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Supreme Court declines to hear Mormon plaza free-speech case

By Robert Marus

WASHINGTON (ABP) -- The Supreme Court has let stand a lower court's ruling that the Mormon Church may not regulate speech on a Salt Lake City park it owns because of the park's past as a public street.

On June 23 the justices declined, without comment, to hear an appeal from the Church of Jesus Christ of Latter-Day Saints to the ruling by the 10th U.S. Circuit Court of Appeals. In October, a three-judge panel of that court ruled that city officials violated the First Amendment by selling a section of a downtown street to the LDS Church for use as a religious park.

Terms of the sale said the area would remain accessible to the public but allowed church officials to regulate speech, such as barring distribution of "anti-Mormon" literature and disallowing sunbathing or other forms of clothing church officials deemed immodest.

The site formerly was a block of Salt Lake City's Main Street that divided the church's main administration complex from the historic Mormon Temple and other religious sites. The city sold the block to the church in 1999. Since then, the church turned the space into a pedestrian plaza featuring religious statues, plants, benches and a reflecting pool.

However, the city retained an easement that allowed the general public pedestrian access to the site after the sale. When city officials and church representatives later drew up the official deed, they added language clarifying that public access did not include making the site a forum for free speech.

But the 10th Circuit panel ruled in October that parts of the plaza that were once city sidewalks remain a "traditional public forum" for speech.

"The purpose of the easement is to provide a pedestrian throughway that is part of the city's transportation grid, and in this respect it is identical to the purpose the sidewalks along that

portion of Main Street previously served," the judges said.

But the Mormon Church said the plaza no longer resembles a city street and therefore is not a public forum. Attorneys for the LDS Church argued, among other things, that allowing the city to control a plaza filled with religious imagery could be viewed as state establishment of religion, which the First Amendment bans.

"A reasonable observer could well perceive a message of endorsement of religion in the city's direct control and regulation of a plaza filled with the religious displays and symbolism of the LDS Church," according to a motion filed in the case.

Several religious groups filed friend-of-the-court briefs supporting the Mormons' claim. They included the Colorado Baptist General Convention, the Baptist Joint Committee on Public Affairs, the United Methodist Church and the Islamic Society of Colorado Springs.

The brief said the lower court's ruling endangers religious liberty because it opens the door to forcing churches to open their private property "for antagonistic demonstrations and marches."

But some Christian leaders in Utah supported the court's ruling. Southern Baptist minister Kurt Van Gorden has been arrested on the plaza twice by LDS security guards for passing out literature that church officials deemed "anti-Mormon."

Evangelical Christian groups, "as well as other mission groups, have used that section of Main Street to pass out gospel literature," Van Gorden said in an interview at the time of the 10th Circuit's ruling. "The city recognized that that was a public forum for over 150 years."

The Supreme Court also issued several other important decisions June 23 as it approaches the end of its 2002-2003 term. The justices:

-- Ruled that Congress can force public libraries to install Internet filtering software on their computers as a condition for receiving federal aid. The American Library Association had challenged the Children's Internet Protection Act, one of many attempts by Congress to limit public access to Internet pornography. The librarians argued that the Internet filtering programs available also filtered out thousands of non-pornographic sites and limited the free-speech rights of the millions of poor Americans who must use public libraries for their Internet access. They won a unanimous decision in the Third U.S. Circuit Court of Appeals. But the Supreme Court justices, led by Chief Justice William Rehnquist, ruled 6-3 that Congress acted within its power and that such coercion by the federal government does not violate library patrons' First Amendment rights.

-- Overturned a California law that would have forced insurance companies doing business in the state to disclose information from their companies' records that might help Holocaust survivors and relatives of Holocaust victims claim insurance payments stolen from them during the Nazi era. The court, on a 5-4 vote, ruled that California's Holocaust Victim Insurance Relief Act of 1999 improperly intruded on the federal government's ability to create U.S. foreign policy. But Justice Ruth Bader Ginsburg, who with Justice Stephen Breyer provides the court's Jewish presence, read a sharply worded dissent from the bench. Arguing that the federal government has not put forth an explicit doctrine on the issue California's law addressed, Ginsburg said, "The judiciary has no warrant to serve as an expositor of the nation's foreign policy." While justices John Paul Stevens, Clarence Thomas and Antonin Scalia joined with Ginsburg in her dissent, Breyer sided with the majority.

