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Supreme Court hears arguments in challenge to religious liberty law

By Larry Chesser and Kenny Byrd

WASHINGTON (ABP) -- In what may prove to be a landmark church-state case, the U.S. Supreme Court jostled with lawyers Feb. 19 over whether Congress went too far in 1993 when it passed a law making it harder for government to restrict religious practice.

The Supreme Court heard oral arguments in a case challenging constitutionality of the Religious Freedom Restoration Act, a law passed by Congress after an earlier high-court ruling made it easier for governments to pass laws which burden religion.

The law restored a legal standard eroded by the court's *Employment Division vs. Smith* decision by requiring that generally applied laws that substantially burden religious practice can be passed only when there is a "compelling" reason to do so.

The Supreme Court is examining RFRA in a zoning dispute between officials in Boerne, Texas, and a church seeking to expand a sanctuary located in a historic preservation district. After the city rejected the expansion request by St. Peter Catholic Church, Archbishop P. F. Flores of San Antonio sued the city, claiming RFRA protection.

Boerne attorney Marci Hamilton told justices the case "is not about religious liberty" but "about federal power," calling Congress' enactment of RFRA a "brazen attempt to reinterpret the free-exercise clause" and the "worst of legislative overreaching."

Defending RFRA was University of Texas law professor Doug Laycock, who told justices that Congress acted within its constitutional authority in passing RFRA.

Laycock and other RFRA supporters argue that Congress is authorized to expand enforcement of constitutional rights, including the First Amendment's religious-liberty protections, in ways that are consistent with the Constitution.

Laycock denied the law was an effort by Congress to usurp judicial authority. "This is not a power grab," he said, noting that the power to determine what constitutes a "compelling interest still resides with this court."

Arguing that RFRA is less intrusive on states than some laws already upheld by the high court, Laycock said, "RFRA is a mile wide and an inch deep."

In addition to arguments against RFRA raised by Boerne, justices heard Ohio's objections to the law from state Solicitor Jeffrey Sutton.

Sutton told justices that states want to "overprotect" religious exercise but do not want Congress telling them how. He predicted states would pass religious-liberty protection of their own if RFRA is struck down by the Supreme Court.

Arguing for RFRA on behalf of the Clinton administration was acting Solicitor General Walter Dellinger, who told justices that the case does not require the high court "to break any new ground."

RFRA bars government from treating religions differently, Dellinger said.

Justice Sandra Day O'Connor asked Dellinger if RFRA would require government to show a compelling reason for a law that taxed the outside-business income of churches when the record showed that only two major churches had such income.

Dellinger said the answer is no, because a tax on outside-business income does not create a "substantial burden."

Dellinger also responded to suggestions that religious-liberty claims should be handled on a case-by-case basis rather than in the sweeping manner employed by RFRA. Congress was concerned, he said, that resolving free-exercise violations on a case-by-case basis would favor large, established religions.

Throughout the 70-minute session, comments and questions raised by justices reflected a degree of skepticism at arguments made by both sides.

At a press conference following the argument session, Boerne attorney Hamilton said RFRA "shifts the balance of power over to the churches' side in a dramatic way," and would always give churches a leg up in disputes with governmental bodies.

Baptist Joint Committee General Counsel Brent Walker told reporters Hamilton was taking it too far when she claimed churches would always have a leg up. Churches do not always win, he said.

Walker said RFRA merely "tipped the playing field back to the way it was before Smith."

A decision in the case is expected by the end of the court term in June.

The case drew friend-of-the-court briefs supporting RFRA from a wide spectrum of religious groups, members of Congress, the American Bar Association and attorneys general from Connecticut, Maryland, Massachusetts, New York and Texas.

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Supreme Court issues mixed ruling on restricting clinic demonstrations

By Larry Chesser

WASHINGTON (ABP) -- In a ruling that allowed both sides to claim victory, the U.S. Supreme Court upheld part, but not all, of an injunction restricting anti-abortion demonstrations at clinics in upstate New York.

A 6-3 court majority upheld a fixed 15-foot buffer zone around doorways, driveways and parking lot entrances at clinics in the Buffalo and Rochester areas.

But in an 8-1 vote, the high court struck down "floating" 15-foot-buffer zones around people and vehicles seeking access to the clinics.

A federal district court in New York ordered the buffer zones and other restrictions following complaints about blockades and other protests at area clinics that perform abortions.

The court injunction allowed two "sidewalk counselors" to engage in nonthreatening conversation with patients or clinic staffers in the buffer zones but required them to retreat when their targets indicated a desire not to be counseled.

In an opinion written by Chief Justice William Renquist, the high court upheld the requirement for abortion protestors to retreat when asked inside the fixed buffer zone but said floating buffer zones "burden more speech than is necessary to serve the relevant governmental interests."

