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**Federal court throws out  
religious freedom law**

By Robert Marus

WASHINGTON (ABP) -- A federal appeals court has struck down part of a law that is the latest in a series of federal attempts to protect certain aspects of religious freedom.

On Nov. 7, a three-judge panel of the Cincinnati-based 6th U.S. Circuit Court of Appeals unanimously said part of a federal law designed to protect prisoners' religious freedom was unconstitutional.

In their opinion, the judges said the portion of the Religious Land Use and Institutionalized Persons Act (RLUIPA) dealing with inmates violated the First Amendment's ban on government endorsement of religion.

"RLUIPA has the effect of impermissibly advancing religion by giving greater protection to religious rights than to other constitutionally protected rights," wrote Judge Ronald Lee Gilman for the panel.

Congress passed RLUIPA in 2000 as a response to the Supreme Court, which in 1997 overturned a similar 1993 law as it applied to state and local governments.

Both RLUIPA and the earlier Religious Freedom Restoration Act (RFRA) were designed to restore a high legal standard of protection for free exercise of religion. The Supreme Court had lowered that standard with its 1990 Employment Division vs. Smith decision.

In that case, the court threw out a legal test that required a government entity to prove it had a "compelling state interest" before it burdened an individual's or group's religious freedom. RFRA restored that standard, putting the burden of proof on the government in such cases.

The Supreme Court struck down RFRA as it applied to state governments on the grounds that it violated states' rights. However, it still applies to federal entities.

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In the latest case, four Ohio inmates of various religions sued the state government, claiming their rights to free exercise of religion were being unnecessarily violated by prison officials. While a lower court agreed, the 6th Circuit did not, agreeing with attorneys for the state that RLUIPA emphasized religious rights while ignoring other fundamental rights of prisoners.

Saying that there is little "evidence that religious rights are at greater risk of deprivation in the prison system than other fundamental rights," the judges noted that, under RLUIPA a non-religious prisoner would have much less legal recourse than a religious prisoner who believed that prison officials were violating his fundamental rights.

"[T]he primary effect of RLUIPA is not simply to accommodate the exercise of religion by individual prisoners, but to advance religion generally by giving religious prisoners rights superior to those of nonreligious prisoners," the opinion said.

The 6th Circuit's ruling applies only in the four Midwestern and Southern states covered by the 6th Circuit. It is in conflict with rulings by the San Francisco-based 9th Circuit and Chicago-based 7th Circuit, who have upheld the constitutionality of RLUIPA.

The discrepancy between federal courts makes it likely that the Supreme Court will ultimately agree to hear a case on the constitutionality of RLUIPA.

The 6th Circuit's decision also only applies to the part of RLUIPA dealing with prisoners' rights. It did not rule on the other main aspect of the law, which restored a high level of legal deference to churches and other religious organizations in zoning disputes with municipal governments and other property-use issues.

The decision dealt with three RLUIPA cases that had been consolidated: Cutter vs. Wilkinson, Miller vs. Wilkinson and Gerhardt vs. Lazaroff.

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### **Bill Pryor asks Alabama court to oust Roy Moore from office**

By Robert Marus

WASHINGTON (ABP) -- A battle between two heroes of the Religious Right is shaping up in Alabama.

On Nov. 10, Alabama Attorney General Bill Pryor (R) asked the Alabama Court of the Judiciary to remove the state's chief justice from office.

Roy Moore, long an outspoken advocate for displaying the Ten Commandments on government property, is facing a trial before the court. He was suspended earlier this year by the state's judicial ethics board after he openly defied a federal court order to remove a massive monument to the Ten Commandments from a state building.

The 5,280-lb. granite monument -- engraved with the Protestant King James translation of the biblical commandments -- was removed from its spot at the center of the Alabama state judicial building's rotunda in August. Moore's fellow justices on the Alabama Supreme Court overruled his decision to keep the monument in place.

At the time, Pryor announced his intention to cooperate with federal authorities in removing the monument, even though he had earlier defended Moore's position that the display was constitutional.

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Last year, U.S. District Judge Myron Thompson declared the monument, which Moore had placed in the building shortly after he was elected to the state's highest judicial post, a violation of the Constitution's ban on government endorsement of religion.

Moore had campaigned as the "Ten Commandments Judge" after gaining notoriety through earlier court battles over display of the commandments in his courtroom while he was an Etowah County magistrate.

