Report from the Capital

January 1978

O'Hair: Tidal Wave or Ripple On the Waters?

By W. Barry Garrett and Stan L. Hastey

AUSTIN, Tex.—Madalyn Murray O'Hair, the famed atheist, continues to make waves among certain segments of the nation's religious community. Some of the waves are caused by facts but others are the result of false rumors that are repeated so often that they give the appearance of truth.

It is a fact that Mrs. O'Hair has filed a lawsuit in an effort to remove the motto "In God We Trust" from U.S. coins and currency. All of the rumors concerning her connection with an FCC petition, RM 2493, are false.

The "In God We Trust" suit was filed by O'Hair on September 1, but has gone largely unreported. No date has been set for oral arguments in the case, according to a spokesperson for the U.S. District Court for the Western District of Texas here.

The case, *O'Hair et al* v. *Blumenthal and Conlon*, was filed after O'Hair threatened to sue the federal government over the motto in a speech last summer at the dedication of her Atheist Center here.

The respondents named in the case are W. Michael Blumenthal, U.S. secretary of the treasury, and James Conlon, director of the Bureau of Engraving and Printing.

The motto is the only issue at stake, according to the district court source. The action is totally unrelated to false rumors that have circulated for the past two and one-half years that O'Hair had filed a petition with the Federal Communications Commission (FCC) to have religious broadcasting removed from the airwaves.

A much more limited petition was filed in 1974 by two California men with no ties to O'Hair asking the FCC to limit the granting of permits to licensees who would engage in exclusively religious radio and television broadcasting. That petition, RM 2493, was unanimously rejected by the FCC commissioners on August 1, 1975.

In spite of the action, however, numerous broadcasters have continued to identify O'Hair as the petitioner. As a result, yet another new wave of protests from ill-informed people has flooded the FCC in recent weeks.

Another version of RM 2493 is that it is a bill in Congress to eliminate religious

(See O'HAIR, p. 7)

Private Educators Both Encouraged, Warned

By Carol B. Franklin

WASHINGTON—Nonpublic schools and the U.S. Office of Education of the Department of Health, Education and Welfare have agreed to cooperate in promoting the interests of private education in the nation.

At the second annual conference on "Private Schools: Fact and Future," jointly sponsored by the Council for American Private Education (CAPE), the National Catholic Educational Association (NCEA) and the U. S. Office of Education (USOE), Ernest Boyer, Commissioner of Education, USOE, pledged to make nonpublic education "top priority" on his agenda.

"This Administration and the Office of Education are determined to enhance the role of nonpublic education," Boyer said.

Franklin

Boyer promised to increase the communication between government and private educators by strengthening the liaison office for nonpublic education in USOE. "We will give you greater visibility," he promised.

Boyer also pledged "more aggressive and sustained support" of nonpublic schools. "Nonpublic school children will be fully served by the Office of Education programs for which they are eligible. Our delivery in the past has been spotty but that will be corrected," he said.

Boyer noted that there are some constitutional restraints on public aid to private education that must be observed. "Some laws are quite specific in some areas so that there are problems of interpretation in providing equitable treatment. But the Office of Education's responsibility is not lessened. We will vigorously pursue our objectives."

The Commissioner also noted that he is having a toll-free telephone line installed in his office to give educators immediate access. He stressed that he planned to increase the advisory role of private educators in the Office of Education.

Boyer also told the private educators that his office would encourage the chief officers of public schools in the states to establish liaison offices so that nonpublic school needs will be better served.

Bernard Goldenberg, associate director of the National Society for Hebrew Day Schools and president of CAPE, told the conference participants that the USOE seemed to be sensitized to the needs of nonpublic education but "we must watch for deeds to match the words, that we receive what we should be receiving from the Office of Education."

Robert Lamborn, executive director of CAPE, said in an interview that his goal for private education in America is "to be seen as a legitimate and vital public agency serving the public needs."

Lamborn listed seven general areas of activity for nonpublic educators to achieve his goal: 1) promote cooperation among private schools within the states; 2) develop working relationships with city and state governments and agencies; 3) develop working relationships with public and private education-related agencies; 4) develop relationships with the federal government on the state level; 5) identify and develop constructive relationships with private school advocates in industry and the foundations; 6) establish contacts with private schools in other states; and 7)

(See EDUCATORS, p. 8)

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From the Desk of the Executive Director

H.R. 41: Government Surveillance of Church Solicitations

By James E. Wood, Jr.