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Fired Missouri Baptist employee files complaint with EEOC

By Vicki Brown

JEFFERSON CITY, Mo. (ABP) -- Already embroiled in a legal battle with five of its institutions, the Missouri Baptist Convention now faces an investigation by the federal Equal Employment Opportunity Commission for possible mistreatment of an employee.

Former MBC controller Carol Kaylor said the EEOC will file formal discrimination charges against the convention within the next few weeks. Kaylor notified the EEOC of her intent to file charges after MBC executive director David Clippard fired her April 10.

"Our basic contention is that she was forced out of her position because she opposed practices that were demeaning to her and to other employees of the Missouri Baptist Convention as women," Kaylor's attorney Michael Berry said.

A news release from the convention, however, denied Kaylor was mistreated and said she was fired for "her involvement in the unauthorized tampering with the executive director's computer and email files," which reportedly occurred Feb. 19.

"We did not seek to make this matter public," said convention attorney Michael Whitehead. "However, where the former employee chooses to make public charges about her termination, it is only fair that we provide some additional facts in response."

Although Kaylor did not provide details of her accusation, she said she decided to take formal action because of treatment she has received since the convention hired Clippard last August.

"In my 18-plus years in the accounting profession, I've never experienced the kind of treatment I have experienced since August," Kaylor said. "I've experienced the kind of treatment I never expected to have anywhere, especially not when I worked in a Christian organization."

An EEOC representative, who conducted a telephone interview with Kaylor June 10, said formal charges would be sent to her attorney for Kaylor's signature. Once the commission receives the signed document, it must notify the employer of the charges within 10 days.

Berry said EEOC officials generally try to mediate disagreements before either party would consider legal action. "They lean heavily to get the parties around the table," Berry said.

He noted the federal commission would do limited investigation while trying to get both sides to negotiate a settlement. If the parties cannot agree, the EEOC would launch a more detailed investigation.

The EEOC handles a wide variety of workplace complaints, from discrimination to sexual harassment. While the federal agency can file a lawsuit on a complainant's behalf, it generally does so only when it sees the potential for broad public benefit.

Berry explained that the individual can file legal action through a private attorney but must seek a right-to-sue letter from the EEOC before doing so.

Clippard was unavailable for comment.

"We regret that Mrs. Kaylor feels that anything said or done by Dr. Clippard was demeaning to her," said Missouri Baptist Convention president Monte Shinkle in a statement. Shinkle said a committee formed to investigate the Feb. 19 incident concluded Kaylor's termination "was justified due to the misconduct."

"We have complete confidence in Dr. Clippard and we are confident that this employment decision will be upheld as lawful," Shinkle said.

The convention continues to pursue legal action against The Baptist Home, Missouri Baptist University, Windermere Baptist Conference Center, the Missouri Baptist Foundation and the Word&Way newspaper. In 2001, Windermere, the university, the foundation and Word&Way chose to elect their own trustees rather than to allow the convention to appoint them. The Baptist Home trustees took the same action a year earlier.

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Minutes show IMB tapped reserves for 13 percent of budget last year

By Mark Wingfield

RICHMOND, Va. (ABP) -- The International Mission Board spent nearly $37 million more in 2002 than it received in income, according to the treasurer of the Southern Baptist Convention agency.

In his report to IMB trustees May 7, Treasurer David Steverson explained reserve funds had been tapped to pay the bills in 2000, 2001 and 2002. The $37 million drawdown in 2002 covered 13 percent of total expenditures for the year.

Steverson's comments are taken from minutes of the meeting made available to the Baptist Standard. The meeting was held in Framingham, Mass.

"Clearly, we cannot continue to sustain such a large gap between income and expenses," he told the board. "We are fortunate in that we had reserve funds that could be drawn upon to support our work in 2002. These reserve funds were available because of additions to reserves in the 1990s, when we experienced good investment returns."

Steverson said the board had tapped those reserves "some" in 2000, "more" in 2001 and then drew down "significant amounts" in 2002.

"We need to keep in mind that when we spend reserve funds, it not only is reflected in a reduction in our total assets, but it also reduces investment income available to be budgeted in future years," he added.

In light of the IMB's current financial challenges, trustees approved a plan to reduce spending this year by $10 million. The board recently announced elimination of 61 positions at its Richmond headquarters and said it will cease publication of its flagship magazine, Commission.