In July, a panel of the Atlanta-based 11th U.S. Circuit Court of Appeals unanimously upheld Thompson's ruling. Thompson then issued the order to remove the monument.

Moore's trial before the Court of the Judiciary, which begins Nov. 12 in Montgomery, could lead to exoneration or any of a number of punishments, including censure, further suspension or complete removal.

Pryor, as the state's chief law-enforcement officer, is charged with prosecuting the chief justice in the case. In a pre-trial brief, he argued that Moore should be removed because he "flagrantly disobeyed the law, incited the public to support his misconduct and undermined the integrity, independence, and impartiality of the judiciary." "Because the chief justice intentionally and publicly engaged in misconduct, and because he remains unrepentant for his behavior," Pryor wrote, "this court must remove the chief justice from office to protect the Alabama judiciary and the citizens who depend upon it for fair and impartial justice."

Pryor, a conservative Catholic, has been nominated to a federal judgeship by President Bush. However, the nomination has been tied up by congressional Democrats who believe Pryor holds extremist views on issues such as church-state relations and abortion rights.

In the nomination battle, Pryor has received strong support from many Religious Right and anti-abortion-rights groups. However, some of his erstwhile supporters have turned against him because of his prosecution of Moore and because of his earlier cooperation in removing the monument.

Some of Moore's supporters have argued that Pryor's actions are designed to help his chances of winning his nomination battle. Pryor has argued that he is simply standing up for the rule of law.

The Court of the Judiciary is made up of nine members, who are a mix of judges, lawyers and laypeople elected by their peers or appointed by state officeholders. If it rules against Moore, he may appeal to have the case re-heard by his colleagues on the Alabama Supreme Court. They could choose to recuse themselves from the case, in which case a special supreme court would be either appointed by Gov. Bob Riley (R) or chosen by the justices themselves.

Although many experts consider the trial an open-and-shut case, removal of the chief justice would require a unanimous vote by the panel. A University of Alabama political-science professor said such an outcome may be in doubt in a state where Moore enjoys immense popular support.

"There are elected judges on that court," William Stewart told the Mobile Register. "They face their own elections. I'm not so sure they would want to be responsible for removing Roy Moore from office."

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**New BGCT President Ken Hall  
says convention a 'work in progress'**

By Ken Camp and Mark Wingfield

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LUBBOCK, Texas (ABP) -- The Baptist General Convention of Texas is a "work in progress," according to newly elected President Ken Hall.

Hall, president of Buckner Baptist Benevolences in Dallas, was elected to the post by acclamation during the BGCT annual session in Lubbock Nov. 10.

Hall is the first institutional executive to hold the convention's presidency -- a volunteer job -- in 38 years. The founder of Buckner Benevolences, R.C. Buckner, served as BGCT president for 19 years in the early 20th century. The last institutional leader to hold the post was Abner McCall, then president of Baylor University.

Buckner is a massive social-service agency that operates several different benevolent institutions partially funded by Texas Baptists -- including children's homes and retirement and nursing facilities.

Hall will serve alongside another institutional executive, Albert Reyes of the newly renamed Baptist University of the Americas, who was elected BGCT first vice president. Dennis Young, pastor of Missouri City Baptist Church near Houston, was elected second vice president. Young also is a past president of the BGCT's African American Fellowship.

Hall commended BGCT Executive Director Charles Wade's leadership and said he expects to follow it in guiding the convention. However, he acknowledged more change is likely in store for the BGCT as it reshapes itself to meet changing missions and ministry needs.

"My emphasis is talking about what we do well and not looking back on yesterday," Hall said, in a news conference following his election.

Messengers to the 118th annual state convention meeting also adopted a \$45.8 million budget for 2004 and approved a charter change allowing Hispanic Baptist Theological School to change its name to Baptist University of the Americas.

Next year's budget is a 10 percent decrease from the 2003 total. The Cooperative Program portion of the budget -- \$39.77 million -- is a 14 percent drop from the 2003 giving goal of \$46,243,902, but it is in line with projected income for this year, according to David Nabors, BGCT treasurer and chief financial officer.

During the convention, newly elected WorldconneX leader Bill Tinsley presented his vision for the developing missions network, saying the enterprise is "between a dream and a prayer."

Messengers to the 2002 BGCT annual meeting approved the creation of WorldconneX as a separate not-for-profit affiliate of the BGCT to "help churches, associations, institutions and individuals fulfill their missions calling through both short-term and long-term missions endeavors across the United States and the world."