The accelerated growth of the federal government in the United States has inexorably meant the intrusion of government into almost every area of the private sector. Religion has not been immune, but rather has become the target of new and proposed federal regulations.

Wood

The IRS, in regulations promulgated at the beginning of 1977, presumed to define the mission and ministry of the churches by arrogating unto itself the authority to determine what does and does not constitute a church. During the first session of the 95th Congress, legislation was introduced in both the House and the Senate on lobbying disclosure which would severely inhibit and limit activities of churches in speaking out on public affairs issues. At the very beginning of the 95th Congress, January 4, 1977, Charles H. Wilson (D-Ca.), chairman of a subcommittee of the House Committee on Post Office and Civil Service, introduced in the House of Representatives a charity disclosure bill, H.R. 41. An almost identical version, H.R. 10922, also sponsored by Congressman Wilson, was in the House Rules Committee when the 94th Congress adjourned and therefore did not reach the floor for consideration at that time.

H.R. 41 seeks to regulate any organization or institution, including churches and church agencies and institutions, that solicits "in any manner or through any means, the remittance of a contribution by mail." Thus any church or church agency requesting contributions through the mail is subject to the disclosure requirements of the bill. Each charitable organization would have to include at the time of its solicitation the following information: its legal name and principal business address; the purpose of the solicitation and the intended use of the contribution; and the percentage of the previous year's contribution which actually went to the charitable purpose—as opposed to fund-raising and administrative costs.

Especially ominous in the bill are the provisions of financial accountability to the Postal Service by any charitable organization which engages in any form of solicitation by mail or receives contributions through the mail even if the funds were solicited orally. Upon request of the Postal Service, the charity so involved must "furnish to the Postal Service such audit reports, accounts, or other information as the Postal Service may require to establish or verify information which such organization is required to include in solicitations." Presumably, under the Freedom of Information Act, confidential contributor lists as well as contributions made would become public information and thereby be readily available to the public at large. Basically, the bill would require solicitors for charitable contributions through the mail or on radio or television to make financial disclosure of the use of the funds to anyone who requests such information.

The Baptist Joint Committee does not view H.R. 41 either as an attack on the religious community or as a manifestation of American anti-clericalism, as is charged in a nationally circulated attack on the bill itself. The declared purpose of the bill is a commendable one, namely, to limit possible abuse by ostensibly charitable organizations. Hence, H.R. 41 has as its objective the exposure of unscrupulous fund raisers who spend most of the funds they raise for purposes other than those claimed when the funds were solicited. Supporters of the bill, therefore, are convinced that H.R. 41 is in the public interest, aimed at consumer protection.

The Baptist Joint Committee has, nevertheless, expressed its firm opposition to H.R. 41. The Committee has done so, first of all, on constitutional grounds. The U.S. Supreme Court has maintained that freedom of religious belief is absolute and that governmental regulations of religious practices must be based on a state interest which is clearly demonstrated and which is highly compelling. H.R. 41 falls woefully short on both of these counts.

Such a bill would result in an unconstitutional entanglement of government and religion and would have a profoundly chilling effect on the solicitation of funds by churches generally. The latter would have an even greater effect on congregational churches since H.R. 41 excludes the reporting of any charitable organization of its bona fide members, which for Baptists can only apply to membership in local Baptist churches and not Baptist agencies and institutions, while every Catholic, for example, is a member of the Catholic Church and can be, therefore, identified with all Catholic societies and institutions.

