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Supreme Court justices hear Texas football prayer dispute

By Kenny Byrd

WASHINGTON (ABP) -- Addressing organized prayer in public schools for the first time in nearly a decade, the U.S. Supreme Court heard arguments March 29 about whether students may lead stadium prayers at high school football games.

A federal appeals court earlier ruled that a south Texas school district's policy allowing varsity football games to be kicked off with prayer is unconstitutional.

Arguing for the district before the nation's highest court was Jay Sekulow, chief counsel to Pat Robertson's American Center for Law and Justice. "There is not a religious-speech exception to the First Amendment," Sekulow told the justices.

Sekulow said the Santa Fe Independent School District's policy is "a neutral policy that simply allows student-led, student-initiated prayer." He said the policy does not violate the Constitution's ban against the government establishing religion.

Arguing for four anonymous students and their parents who challenged the prayer policy was Anthony Griffin, a lawyer from Galveston, Texas, also representing the American Civil Liberties Union.

"I can pray before the football game. I can pray after," Griffin said. "I can even pray during the football game. I don't need the government's forum. I don't have an absolute right to take over the mike," he added.

The school board adopted the disputed policy in 1995. It allows students elected by their peers to deliver invocations and benedictions at graduation ceremonies and a "brief invocation and/or message" during pregame ceremonies at home varsity football games.

The policy contained a "fallback" position requiring such prayers to be "nonsectarian" and "nonproselytizing," in case a court said those restrictions were necessary.

The 5th U.S. Circuit Court of Appeals ruled that graduation prayers are permissible if they are nonsectarian and nonproselytizing, but the policy cannot be extended to football games.

Unlike graduation ceremonies, the appeals court said in a 2-1 decision, football games are "hardly the sober type of annual event that can be appropriately solemnized with prayer."

The Supreme Court limited its review to the football-game prayers and refused to delve into the issue of graduation prayers.

While Chief Justice William Rehnquist and Associate Justice Antonin Scalia posed questions that appeared sympathetic to the school district's policy, most justices sounded skeptical.

"I'm not sure what solemnizing a football game is," said Associate Justice David Souter. While the policy does not require the elected "student chaplain" to pray, if he or she does so the "school district is forcing school children to sit there and participate," Souter said.

Chief Justice Rehnquist noted that attending football games is not a requirement. And when Griffin said football players, cheerleaders and band members are required to attend, Scalia asked, "Is anyone forced to be a cheerleader or a band member?"

Associate Justice Anthony Kennedy said electing a student to give a message involves some kind of campaign. Students will end up having an election over whether to pray or not and who best can lead it, he said. "This is the kind of thing I think the Establishment Clause wants to keep out of schools."

Associate Justice Steven Breyer said the voting procedure is "more likely" to leave out a student with a minority view. "The purpose of the Establishment Clause is to allow families to raise their children in the religion of their choice," he said.

O'Connor called the Santa Fe policy "an unusual sort of arrangement." She questioned whether the policy could be expanded to the classroom where a student could be elected to lead the class in an opening prayer.

"I think we have to look at the extended application," said O'Connor, who is often a swing vote in religious-liberty cases.

Associate Justice Ruth Bader Ginsburg questioned whether the policy provides a true forum for free speech when only one student is heard. "What reason is there to believe that over time, there will be the full spectrum of speech resulting?" Ginsburg asked.

The packed courtroom filled with laughter when Ginsburg asked if it would be appropriate if the selected student's message was, "Break their necks, make 'em wrecks, buckle down, boys."

Following the arguments, Sekulow said religious speech should not be censored, but he agreed that school officials ought to be able to prohibit the type of prayer that Ginsburg posed.

Sekulow said the government could censor that hypothetical prayer "because it would be inappropriate." Such a refusal, he said, "would not be based on religious views or any view other than neutral criteria to stay within the topic that's allowed."

"You can't pray for another team to go break their legs," Sekulow said.

But the fact that school officials would determine which prayers are appropriate poses a constitutional problem, said other lawyers addressing reporters after the oral arguments.

"The Sante Fe policy will result in coercion, control and compromise of prayer," said Melissa Rogers, general counsel of the Washington-based Baptist Joint Committee.

The government controls the pregame program, the stadium, the public-address system and the voting system and requires some students to attend football games, Rogers noted.

"The reasonable observer accurately perceives these prayers as having the government stamp of approval on them," she said. "But as Baptists and Christians we do not seek government's stamp of approval, but God's."

"As people of faith we are called to pray, but we don't need or want government's help in doing so," Rogers said. "Let the students pray at football games. ... Let them gather voluntarily in huddles before and after the game; let them pray during a neutral moment of silence or individually in the stands at any time."