"We do not intend to duplicate traditional mission sending agencies or to compete with anyone. Whatever shapes that may take, WorldconneX's task will remain true to the dreams and visions God sends and to prayers for his leadership," Tinsley said.

During the convention, representatives of the National Baptist Convention of Mexico joined Texas Baptist leaders in signing a formal agreement authorizing a working relationship between the BGCT and Mexico Baptists.

Gilberto Gutierrez, president of the National Baptist Convention of Mexico, and other officers of the Mexico convention affirmed the partnership covenant. Immediate goals are for the Texas and Mexico Baptists to work together in evangelism, church planting, missions, leadership development, meeting human needs and prayer strategies.

In other business, messengers approved a motion by Robert Creech, pastor of Houston's University Baptist Church,

instructing the BGCT Christian Education Coordinating Board to "evaluate fully" the implications of Houston Baptist University's fraternal relationship with the Southern Baptists of Texas Convention. The process will clarify the BGCT relationship with the university, including future funding levels, and report its findings to the BGCT Executive Board by May 2004.

The convention also gave final approval to a constitutional amendment allowing BGCT-affiliated institutions to elect 25 percent of their governing boards directly. The remaining three-fourths of each board will continue to be elected by messengers to the BGCT.

In his annual executive director's report to the convention, Wade affirmed the desire of individuals and churches wanting to "do missions and develop strategies in fresh ways" and who ask questions about the viability of denominational structures.

"Nothing has to be done just because it is what we have always done. We should ask questions about how what we do relates to our priorities and our passion," Wade said.

Wade particularly called on Texas Baptists to support BGCT-affiliated universities and seminaries, to continue developing Bible study curriculum, and to support the adopted BGCT Cooperative Program giving plan.

The convention registered 2,582 voting messengers and 503 visitors, for a total of 3,085 registered attendees.

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### **Missouri Baptist University wins round in legal battle**

By Vicki Brown

JEFFERSON CITY, Mo. (ABP) -- A Missouri judge has given an initial legal victory to one of the institutions locked in a messy legal spat with the Missouri Baptist Convention.

Cole County Circuit Court Judge Thomas Brown ruled Nov. 10 that the state convention is not the "sole member" of the Missouri Baptist University corporation. The ruling dismisses the MBC's contention that it is the university's sole member, which would have meant that only the convention has the authority to change the university's corporate charter.

In 2001, four MBC-related institutions -- the university, the Word & Way newspaper, the Missouri Baptist Foundation and Windermere Baptist Conference Center -- changed their charters to allow each entity to elect its own trustees rather than to allow the convention to elect them. Trustees for The Baptist Home -- a convention-related retirement-home system -- had taken similar action a year earlier.

The trustee boards' moves to become self-perpetuating came after a lengthy battle by fundamentalists to take control of the convention's governing structures. They had largely won that battle by 2001 -- and attempted to fill open spots on the agencies' boards with like-minded conservatives.

The convention then filed a lawsuit against the five institutions to force the entities to rescind the new charters.

MBU attorneys filed a summary judgment motion asking the judge to determine whether the convention is a corporate member, as the convention had claimed. According to Foundation legal council Larry Tucker, the other entities also

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have filed motions for judgments on member status. Those cases will most likely be argued sometime early next year.

Tucker noted that Judge Brown ruled that the convention did not become a member of the university's corporation simply because it traditionally had elected or appointed MBU's trustees.

"[This ruling] is good news for the college and for all the others," Tucker said.

MBU attorney Clyde Farris argued that the university changed its charter in 1997 to reflect changes in Missouri's not-for-profit laws made in 1995. The MBU charter noted that the corporation would have no members.

"They [university officials] sent it to the convention and they [convention officials] knew it," Farris said, noting that the inter-agency relations committee and convention messengers also approved the 1997 charter. "The convention by its action has waived its right to come back and claim it is a member," he said.

Lead MBC attorney Mike Whitehead contended that under the statutory definition of election, the convention should be considered a corporate member. He noted that members of a for-profit company are protected by stock shares, while members of a not-for-profit agency are protected by governance.

"The legislature says...that people who have the right to vote should be called members," Whitehead said. "If someone else [other than the institution] has the ability to appoint directors, then the rights of that someone, even if it is an entity, must be protected."

Whitehead added that the convention has "a right to control the governance" because it "birthed and founded the entity."