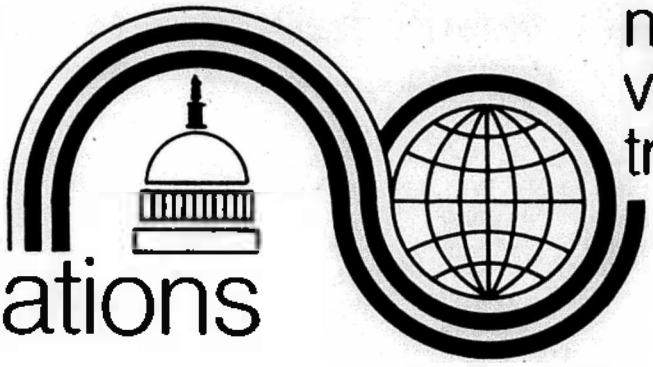
The Supreme Court has consistently held that government, in its dealings with religion, must not inhibit religion, must remain neutral toward religion, and must not become excessively entangled with religion. Passage of H.R. 41 would inevitably be restrictive on churches and church institutions in fund-raising. In *Everson* v. *Board of Education* (1947), the Court declared that "State power is no more to be used to handicap religions than it is to favor them." Twenty-three years later, in *Walz* v. *Tax Commission* (1970), the court reenforced this view by concluding that the position of the state toward the church should be one of "benevolent neutrality." Chief Justice Warren Burger wrote, "We must also be sure that the end result—the effect—is not an excessive government entanglement in religion." Two tests to determine excessive state entanglement in religion were enunciated: "whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement."

In registering our opposition to the bill, we have maintained that the bill creates inequities between churches, that key words and phrases in the bill are unclear and vague, that the bill is in conflict with the free exercise of religion, and that it gives to government the power to determine what is and what is not a "religious" purpose. There is, therefore, good reason to believe that the courts would find the bill unconstitutional on First Amendment grounds.

For all of the reasons stated above, we believe that churches and associations and conventions of churches should at least be excluded from coverage by the bill. Such legislation is a threat to the financial operation of every local church, denominational church agency, church school, church hospital, and mission endeavor.

(See SOLICITATIONS, p. 7)

washington observations



news
views
trends

ONE OF THE HOTTEST church-state news items in Washington at the outset of 1978 is the effort in the U. S. Senate spearheaded by Senators Daniel P. Moynihan (D-N.Y.) and Bob Packwood (R-Ore.) to enact legislation providing tax credits for tuition paid at any private educational institution--higher, secondary, or elementary. It is easily the biggest such proposal since the U. S. Supreme Court began striking down numerous state laws designed to funnel public funds to nonpublic schools. The Baptist Joint Committee has joined the latest fray and further developments will be reported in these pages.

ALSO PENDING in Congress is H. R. 41, a bill designed to regulate the solicitation of funds by religious and other charitable groups. A thorough analysis of this controversial piece of legislation can be read on the opposite page.

YET ANOTHER LEGISLATIVE battle is brewing over S. 1785, a measure which would require disclosure of lobbying activities and expenses by all groups which seek to influence Congress, including the churches. As in the debate on charitable solicitations, the position of the Baptist Joint Committee has been to seek exemption from the bill's coverage for churches and their agencies and institutions.

TWO PROMINENT Southern Baptist Foreign Mission Board officials have publicly declared their support for ratification of the Panama Canal treaties. Charles W. Bryan, the FMB's area secretary for Middle America and the Caribbean, and Ervin E. Hastey, a former missionary to Panama and president of the Baptist Mission there, told Baptist Press that the treaties should be ratified in the interest of American foreign policy and for missionary reasons as well. Next month's Report from the Capital will have the full story.

ANOTHER ENDORSEMENT of the treaties came last month from the American Baptist Churches' Boards of International and National Ministries. The statement, which commends the government for signing the documents and urges the Senate to ratify them, at the same time says they do not measure up to the full aspirations of the Panamanian people.

Tax Credit Legislation Sidetracked For Now

By Carol B. Franklin

WASHINGTON—Tax credit for college tuition was killed for the 1977 session of Congress when an amendment to the Social Security appropriations bill attached by Senator William V. Roth, Jr. (R-Del.) allowing a $250-a-year credit was severed.

The conferees had disagreed on the tax credit provision, thereby holding up passage of the Social Security bill. Under Administration pressure to get the Social Security legislation passed before adjournment, the controversial tax credit provision was finally dropped.

Roth vowed he would renew his attempts to provide tax relief for parents of students in nonpublic colleges when Congress reconvenes next year. Hearings have been scheduled in January for a similar measure allowing tax credits for all nonpublic school students introduced by Senators Daniel P. Moynihan (D-N.Y.) and Bob Packwood (R-Ore.).