Renquist said floating buffer zones limit the rights of abortion opponents to converse or hand out leaflets to people on sidewalks near the clinics.

"Leafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at its most protected on public sidewalks, a prototypical example of a traditional public forum," Renquist wrote.

In contrast, the high court said the fixed buffer zones are "necessary to ensure that people and vehicles trying to enter and exit the clinic property or clinic parking lots can do so."

Opponents argued that requiring abortion counselors to retreat even in the fixed buffer zone unconstitutionally restricted free speech based on content.

Renquist rejected that argument, noting that the injunction limiting the free speech of abortion opponents inside the 15-foot buffer zone "is the result of their own previous harassment and intimidation of patients."

The court record in the case "shows physically abusive conduct, harassment of the police that hampered law enforcement, and the tendency of even peaceful conversations to devolve into aggressive and sometimes violent conduct," Renquist wrote.

In a separate opinion, Justice Antonin Scalia, joined by Justices Anthony Kennedy and Clarence Thomas, dissented from the court's approval of the fixed buffer zone. The three justices also dissented in 1994 when the high court upheld a 36-foot buffer zone around a Florida clinic.

Justice Stephen Breyer was the lone dissenter from the high court's decision striking down the floating buffer zone.

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U.S. religious leaders urge campaign finance reform

By Larry Chesser

WASHINGTON (ABP) -- Describing the present system of financing political campaigns as a "major scandal," a group of religious leaders is asking Congress to make campaign-finance reform one of its first acts.

The religious leaders, convened by the National Council of the Churches of Christ in the U.S.A., said the matter is a moral issue.

"As religious leaders we believe in government's role in seeking justice for all people and in building their common good," they said in an open letter to Congress. "Justice cannot be achieved unless the rules governing the democratic process are just and fair to all."

Sen. John McCain, R-Ariz., welcomed the religious leaders' support, calling the present rules governing election finance "unjust ... unfair and in the view of some corrupt."

McCain and Russ Feingold, D-Wis., were primary sponsors of a campaign-finance reform bill that stalled in the last Congress and has yet to pick up momentum this year.

McCain told a Capitol Hill press conference he is not surprised by the lack of progress.

Incumbents are not going to change a campaign system that ensures the re-election of 95 percent or more of incumbents, McCain said. "That's the source of our frustrations, and that's the source of our failures."

Feingold said anybody who thought the "leadership was going to suddenly, completely reverse course and say campaign finance reform is one of their top priorities hasn't been paying attention."

He called the efforts by the religious leaders heartening and predicted eventual passage of campaign finance reform.

Religious leaders cited a variety of motivations for supporting campaign-finance reform.

NCC General Secretary Joan Brown Campbell said the organization's "commitment to campaign finance reform grows directly from profound religious faith: every human being is a person of dignity and worth as a child of God."

"In our democracy a signal of that dignity and worth is a fair and just electoral process where all people are included equitably and with respect," she said.

Rabbi David Saperstein, director of the Religious Action Center of Reform Judaism, said present campaign laws "reduce voter access to elected officials, erode moral standards in government agencies and institutions and breed distrust and alienation."

McKinley Young of the African Methodist Episcopal Church said the principle of one person, one vote, has been "greatly diminished" by the way campaigns are financed. He said there is a moral imperative for a higher standard.

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Nominations sought for ABP award

JACKSONVILLE, Fla. (ABP) -- Directors of Associated Baptist Press are accepting nominations for the 1997 Religious Freedom Award, said Greg Warner, executive editor of the news service based in Jacksonville, Fla.

The award, established in 1993 to recognize outstanding contributions in the areas of religious liberty and journalistic freedom, will be presented this fall.

Nominations will be accepted through March 31, Warner said.

Previous winners are former Florida Baptist Witness editor Jack Brymer, the Dallas Morning News and New York Times correspondent Gus Niebuhr.

Associated Baptist Press is a non-profit, independent news service with subscribers including Baptist state papers and about 70 secular news outlets.

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-- By ABP staff

Network pulls plug on singer Pat Boone

LOS ANGELES (ABP) -- The Trinity Broadcasting Network has canceled Pat Boone's "GospelAmerica" program over protests of the singer's appearance at the Jan. 27 American Music Awards wearing black leather and fake tattoos.

Boone, a long-time gospel performer, was promoting his new album, which combines lyrics from heavy-metal hits with orchestra backing more typical of Boone's style.

"I thought everybody saw it for what it was, sort of a parody, just a send up," Boone told Associated Press.

Thousands of Boone fans found the joke offensive, however, calling the religious network to express their outrage.

Network officials said Boone has been invited onto another show to explain his actions and his program will not be aired in the meantime.

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-- By ABP staff

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