He contended that MBU president Alton Lacey changed wording in the institution's charter to read that the convention elects MBU trustees rather than appoints them. Whitehead said the relationship between the two entities remained the same. The change "doesn't amount to a relinquishment of the known right to choose the trustees," he said. "The process did not change until the college made a unilateral decision in 2001...It's the 'gotcha' that lets them walk away with a multimillion-dollar entity."

Farris responded that the university has never been a convention asset. "It has never been on their financial statements," he said.

The attorney acknowledged that the convention helped start the university, but that the MBC never owned it. The convention could have owned MBU, but "they didn't want to because they didn't want to accept the liability responsibility," Farris said.

He asked the judge to consider all the law's provisions. "The real relationship...is one of covenant relationship," he said. The college agreed to certain conditions in return for funding. "But [funding] does not allow them [the MBC] to control it and [the convention] is not a member."

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## **Conservatives win again in N.C. as moderates ponder future role**

By Greg Warner

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WINSTON-SALEM, N.C. (ABP) -- Conservative David Horton was elected president of the Baptist State Convention of North Carolina Nov. 11 in what was anticipated as a make-or-break election for moderate Baptists in the state.

Moderate David Hughes, 51, pastor of First Baptist Church in the host city of Winston-Salem, garnered 40.5 percent of the 3,840 votes cast -- a weaker showing than either candidate anticipated.

"I was surprised, because the elections are always so close," said Horton, pastor of Gate City Baptist Church in nearby Greensboro. He received 59.5 percent, the largest winning margin for a non-incumbent since 1987 and the largest since 1996 for a presidential candidate facing opposition.

Horton's election is the ninth in a row won by conservative presidential candidates. He succeeds conservative Jerry Pereira, 49, pastor of First Baptist Church of Swannanoa, who would have completed his second term as president but died four days before the convention, following a six-month battle with cancer. In an unusual move, Pereira endorsed Horton and other conservative officer candidates.

Even before the vote, there was speculation among messengers that moderate Baptists would disengage from the state convention if they lost another election, perhaps forming a new convention as has been attempted in a few other states.

After the election, Horton, 43, told reporters he hopes moderates will continue to accept the place open to them in the convention. "There has been a place at the table ... for moderates, and conservatives, and there will continue to be a place at the table for moderates." He added moderates and conservatives still agree on more issues than they disagree.

Hughes, however, suggested many moderates no longer feel "a sense of place and belonging." The sound defeat gave moderates "a clear-cut answer" for the future, he said. "While I'm disappointed with the choice that was made, I'm glad there is more clarity than there was before."

"Today the convention spoke for the ninth year in a row.... That's very definitive," Hughes told reporters in an unusual joint press conference with Horton. "This convention is lining up squarely behind the Southern Baptist Convention, and I think that it's good to get out on the table where things stand."

Hughes said there is "a sense of discouragement and resignation among moderates. ... I've been trying to get them to stay involved." But he admitted that encouragement has been met with mixed reviews.

He predicted moderates will take some time to assess the situation, then gather to determine their course. "Not all moderates will do the same thing," he said. "These folks are like herding cats, they are very independent thinkers. ... It will be well into next year before it's clear who might be doing what."

Jim Royston, executive director-treasurer of the convention, said the staff will continue to work with all 3,803 churches in the convention, regardless of their alignment. "We work with every church, and we don't even ask that kind of question." He credited both Horton and Hughes for "rolling up their sleeves" and working within the convention.

"I wish this was an example of shared leadership," Royston said, a reference to the aborted proposal to alternate the presidential position between conservatives and moderates. Horton and Hughes became friends when both worked to pass the "shared leadership" plan, which was defeated by convention messengers in 1999.

"I think the convention has to decide to do shared leadership," Horton responded. He said the plan failed "because the convention didn't want to be given parameters" for convention officers. He said the current system "is a good process."

By most accounts, the presidential election was in part a referendum on the conservative shift in the Southern Baptist Convention, now in its third decade. Horton's support for the SBC was mentioned at least four times in the three-minute nomination speech from retired Winston-Salem pastor Mark Cortis.

And while Hughes suggested in recent weeks that the North Carolina convention should consider reducing its funding of the SBC to address its own budget shortfall, Horton said after the vote, "I think my election signals strong support for continued giving to the Southern Baptist Convention."