The Baptist Joint Committee on Public Affairs has opposed all attempts at the federal and state level to provide tax credits for tuition. In August 1972 the Committee testified against a similar measure before the House Committee on Ways and Means.

The testimony offered at that time opposed giving tax credits for tuition "because it is contrary to the traditional American principle of religious liberty and the constitutional separation of church and state, and because it would be an unwise and divisive public policy."

"What must not be lost sight of is that though the tax credits would be provided for parents or guardians of students in private nonprofit schools the purpose of the act is to aid schools rather than parents and to give substantial governmental aid to private school systems," the testimony continued.

It further stated, "There can be no escape from the conclusion that such infusion of public funds into religious education benefits the sponsoring church and that the net result is that the taxpayers generally are forced to join in subsidizing religion. It is our position that this is not the proper function of government in the American system."

The Baptist Joint Committee also participated in a friend of the court brief in 1972 asking the U.S. Supreme Court to rule that "tax credit for tuition paid by parents to nonpublic schools" is a violation of the establishment clause of the First Amendment of the Constitution.

The 1972 case challenged a New York law which provided for a tax deduction for parents paying parochial or nonpublic school tuition. The court overturned the New York statute on the grounds that "the effect of the aid is unmistakably to provide desired financial support for nonpublic, sectarian institutions."

The current congressional efforts to provide tax credit have aroused considerable controversy. Critics charge that the relief would go primarily to middle and upper income families rather than those in lower income brackets. Cost estimate to the U.S. Treasury for one year is $1.2 billion. It has also been suggested that schools might raise tuition in response to this legislation. Supporters of the idea of tax credit for tuition deny these charges.

Court Rules Out Payment to Parochial School

WASHINGTON—Nonpublic schools are not entitled to be reimbursed for expenses incurred under state regulations which have been ruled unconstitutional, the U.S. Supreme Court held here.

In a 6-3 decision, the high court dismissed the claim of Cathedral Academy of New York City, a Roman Catholic parochial school, which for five years has sought reimbursement for state-mandated expenses during the 1971-72 school year.

A 1970 New York law authorized payment to parochial schools for a number of educational services, including testing, maintenance of enrollment and health records, and personnel qualification records. The Supreme Court declared that law unconstitutional, however, in the spring of 1972.

In response to the 1972 decision, the New York state legislature enacted a new law authorizing reimbursement to nonpublic schools for expenses incurred in anticipation of state funds. This second law, after lengthy proceedings in lower

(See PAYMENT, p. 7)

Vatican Envoy to Cost U.S. $39,500 in 1978

By W. Barry Garrett

WASHINGTON—The Department of State will spend $39,500 during fiscal year 1978 for President Carter's personal representative to the Vatican, according to an estimate by a highly placed government official.

James W. Swihart, Jr., Country Officer for Italian Affairs in the Department of State, reported that for a nine year period, beginning in 1970, the President's personal representative to the Vatican will have cost $318,210.

President Carter in 1977 appointed David M. Walters as his personal representative to the Vatican to succeed Henry Cabot Lodge who filled the same position under Presidents Nixon and Ford. Both Lodge and Walters have served without salary, although their expenses have been fully paid by the U.S. government.

The information from the Department of State was provided as a result of a request through the office of Rep. Gene Taylor (R-Mo.)

All of the costs were not included in the report by Swihart, since, as he explained, "the salaries of all Foreign Service employees are centrally charged in Washington and not included in the expenses of individual posts." He continued, "In this case, the total salary cost of the two employees who assist the President's personal representative is $44,641."

Left unanswered by the Department of State is the following question. "Is the status of this envoy that of (1) the President's representative to the Vatican as a church and religious organization, or (2) as a representative of a temporal sovereign government, with governmental powers, and with ambassadors to many other sovereign governments of the world?"