The $10 million figure came from the gap between $115 million in gifts to the 2002 Lottie Moon Christmas Offering and the $125 million offering goal. Gifts to the offering increased 1.15 percent over the previous year, even though the total fell short of the budgeted goal.

IMB officials have not publicly stated a projection for this year's total shortfall, although they have acknowledged missing the offering goal will compound an already tight situation.

In 2002, the IMB received 52 percent of its income through the Lottie Moon Offering and 33 percent through the SBC's Cooperative Program unified budget. The balance of income came primarily from investment income, hunger and relief funds, and field-generated funds.

The recent downturn in the national economy has hit the IMB hard, as it has many non-profits. Steverson reported the IMB's total cash and investments at year-end were $66 million less than the previous year-end. More than $50 million of that loss was due to sagging investments.

"We had $25.5 million in investment income [planned] in our 2002 budget and not only did not earn that amount, we actually had unrealized losses on our investments of just over $25 million," he explained.

Unlike many religious agencies that have experienced declining contributions on top of decreased investment income, the IMB has continued to receive more money each year from Southern Baptists. In real dollars, combined contributions to the IMB through the Cooperative Program and Lottie Moon Offering have increased $58 million (32 percent) over the past five years, from 1998 to 2002.

In 1998, Southern Baptists sent the IMB $181 million. In 2002, the Cooperative Program and Lottie Moon provided $239 million to the IMB.

However, expenditures have increased even more rapidly, as the board has sought to send out more than 1,000 new missionaries annually. The 1,000 goal includes both long-term and short-term workers, with short-term workers accounting for about 60 percent of those sent.

"None of our income sources came anywhere close to keeping up with our expenditures," Steverson told the board. "Our missionary support expenditures reflect the increased numbers of missionaries who are serving around the world."

Other sources of overseas expense have been reduced to help feed the missionary expansion, he added.

Despite the deficit spending, the IMB does have something to show for its investment, Steverson told trustees.

"We have record numbers of new missionaries, as well as record numbers of baptisms, churches, new churches and outreach groups. Church membership [overseas] is at an all-time high, and more people are involved in discipleship, Bible study and leadership training than ever before. ... We can rejoice that while we have spent significant amounts, we have

significant results to show for what was spent."

The treasurer also added warnings, however, that the IMB "must make significant adjustments if we are to prepare ourselves for the future" and that the current pattern of spending is "not sustainable over a longer term."

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'Weakening' marriage attitudes hurt children, Rutgers study finds

By Hannah Lodwick

RUTGERS, N.J. (ABP) – Americans value marriage more for romance than child-rearing, and the result is less stability for children, according to a recent study by Rutgers University.

"Though most adults continue to prize marriage and to seek it for themselves, children are less able to count on their parents' marriage as the secure foundation for their family lives," the report said.

The report, part of an annual initiative from the National Marriage Project, found that increases in divorce rates, out-of-wedlock births and unmarried cohabitation have contributed to high percentages of children growing up in volatile families.

An estimated 40 percent of children today will live in a cohabiting household sometime during their developing years, the Rutgers study said.

In a recent international comparison, 70 percent of Americans disagreed with the statement that "the main purpose of marriage is having children," while 51 percent of Norwegians and 45 percent of Italians said the same. Among Americans ages 20-29, the numbers reached almost 80 percent.

According to the study, titled "The Social Health of Marriage in America," the decline of attention to children in a marriage has contributed to the weakening of marriage as a whole. Whereas people used to look for a potential spouse who displayed qualities conducive to future parenting, now single adults tend to evaluate partners based on more exacting, emotional requirements.

The report said the dichotomy between adult desires for intimacy and privacy with their "soul mate" and the children's needs for security and attention causes tension in the marriage and can lead to high levels of discord.

Researchers found that while teens, especially boys, desire a long-term marriage, both boys and girls have become more accepting of marriage alternatives, perhaps attempting to lessen the likelihood of discord and eventual divorce in their own lives.

Many young people have foregone marriage altogether, opting either to remain single or to choose unmarried cohabitation. Since 1960, the number of cohabiting couples with children has increased by 850 percent, and roughly half of unmarried women ages 25-29 have lived or

currently live with a partner.

"The belief is that living together before marriage is a useful way to 'find out whether you really get along,'" the report said. "In fact, a substantial body of evidence indicates that those who live together before marriage are more likely to break up after marriage."

David Popenoe, co-director of the project, said homes with two married parents provide the best environment for children.

