nationalist Movement (91-538).

In another free-speech case likely to be decided by the end of June, the Supreme Court is expected to decide whether solicitation of funds and distribution of literature may be banned from airport terminals.

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-- By Larry Chesser

Subcommittee approves
religious-freedom measure

WASHINGTON (ABP) -- The Religious Freedom Restoration Act moved one step closer to passage June 24 by gaining approval of the House Subcommittee on Civil and Constitutional Rights.

The subcommittee approved H.R. 2797 by a 5-3 vote after defeating five attempts to amend the bill.

RFRA would restore the strict "compelling interest" standard the U.S.

Supreme Court formerly required government to meet before restricting free exercise of religion. That test permitted government to restrict religious exercise only to further a compelling governmental interest and if the least restrictive means of safeguarding that interest had been employed.

The high standard, articulated by the Supreme Court in 1963, virtually was abandoned in its Oregon Employment Division vs. Smith decision in April 1990.

The Smith decision stated that government need not justify burdens on religious practice unless the law is aimed at religion.

A broad coalition of more than 50 religious and civil-liberties groups, headed by the Baptist Joint Committee, has worked for two years to reinstate the protection lost in Smith. But the coalition has faced opposition by some anti-abortion groups, primarily the U.S. Catholic Conference and the National Right to Life Committee, which contend that RFRA would permit abortion as a religious right.

Other anti-abortion groups, such as the Southern Baptist Christian Life Commission and the National Association of Evangelicals, support RFRA because they say the bill is abortion-neutral.

The Catholic Conference has declined to support RFRA unless the legislation exempts challenges to abortion restrictions, to the use of tax funds by religious groups and to the tax-exempt status of organizations from the heightened protection of the compelling-interest test.

During subcommittee consideration of the bill, all three of those exemptions were offered as amendments by Rep. Henry Hyde, R-Ill. Hyde submitted a total of five amendments. Each was defeated.

Hyde's first amendment added a disclaimer that the act does not "grant, secure, or guarantee any right to abortion, access to abortion services or funding."

"My greatest concern with this legislation remains...(that) it would provide an independent statutory basis for abortion should the Supreme Court overturn Roe vs. Wade, and thus, I oppose it in its present form," Hyde said.

Subcommittee chairman Don Edwards, D-Calif., and Rep. Mike Kopetski, D-Ore., both disagreed, saying that the abortion issue related to RFRA is extraneous and additional language is unnecessary.

Although the abortion issue sparked debate during hearings and consideration of the bill, the subcommittee seemed virtually unanimous in its disdain for the Smith decision.

However, Rep. Bill McCollum, R-Fla., argued that RFRA was not only a bad bill, but that Smith was a good decision. McCollum said that Justice Antonin Scalia's majority opinion was "intelligent" and has been misunderstood.

Americans do not need the compelling-interest test, which is too vague, to protect religious freedom, he added.

Oliver Thomas, chairman of the Coalition for the Free Exercise of Religion and general counsel at the Baptist Joint Committee, said McCollum is the first congressman he had heard compliment the Scalia opinion.

"Smith is the Dred Scott of religion cases," Thomas said, referring to the 1857 Supreme Court ruling that determined slaves were property. "In an age of increasing government regulation, no church, synagogue or parochial school is safe until RFRA is passed."

A companion bill is expected to be introduced in the Senate by Sens. Orrin Hatch, R-Utah, and Edward Kennedy, D-Mass.

Fetal-tissue ban sustained as House fails to override veto

WASHINGTON (ABP) -- The Bush administration's ban on medical research using fetal tissue from induced abortions was sustained June 24 by the U.S. House of Representatives.

The House vote, 271-156, fell short of the two-thirds majority needed to override President George Bush's veto of the National Institutes of Health Reauthorization bill (H.R. 2507). Bush has vetoed 30 bills without an override.

The measure would have funded medical research in areas such as cancer, women's health and AIDS but faced administration opposition because of a provision that would have lifted its four-year-old ban on fetal-tissue research. The Reagan administration imposed the ban in 1988, and Bush has maintained it, purporting that such research would encourage abortions.

Ban opponents claim the moratorium has halted substantial research in the treatment of Parkinson's disease, Alzheimer's disease, diabetes and other genetic disorders.

In a message to Congress, Bush said he vetoed the measure because he found it unacceptable on virtually every ground -- ethical, fiscal, administrative, philosophical and legal.

"The bill's provisions permitting the use of tissue from induced abortions for federally funded transplantation research involving human subjects are inconsistent with our nation's deeply held beliefs," Bush wrote.

"Let it be clear: this is not a moratorium on research," he continued. "It is only a moratorium on the use of one source of tissue for that research. I believe this moratorium is important in order to prevent taxpayer funds from being used for research that many Americans find morally repugnant and because of its potential for promoting and legitimizing abortion."

Bush emphasized he is committed to pursuing cures for such disorders if the research uses tissue from what he said are ethically acceptable sources, either ectopic pregnancies or spontaneous abortions. He noted that on May 19 he issued an executive order establishing a fetal-tissue bank that will collect tissue from these sources to meet research needs.

But ban opponents have criticized the Bush-authorized fetal bank because they say tissue from miscarriages and tubal pregnancies often is unsuitable for transplantation research.

Ironically, representatives on both sides of the issue argued their views reflected the "pro-life" position. Some anti-abortion members supported the ban, but others broke ranks because they said the fetal-tissue issue is not about abortion.

In fact, 14 Republican senators urged Bush to reconsider his position in a June 11 letter. The letter said, "Fetal-tissue transplantation research is not about abortion; it is about saving lives."

But other congressional Republicans agreed with Bush that fetal-tissue research would increase the number of abortions. They argued sustaining the veto was sustaining unborn life.

Rep. Henry Hyde, R-Ill., refuted an argument by a House member that right-wing religious zealots were holding H.R. 2507 hostage. He noted the Southern Baptist Convention and U.S. Catholic Conference support the ban, adding that those two groups are not the "ugly right."

The SBC adopted a resolution against medical research using tissue from elective abortions at its annual meeting in Indianapolis.

Baptists were referred to by another congressman during floor debate.

Rep. Fred Upton, R-Mich., reminded representatives of pro-life Baptist minister Guy Walden, who testified to Congress on behalf of fetal-tissue research. "After losing two children to a rare genetic defect known as Hurler's syndrome, testing revealed that this same birth defect threatened to rob him and his pregnant wife of yet another child," Upton said. "The Waldens knew it would take a miracle to save their child from deformity and an early, certain death -- and with a fetal-tissue transplant they found one."

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-- by Pam Parry

***** END *****