The estimated FY 1978 expenses for the President's personal representative to the Vatican is as follows: travel, $4,500; subsistence, $2,100; office expenses, including clerical, $27,100; all other expenses, $5,800 for a total of $39,500 for the year. (BP)

Supreme Court Update

High Court to Decide Tenn. Pastor's Case

By Stan L. Hastey

WASHINGTON—Justices of the U.S. Supreme Court are one step closer to deciding a major church-state case after hearing oral arguments in the case of a Baptist minister from Tennessee who was sued after running for the state constitutional convention.

The high court was asked by the attorney for Paul A. McDaniel, pastor of the Second Missionary Baptist Church in Chattanooga, to strike down a provision in the Tennessee state constitution dating to 1796 which declares that "no Minister of the Gospel or priest of any denomination whatever, shall be eligible to a seat in either House of the Legislature."

Tennessee's constitutional prohibition, which had not been challenged in court until 1977, declares that ministers and priests should be excluded from public office because they "are by their profession, dedicated to God and the care of Souls, and ought not to be diverted from the great duties of their functions."

McDaniel ran for a seat from the 29th house district in Tennessee's election for a special constitutional convention. In a four-way race, he won easily but was challenged in Hamilton County Chancery Court by Selma Cash Paty, an opponent who ran second to McDaniel. That court upheld his election but on appeal the Tennessee Supreme Court ruled for Paty.

McDaniel was granted his seat in the recently-concluded constitutional convention by virtue of action by Supreme Court Justice Potter Stewart staying the Tennessee ruling.

In challenging the decision of Tennessee's high court, McDaniel's attorney, Frederic S. LeClercq, of Knoxville, argued that the state prohibition was enacted at a time in American history when anti-clericalism was prevalent. It was not the intention of the founding fathers, he contended, to exclude the clergy from holding office.

LeClercq cited not only the First Amendment's guarantee to free exercise of religion, but stated that a "respectable argument" could be made for his client from Article VI of the federal Constitution, which states that "no religious test shall ever be required as a qualification to

(See McDANIEL, p. 7)

Forced Retirement Ok'd; May Be Short-Lived

By Stan L. Hastey

WASHINGTON—In a ruling that may have little or no lasting effect, the U.S. Supreme Court held here that employers may force some workers to retire before age 65.

The 7-2 decision came in the case of a former pilot for United Air Lines, Harris S. McMann, of Alexandria, Va., who was involuntarily retired upon his 60th birthday in 1973.

Six years earlier Congress had passed the Age Discrimination in Employment Act forbidding "arbitrary age discrimination in employment" and seeking instead "to help employers and workers find ways of meeting problems arising from the impact of age on employment."

The law did make an exception for employers with "bona fide" retirement programs already in effect prior to passage of the law. United Air Lines has had such a program since 1941.

The distinction may be academic, however, because both houses of Congress recently passed new amendments to the 1967 law making it illegal for employers to force retirement before age 70 for any reason. That measure is currently in a conference committee of both houses. It is expected to receive final passage and be signed into law by the President early this year.

Chief Justice Warren E. Burger, who wrote the opinion for the 7-2 majority, stated that the intent of Congress in passing the original 1967 law was to make exceptions for "the countless bona fide retirement plans" already in effect.

While acknowledging that "we do not pass on the wisdom of fixed mandatory retirements at a particular age," the court went on to declare that United Air Lines' 1941 retirement plan "cannot be a subterfuge to evade an Act passed 26 years later."

"To spell out an intent in 1941 to evade a statutory requirement not enacted until 1967," Burger concluded, "attributes, at the very least, a remarkable prescience to the employer."

Writing for himself and Justice William J. Brennan, Justice Thurgood Marshall argued in a dissenting opinion that "the mischief the Court fashions today may be short lived" in that it "may have virtually no prospective effect."

(See RETIREMENT, p. 6)

Women Win Battle in Seniority Rights Case

By Stan L. Hastey

WASHINGTON—Companies may not penalize women returning from mandatory pregnancy leave by denying them seniority rights, the U.S. Supreme Court ruled here.

At the same time, employers are under no legal obligation to pay sick leave to women while they are temporarily removed from the work force to give birth.

The high court's unanimous decision sought to clarify the extent of legal rights of pregnant women under the Civil Rights Act one year after ruling that pregnant women are not entitled to disability benefits during maternity leave.

That decision, involving the General Electric Co. (GE), was condemned by leaders in the women's movement as a blow against their objective of equality between the sexes.