"If you look at studies and compare child outcomes from a single-parent family to those with a two-parent family, the children in the second group have lower levels of emotional distress and anxiety," Popenoe said.

Indeed, the report found that children who lived in separated families had more than twice the risk of social and behavioral problems than those who lived in two-parent families. It also said children in single-parent families have negative life outcomes at two-to-three times the rate of children in two-parent families. Despite what critics call an "unnecessarliy gloomy" report, Popenoe and co-director Barbara Dafoe Whitehead found declines in child poverty and teen pregnancy and a slight increase -- from 68 percent to 69 percent since 1990 -- in the number of children living with two married parents.

Popenoe credits lower divorce rates, trends toward marrying at an older age and a slight values change with the increase in married-parent homes.

- Hannah Lodwick is a summer intern with Associated Baptist Press and a journalism student at Baylor University.

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Correction

By ABP Staff

CORRECTION: In the June 20 ABP story, "Senate leader taps Navy admiral as first African-American chaplain," former U.S. Senate Chaplain Lloyd John Ogilvie is misidentified as the former pastor of Washington's National Presbyterian Church. Prior to becoming U.S. Senate chaplain, Ogilvie was pastor of First Presbyterian Church of Hollywood, Calif.

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Court upholds 'narrowly tailored' affirmative-action programs

By Robert Marus

Court upholds 'narrowly tailored' affirmative-action programs

By Robert Marus

WASHINGTON (ABP) -- In separate split decisions June 23, the Supreme Court upheld one affirmative-action program at the University of Michigan but declared another unconstitutional.

Both cases challenged University of Michigan admissions systems that consider race in deciding which students to accept. In Grutter vs. Bollinger, a white student denied admission to the university's law school sued, saying her race unfairly disadvantaged her. In Gratz vs. Bollinger, two white prospective students for Michigan's undergraduate program made a similar claim.

The school's admissions systems give extra weight to applicants from minority groups that have been historically and systematically oppressed in the United States -- African-Americans, Latinos and American Indians. Applicants also receive preference for possessing a number of other traits -- such as involvement in athletics and extracurricular activities or being related to Michigan alumni.

The law school program, however, does not tie race to admissions advantages as directly as does the undergraduate program.

In the Grutter decision, the court held on a 5-4 vote that the law school's program is "narrowly tailored" enough to satisfy the high court's earlier rulings on affirmative-action cases.

The equal-protection clause of the Constitution "does not prohibit the law school's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body," Justice Sandra Day O'Connor said in the majority opinion. Joining her in the opinion were justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer.

In 1978, the Supreme Court's University of California vs. Bakke decision outlawed achieving racial diversity in college admissions through quotas for minority students. But that ruling left the door open to achieving racial diversity through other means, and many colleges and universities -- such as the University of Michigan -- have since then considered membership in a minority group traditionally underrepresented on campus to be an advantage for those competing for admission. They may also consider other factors -- such as athletic achievements, extracurricular activities or familial relationship to alumnus -- as advantageous in the admissions process.

Chief Justice William Rehnquist was joined by justices Antonin Scalia, Clarence Thomas and Anthony Kennedy in dissenting from the judgment and most of the majority's opinion in the Grutter decision. They said achieving racial diversity on campus is not a sufficiently "compelling state interest" to justify the disadvantages it causes white students in the admission process. The minority also criticized the majority's assertion that insuring the presence of a "critical mass" of minority students on campus was necessary to satisfy the state's interest.

In the Gratz decision, the justices decided 6-3 that Michigan's undergraduate affirmative-action admissions program goes beyond constitutionally acceptable limits by using a point system that automatically gives minorities 20 points. A total of 100 points are necessary for admission.

"The university's policy, which automatically distributes...one-fifth of the points needed to

guarantee admission to every single underrepresented minority applicant solely because of race, is not narrowly tailored to achieve the interest in educational diversity," Rehnquist wrote in the majority opinion.

Thomas and Scalia as well as O'Connor, Kennedy and Breyer joined Rehnquist in the majority. Ginsburg, Stevens and Souter dissented. In her dissent, Ginsburg argued that the kinds of focus on race represented by the Michigan undergraduate admissions program is still necessitated by lingering racial inequality in American society.

"We are not far distant from an overtly discriminatory past, and the effects of centuries of law-sanctioned inequality remain painfully evident in our communities and schools," she wrote.

The Grutter case is No. 02-241. The Gratz case is No. 02-516.

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