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Supreme Court may revisit  
key church-state test

By Larry Chesser

WASHINGTON (ABP) -- The U.S. Supreme Court indicated Nov. 29 it may re-examine its long-held but controversial legal test for assuring church-state separation.

The high court agreed to review lower-court decisions that struck down creation of a special New York public school district to accommodate the religious needs of a Hasidic Jewish community.

Two of the parties appealing the case -- New York Attorney General Robert Abrams and the new district's school board -- asked the high court to reconsider its landmark 1971 ruling in *Lemon vs. Kurtzman* that has been used to ensure governmental neutrality toward religion.

To comply with the First Amendment's church-state separation requirements under the three-part *Lemon* test, governmental actions must have a secular purpose, neither advance nor inhibit religion, and avoid excessive entanglement with religion.

The high court's decision to accept the case may signal it will address the *Lemon* test, since the court said its review will not be limited to the issues raised in the New York dispute.

The *Lemon* test has been sharply criticized by four current members of the court -- Chief Justice William Rehnquist and Associate Justices Antonin Scalia, Anthony Kennedy and Clarence Thomas. A fifth justice, Sandra Day O'Connor, has offered less-harsh criticism of *Lemon*.

"It is not a foregone conclusion that the court will re-examine *Lemon*, though it appears to be on the table," said Brent Walker, general counsel at the Baptist Joint Committee.

Even if the court revisits *Lemon*, Walker said, it may be to reaffirm it, not abandon it.

"It is far from clear that the court will use this case to lower the wall separating church and state," he said.

Proponents of the neutrality required by *Lemon*, he said, should be comforted by the replacement of recently retired Justice Byron White, a *Lemon* opponent, with Justice Ruth Ginsburg, who spoke generally in favor of the test during confirmation hearings and applied it as a federal appeals-court

judge.

The Southern Baptist Christian Life Commission has not taken a position on the New York case but has previously called for a re-examination of Lemon.

The New York legislature created the special school district encompassing the village of Kiryas Joel in Orange County to resolve a conflict over providing special-education services to handicapped students of the village, which is inhabited almost exclusively by Hasidic Jews.

Hasidic Jews practice an insular lifestyle, generally speaking Yiddish instead of English; wearing distinctive dress; barring television, radio and English-language publications; and usually educating their children in boys' and girls' religious schools.

Although the Monroe-Woodbury Central School District previously offered education for handicapped students through the private Hasidic schools, that practice was outlawed by the Supreme Court.

The school district's solution -- to offer classes through its other schools -- proved unsatisfactory to the Hasidic students, so the state legislature established the special school district encompassing the Hasidic community, which allowed education for the handicapped students within the Hasidic environment.

Officers of the New York State School Boards Association filed suit charging that the special district violates the First Amendment. To this point, courts have agreed.

The New York Court of Appeals said the principal effect of the creation of the special school district "is to advance religious beliefs."

Because the special services are already available to the handicapped children of Kiryas Joel in the Monroe-Woodbury district, New York's top court said, the primary effect of the special district "is not to provide those services, but to yield to the demands of a religious community whose separatist tenets create a tension between the needs of its handicapped children and the need to adhere to certain religious practices."

Lawyers for the special school district argue both that Lemon was misapplied by the lower courts and that it should be discarded.

As long as Lemon remains the law, "it creates great uncertainty for the lower courts," Kiryas Joel school district attorney Nathan Lewin said in asking the high court to hear the case.

"This court should resolve, once and for all, whether Lemon vs. Kurtzman will be retained as the beacon by which legislatures and lower courts are to be guided to a safe shore," Lewin argues.

The BJC's Walker urged caution in any re-examination of Lemon.

"The Lemon test was developed over a 10-year period and embodies teachings as old as the republic itself -- a mandate of governmental neutrality with respect to religion."

Walker said the court could decide the New York case without utilizing Lemon by following another case that bars favoring one religion over others.

"Where one religion is being privileged over all others, the Supreme Court has ruled that the state must justify that treatment by showing that it is pursuing a compelling interest through narrowly tailored means," he said. "This case more closely resembles those circumstances than the typical Lemon case where all religions are privileged."