Both the GE case and the present one, involving pregnancy leave policies at the Nashville (Tenn.) Gas Co., have to do with application of Title VII of the Civil Rights Act of 1964, a portion of which reads that an employer may not "limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of . . . sex."

The Nashville case involved Nora D. Satty, a clerk in the customer accounting department at Nashville Gas Co. Although she had accumulated almost four years' seniority when she began her maternity leave, company policy stripped her of seniority benefits when she returned to work ten weeks after going out on maternity leave.

In addition, Satty discovered upon her return that her old position had been eliminated and that the best the company would offer her was a temporary job at a lower salary than she had earned previously. While holding the temporary job, she unsuccessfully applied for three permanent positions, all of which were awarded to employees who had begun working for Nashville Gas Co. after Satty's maternity leave began.

The high court ruled that such a policy of discriminating against employees forced to take maternity leave and sub-

(See PREGNANCY, p. 7)

Baptist Pastor Named in South Korean 'Manipulation' Plan

By W. Barry Garrett and Robert O'Brien

ATLANTA—William L. Self, a Southern Baptist minister listed by a secret Korean Central Intelligence Agency (KCIA) document as a candidate for possible "manipulation," said he finds the listing "curious" and welcomes the chance to discuss it openly.

Self, pastor of Atlanta's Wieuca Road Baptist Church, said he traveled to South Korea, Feb. 15-25, 1975, as a guest of that government because the visit "represented to me a unique opportunity to witness for my faith in Jesus Christ to a foreign head of state. No Christian should ever pass up that chance." Self said he went as a pastor, "not in any official capacity from my government or my denomination."

The visit came after it was recommended by Korean evangelist Billy Kim, who had led an evangelistic crusade at Wieuca Road Baptist Church in Nov., 1974. The trip, at the invitation of the South Korean prime minister, included an audience with Korean President Park Chung Hee. The Korean leaders wanted Self to come to their country to assess wide-spread charges that religious oppression existed there.

The KCIA document, recently released by the House Subcommittee on International Organizations, involved a "1976 Plan for Operation in the United States" which involved "manipulation" of numerous religious leaders, Congress, the White House, the Pentagon, the media and the academic community. The KCIA, which apparently never got the plan fully launched, plotted infiltration to strengthen "the execution of the U.S. security commitment to the ROK (Republic of Korea) and ROK-US ties."

The House committee deleted names from the released document because the investigation is in progress, but Self openly declared that he has been contacted by the House committee and told the document lists his name. He said the committee asked for an interview which "I welcome because I have nothing to hide."

"I do not know at this point what some of their (the South Koreans) intentions were," he said in a telephone interview with Baptist Press, "but mine were and are clear. Perhaps I'm naive in international, worldly politics, but it represented to me a most unique opportunity to witness for my faith in Jesus Christ to a foreign head of state."

Self said he has a natural inclination toward internationals because the Atlanta Korean church uses Wieuca Road Church's facilities and because his church has a long-standing ministry to internationals in Atlanta through language and citizenship classes.

He said that during the 1975 visit he and Korean officials "exchanged customary gifts, not money; ideas, not contracts, and the chance to explore truths, not intrigue." He said the visit included "a routine public relations visit to the KCIA headquarters, the Chief of Naval Operations and others—all with the knowledge of the U.S. Embassy."

But he said no one attempted to bribe or improperly influence him, either in Korea or since his return to the States.

He did note that he has written some letters to U.S. senators and representatives urging retention of U.S. troops in Korea and that Kim preached on a Sunday evening sermon at his church and has introduced him to various Korean dignitaries during Kim's 1976 visits to the U.S.

"But no one has attempted to get me to do anything improper," declared Self. "Billy Kim wanted me to support troop retention, but I wrote the letters because I, along with the Pentagon, happen to believe we should keep troops there. It would be unthinkable to sell my integrity for an overseas trip."

When he returned from Korea, Self said in a 1975 interview that he found that Christians are free to preach and evangelize in South Korea, as long as they refrain from overt acts of political interference that might upset "the delicate balance of power" there.