Horton said the SBC is "really worthy of our support" and he encouraged Baptists in the state "to do everything we can to give more to the Southern Baptist Convention" and the North Carolina convention.

The issue of SBC funding could come up in budget discussions set for Nov. 12, the last day of the convention. Other officers of the convention also are scheduled to be elected Nov. 12.

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### **North Carolina Baptists affirm expulsion of church over gay issue**

By Tony Cartledge and Greg Warner

WINSTON-SALEM, N.C. (ABP) -- North Carolina Baptists twice affirmed a decision to oust McGill Baptist Church in Concord from the state convention for baptizing two men presumed to be gay.

Messengers to the Baptist State Convention of North Carolina overwhelmingly voted down a motion Nov. 11 to reconsider the ouster. A day earlier the convention's Executive Committee affirmed the earlier decision by Executive Director-Treasurer Jim Royston to remove the church. The committee's Nov. 10 vote followed a lengthy discussion and an interview with church representatives.

McGill's baptism of the two men led to the church's ouster from the Cabarrus Baptist Association last April.

Royston, after consultation with legal counsel and other officials, notified the convention's business office not to accept further contributions from McGill, citing a 1992 General Board policy that prohibits accepting funds from "any church which knowingly takes, or has taken, any official action which manifests public approval, promotion or blessing of homosexuality."

McGill learned of the action in September when a search of the convention's church locator service showed that McGill's name had been removed, even though the convention had cashed a recent check from the church. When notified of the discrepancy, Royston said the business office had mistakenly processed the check, and ordered that the money be returned to the church.

In its October session, the Executive Committee tabled a motion to reverse Royston's decision until church officials had an opportunity to present their case at the next meeting.

When questioned by members of the Executive Committee, pastor Steve Ayers of McGill Baptist said he had no problem with the policy itself, but insisted that the church should not be held in violation of the policy because it has not taken "any official action which manifests public approval, promotion or blessing of homosexuality."

"We baptized two people who accepted Jesus as Lord and Savior," he said.

Some members asked if Ayers knew the men were practicing homosexuals before baptizing them. Ayers replied that, though the men shared a house and were widely presumed to be gay, he had no knowledge of what they practiced, and did not ask. Nor does the church ask other new believers for details about their lifestyles, Ayers said.

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"If someone looks me in the eye and says that he has received Jesus into his life and has turned his life toward Christ, I will baptize them," Ayers said.

Fletcher Hartsell, a McGill member who also serves as a state senator, said the church considered itself a missions organization trying to reach a wider community. "We have an obligation to reach people where they are and lead them to Christ," he said. Those who receive Christ become "a new creation," he said -- not perfect, but new and growing.

Ayers said he did not expect people to become perfect before they could be baptized into the church fellowship. "What better place to grow than in church?" he asked.

When questioned about the publicity surrounding the issue, Ayers said the church never sought publicity, and that the matter came into the public eye only after a neighboring pastor reported the issue to officials of the Cabarrus Association, leading the association to get involved.

Ayers said the church never called a news conference or sought publicity in any way, but courteously responded when people asked questions.

After the McGill representatives were dismissed, the committee discussed the matter further, with some insisting that baptism alone is a public act, and that baptizing someone presumed to be gay without insisting on a prior change in lifestyle meets the policy of affirming homosexuality.

After further discussion, the committee voted 12-6 to uphold the decision.

Afterward, Ayers said "We think it is a sad day in Baptist life that we would somehow limit God's grace and love to certain people, and to say we can no longer trust people at their word when they tell us they have experienced the risen Lord in their life and turned toward him."

"Our congregation is on a journey of faith," he said, "unfortunately no longer with the Baptist State Convention."

On the second day of the state convention, Gene Scarborough, pastor of North Rocky Mount Baptist Church in Rocky Mount, made a motion to ask the Executive Committee to reexamine its position on the policy used to expel McGill. By refusing to accept the church's contributions -- which is the convention's method of recognizing member churches -- the convention is "exercising authority over another Baptist body," Scarborough said.

"I think churches have a right to support our efforts, and we don't have a right to refuse if they want to support our convention," he said.

Other messengers argued against any change.

"At a time when other religious bodies are speaking with an unbiblical voice [on the gay issue], we need to speak with a certain voice on this," said Steve Hardy of Winston-Salem, referring to the recent installation of gay Episcopal bishop Gene Robinson.

The motion to reconsider was defeated on a show-of-hands vote.