In another church-state case, the high court declined Nov. 29 to review the case of a railroad worker -- a practitioner of the Worldwide Church of God -- who said his civil rights were violated when Amtrak dismissed him for failing to work during his Sabbath -- from sundown Friday to sundown Saturday -- and on certain religious holidays.

A lower court said Amtrak could not have accommodated Stephen Rasch's

religious needs without incurring undue hardship. Rasch was dismissed from Amtrak in November 1988, but was reinstated 10 months later and given a post that permitted him to observe his Sabbath.

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President Clinton  
signs Brady Bill

WASHINGTON (ABP) -- President Clinton signed the Brady Bill into law Nov. 30, capping years of effort to enact a five-day waiting period before Americans can purchase a handgun.

Clinton described the bill as the first step "in taking our streets back, taking our children back, reclaiming our families and our future."

The bill's waiting period will allow for a criminal background check on potential buyers.

The measure, which cleared Congress just before adjournment, is named for former White House press secretary James Brady, who was shot during an attempt to assassinate President Reagan in 1981.

The Senate approved the bill by voice vote and the House of Representatives by a 238-187 vote.

The signing ceremony was attended by James and Sarah Brady, who have been at the forefront of the campaign to enact gun-control legislation.

The waiting-period requirement would end in five years -- the time lawmakers estimate is needed to implement a national computerized system so that instant checks can be made.

Some Republican senators initially filibustered because they said that five years was too long for the requirement to be in effect. They favored a period of four years, giving the attorney general an option to extend it one year.

They acquiesced after Democratic Majority Leader George Mitchell of Maine said that he would require senators to return after the Thanksgiving break if they did not dispense with the Brady Bill.

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-- By Pam Parry and Larry Chesser

Evangelicals in Bulgaria  
complain of harassment

SOFIA, Bulgaria (ABP) -- Another former communist country is locked in an internal struggle over how much religious freedom to allow.

This time it's Bulgaria, an East Europe country of 9 million people located on the Black Sea. Bulgaria emerged from communist rule in 1989 and, like most post-communist countries, established religious liberty for its citizens.

But the influx and growth of religions competing with the dominant Orthodox Church has produced tension and calls for new restrictions. Evangelical Christians, including Baptists, say they are the targets of a

harassment campaign conducted by the Orthodox Church and abetted by the government.

According to Theo Angelov, president of the Baptist Union of Bulgaria, evangelicals and even mainline Protestants are lumped together with less traditional religions under the derisive heading of "sects," even though some of those traditional faith groups have been around for more than 100 years.

Government leaders accuse the sects of bribery, brainwashing and infecting Bulgaria with drugs and organized crime, according to the European Baptist Press Service.

New laws that give preference to the Orthodox Church and restrict other faith groups have been proposed by Christopher Subev, chairman of the parliament's committee for religions.

Already some non-Orthodox churches have been denied building permits and others forced to vacate government-owned buildings.

James Duke, an American serving as pastor of an English-speaking Baptist congregation in Sofia, has been told to leave Bulgaria by Dec. 3. Efforts to obtain long-term visas for James and his wife, Audrey, have been futile.

The Dukes, Southern Baptists, have been working with the Sofia congregation since March. Between 70 and 120 internationals meet for worship every week in a hotel in the capital city.

If allowed to register with the government, the Sofia congregation would be the only official English-language church in Bulgaria. But efforts to register have been rebuffed. Without registration, James Duke explained, "our church could be closed at any time."

A report by the Helsinki Commission earlier this year found considerably more religious freedom in post-communist Bulgaria but also noted evangelical complaints about visa problems, proposed restrictions and media attacks "that have confused their churches with foreign non-Christian sects."

"Apparently little distinction is made among the various non-Eastern Orthodox religions, and a growing number of Bulgarians seem to be supporting state restrictions for non-Orthodox evangelical activity," said the Washington-based Helsinki Commission, which monitors human rights.

The number of Baptists in Bulgaria reportedly has tripled since the fall of communism. Baptists now claim 3,000 members in 30 churches.

Such growth has been viewed as a threat by the Orthodox Church in Bulgaria and other former communist countries.

Efforts to restrict non-Orthodox religions have surfaced in several eastern European countries, including Russia and Albania.

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-- By Stanley Crabb and Greg Warner

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