During his 1975 interview with President Park, Self, a trustee of the Southern Baptist Convention (SBC) Foreign Mission Board, said he told Park that SBC missionaries are instructed to conduct spiritual ministries to persons, not become involved in the politics of the country. Self became president of the Board's trustees in 1977.

The KCIA document also called for "manipulation" of a 359-member Baptist tour group (which Self says is "totally unrelated to me") and a series of other proposed actions among leaders from many areas of life.

They include invitations to important persons in the Methodist and Presbyterian churches in the States to visit Korea; manipulation of a minister of the Holiness Church and another person "of the overseas missionary board of the national headquarters of the American Methodist church;" strengthening of the "utilization of already pro-ROK religious figures;" utilization of a person with a Korean language newspaper; utilization and suppression of anti-government Christians; invitations to influential "resident" religious leaders to visit Korea at the expense of the Korean government; and payment of expenses in an attempt to influence 50 churches in Washington, New York, Los Angeles, San Francisco, Chicago and Houston.

The objectives of the "1976 Plan," as stated in the document, were to thwart North Korean control and influence in America, strengthen U.S. commitment to South Korea and disrupt North Korea's infiltration of Korean residents in the U.S.

The document outlined "operational guidelines" to achieve the objectives. They included efforts to "organize forces supporting the ROK in all circles in the U.S. and transform anti-ROK public opinion." (BP)

Retirement

(Continued from p. 5)

He also suggested that older workers adversely affected by the ruling have a "simple route" to regain their jobs: they "need only reapply for the vacancy created by (their) retirement" because the law clearly prohibits discrimination in employment on the basis of age.

The U.S. Department of Labor estimates that some eleven million American workers may be temporarily affected by the court's decision.

In another action involving alleged discrimination, the high court announced it will decide if a company that relines blast furnaces violated the Civil Rights Act by hiring white bricklayers from a list which included only whites while bypassing similarly qualified blacks.

The company is prepared to argue that discriminatory intent must be proved rather than discriminatory effect, a line of reasoning already used by the high court in deciding several recent sex discrimination cases. (BP)

O'Hair

(Continued from p. 1)

broadcasting. This rumor is as false as the rumors about Mrs. O'Hair and the FCC.

Yet another myth subscribed to by many church people and some journalists is that the Texas atheist was responsible for the Supreme Court decisions on prayer in schools. The facts are as follows.

Mrs. O'Hair was not connected in any way with the landmark 1962 decision in the New York case in which the Court said that a governmentally written and approved prayer, required by government to be recited by school children, is unconstitutional.

She was a party in an auxiliary case in 1963 when the Court ruled that governmentally required religious devotions for school children, such as Bible reading and/or recitation of the Lord's Prayer, violate the Constitution.

The legal suit over the motto "In God We Trust" is being followed closely by the staff of the Baptist Joint Committee on Public Affairs in Washington, D.C., which will report new developments in the case as they occur. (BPA)

Pregnancy

(Continued from p. 5)

sequently denied seniority rights violates the law.

Justice William H. Rehnquist, who wrote the court's opinion, said that the company policy both deprived affected employees of employment opportunities and adversely affected their status as employees in violation of the provisions of Title VII.

The policy, Rehnquist continued, "imposed on women a substantial burden that men need not suffer."

The justices nevertheless reaffirmed their decision last year in the GE case by ruling that Satty was not entitled under the law to sick leave pay while on maternity leave.

Rehnquist said that the denial of such pay "is merely the loss of income for the period the employee is not at work" and that "such an exclusion has no direct effect upon either employment opportunities or job status." (BPA)

Payment

(Continued from p. 4)

courts, has now been declared similarly unconstitutional.

Supreme Court justice Potter Stewart, who wrote the majority opinion, stated that because the purpose of the second New York law was identical to the first, "it is for the identical reasons invalid."

Stewart countered an argument by Cathedral Academy that the once-only payment called for under the second New York law could not excessively involve government in the affairs of a church by saying that "the prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment, and it cannot be dismissed by saying it will happen only once."

To have ruled in the school's favor, Stewart declared, "would mean that every such unconstitutional statute, like every dog, gets one bite."

The New York law, Stewart concluded, would "of necessity either have the primary effect of aiding religion . . . (or) result in excessive state involvement in religious affairs."