Rogers admitted to reporters that "your notebooks are full of Baptist voices in favor" of the prayer policy. But the BJC filed a friend-of-the-court brief to ensure that the court "heard from Baptists who oppose this practice."

Joining the BJC brief was the J.M. Dawson Institute of Church-State Studies at Baylor University and the General Conference of Seventh-day Adventists. Drafted by Derek Davis, director of the Dawson Institute and BJC special counsel, it argues that the Santa Fe district sends a "mixed message" to students.

"On the one hand, its policy stands as an endorsement of prayer -- a quintessential religious act," the brief states. "But on the other hand, the school district's policy denigrates and trivializes the act of prayer by portraying an act of religious devotion as a quasi-secular ceremonial practice."

The Ethics and Religious Liberty Commission of the Southern Baptist Convention did not file a brief on either side of the dispute.

Richard Land, executive director of the ERLC, said the SBC agency did not sign onto a brief in the case because the policy does not ensure that students of various faiths have an opportunity to express prayers.

"Nevertheless, I hope and pray that the court will affirm the Santa Fe practice, understanding that the minority does not have a right to silence the majority either," Land said in a statement.

Several members of Congress filed briefs in favor of the Santa Fe prayer policy, including Reps. Steve Largent, R-Okla.; J.C. Watts, R-Okla.; Richard Armey, R-Texas; Tom DeLay, R-Texas; Bob Barr, R-Ga.; Sam Johnson, R-Texas; and Zack Wamp, R-Tenn.

The high court will issue a ruling before the court term ends at the end of June.

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House Speaker Hastert appoints Catholic chaplain, ends dispute

By Kenny Byrd

WASHINGTON -- For the first time in history, a Roman Catholic has been named chaplain of the U.S. House of Representatives.

House Speaker Dennis Hastert, R-Ill, appointed Daniel Coughlin, vicar for priests of the Chicago archdiocese, to the post, ending several months of partisan dispute that included charges of anti-Catholic bias.

Coughlin was sworn in to fill the tax-funded post March 23.

After forming a bipartisan search committee to fill the post vacated by retiring House chaplain James Ford, Hastert and House Majority Leader Dick Armey were criticized for passing over Catholic candidate Timothy O'Brien, who had received the most backing from the search committee.

The two GOP leaders selected Presbyterian minister Charles Parker Wright, outvoting House Minority Leader Richard Gephardt, D-Mo., who supported O'Brien.

Wright declined the nomination, however, prompting Hastert to tap Coughlin for the post.

"I have never seen a more cynical and more destructive political campaign," Hastert said on the floor of the House before announcing the appointment. "That such a campaign should be waged in connection with the selection of the House chaplain brings shame on the House."

"Daniel Coughlin is a Catholic," Hastert said. "That does not make him more or less qualified for the job. But I am proud of his historic appointment. I hope his appointment will help us to heal and that it will bring a sense of pride to the millions of Catholic men and women around this country who have had legitimate feelings of past discrimination, which some in this House have sought to manipulate."

Gephardt said he would support Coughlin. "I have never said and never believed that there was bias of any kind in the making of this selection," Gephardt said. "I do believe that in the future ... we can find a process that will ensure bipartisanship in the selection of this important office."

Rep. Gerald Kleczka, D-Wis., however, told House colleagues that some members had spread rumors to hurt the reputation of O'Brien, who resides in Kleczka's district.

"I think there are some in this body that owe Father Tim O'Brien an apology," Kleczka said.

Last year, O'Brien told The New York Times that had he been affiliated with any mainline Protestant denomination, he would have been selected. "If I were not a Catholic priest, I would be the House chaplain," he said.

Many Democratic critics of the selection process said the search committee ranked the candidates, but Hastert and others denied that characterization.

"We did not rank these candidates," said Rep. Earl Pomeroy, D-N.D. But he admitted "that Father O'Brien had the most support" for the appointment.

The controversy has led some critics to advocate abolishing the chaplain's office. "Is that what is good for this institution?" Hastert asked lawmakers. "I hope your answer is no. But that, my friends, is where the political games could be taking us."

Barry Lynn, executive director of the Americans United for Separation of Church and State, said, "No matter what his qualifications are, Coughlin's appointment to House chaplain was motivated by politics, and nothing more."

Lynn said lawmakers should rely on their own religious advisers and not ask taxpayers to finance the \$136,000 budget of the House chaplain. "This controversy has shown the obvious dangers of mixing religion and government," he said.

"Having a taxpayer-financed chaplain is misguided and divisive, and Congress would be wise to take a lesson from this mess and abolish this post altogether," Lynn added.

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