Chief Justice Warren E. Burger and justice William H. Rehnquist dissented in a brief statement, saying that a 1973 decision permitting a one-time reimbursement payment to Pennsylvania private schools should govern the present case.

Justice Byron R. White, who has consistently voted to uphold nonpublic school aid plans, also dissented, saying that the high court majority "continues to misconstrue the First Amendment in a manner that discriminates against religion and is contrary to the fundamental educational needs of the country." (BPA)

McDaniel

(Continued from p. 5)

any office or public trust under the United States."

McDaniel's free exercise argument, summed up in a written brief submitted this summer, says that Tennessee "exacts a cruel penalty—it relegates Rev. McDaniel and other ministers to the level of second class citizenship."

An assistant attorney general of Tennessee, Kenneth R. Herrell of Nashville, argued before the high court that the state's interest in the law is the separation of church and state. He cited the First Amendment's clause forbidding the establishment of religion as sufficient foundation for Tennessee's prohibition against clergy in public office.

Justice John Paul Stevens interrupted Herrell at one point to ask if the state's absolute conception of separation of church and state could be carried to the theoretical extreme of denying to all regular church-goers access to public office. Herrell responded that the state would have a legitimate interest in such a provision.

At another point in Herrell's presentation, Chief Justice Warren E. Burger asked if Tennessee's prison chaplains are paid by the state and Herrell again answered in the affirmative.

Burger also posed the question if all members of denominations which make every adherent a minister automatically would thereby be excluded. Herrell once more answered, "Yes."

In an interview after the hearing, McDaniel stated his belief that the state has no compelling interest in forbidding him and other members of the clergy from holding office. He stated further that the state's arguments made in the Tennessee Supreme Court that to allow clergy to hold office would give them disproportionate influence because of the people under their spiritual care has not come to pass. He indicated that he functioned as any other member of the constitutional convention.

The justices will now take the case under advisement, with no decision likely until sometime after the first of the year. Because of the illness of justice Harry A. Blackmun, the remaining eight justices will decide the case. (BPA)

Solicitations

(Continued from p. 2)

Hopefully, Congress will give primary attention to granting power of disclosure to the Postal Service to confidential records of contributors where there is evidence of mail fraud and/or evidence of criminal or civil violation of existing laws. As Congressman Don Bonker (D-Wis.) expressed it on the floor of the House shortly before the 1977 Christmas recess, "H.R. 41 is the wrong approach to abuses in the name of charity." Meanwhile, there is an urgent need for the exclusion of the churches and conventions and associations of churches from H.R. 41 and of making your views known to members of the House Committee on Post Office and Civil Service.

Educators

(Continued from p. 1)

maintain and strengthen contacts with national education groups.

Senator Richard Schweiker (R-Pa.) encouraged the participants to see hope for the goal of a "strong, healthy system of private education." "I see good things in Congress for private schools," he said. He noted that he has introduced a "tuition relief" measure in the Senate (S. 834) which will be in hearings in January 1978 before the Senate Finance Committee.

Schweiker noted that certain myths still plague the private schools' image with the public. He urged the educators to dispel the myths that private schools are only for the rich or that they cost much more than public education. He also pointed out that private schools are not all alike and that many have heavy minority enrollment.

Two legal authorities who spoke to the conference cautioned against too much optimism by private educators. Charles Whelan, professor of law, Fordham University, noted that he was sympathetic to the desires of his audience but told them, "If I were to tell you that there were no constitutional problems imaginable with the tuition tax credit, I should be disbarred."

Charles Wilson, attorney with a Washington, D.C. law firm, warned of the dangers in public aid to private school cases. He told the participants that if the National Labor Relations Board is denied jurisdiction over elementary and secondary school teachers in labor disputes on the grounds that that would constitute excessive governmental entanglement in pervasively religious schools, then the courts may rule against public aid to those schools.

The Council for American Private Education represents 14 national educational organizations which either serve or operate about 15,000 private elementary and secondary schools. These schools employ about 225,000 teachers and enroll nearly 4.2 million students. According to CAPE, this represents about 90 percent of all students attending private schools in the United States. (BPA)

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