Nashville, Tennessee

BAPTIST JOINT COMMITTEE

REPORT FROM THE CAPITAL

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NewsMakers

◆ U.S. Rep. **Ernest Istook,** R-Okla., called the U.S. Supreme Court's recent invalidation of a Texas school district's football game prayer policy the "latest step of using the First Amendment to oppose religion rather than to protect it." He favors a constitutional amendment that critics say would permit school-sponsored religious activities and tax-funded religious education and programs. "Unfortunately we don't have the votes to win the necessary two-thirds support for such an amendment from the current Congress," he said. "I remain hopeful that this will change after this year's elections."

◆ Virginia Attorney General **Mark Earley** said public school teachers can mention prayer as an option when instructing students on a daily moment of silence. Earlier the state Department of Education had advised school personnel to introduce the daily minute of silence with the words: "As we begin another day, let us pause for a moment of silence."

◆ **Jere Allen,** executive director of the District of Columbia Baptist Convention since 1992, has announced his retirement, effective at the end of this year. **Lynn Bergfalk,** DCBC president, pastor of Calvary Baptist Church in D.C. and a Baptist Joint Committee director, will chair a search committee. Δ

Justices block school-sponsored prayer before football games

Opening public high school football games with prayer violates the separation of church and state, the U.S. Supreme Court ruled in an eagerly anticipated decision June 19.

While not banning all prayers at public schools, the court ruled 6-3 that a Texas school district's policy of allowing a student elected by a majority of classmates to deliver an invocation over the public address system before home varsity football games is unconstitutional.

The policy of the Santa Fe Independent School District in Galveston County, Texas, amounts to state-sponsorship of prayer, which violates the First Amendment, the court majority said.

The First Amendment forbids the government from passing laws that either establish religion or prevent its free exercise. The school district argued that the student-led prayers were protected as private speech.

Writing for the court, however, Justice John Paul Stevens said electing a student under a policy set up by the school district to encourage prayer "is not properly characterized as private speech."

Joined by Justices Sandra Day O'Connor, Anthony Kennedy, David Souter, Ruth Bader Ginsburg and Stephen Breyer, Stevens said the policy violates the rights of students who do not wish to pray.

The Constitution does not ban all religious activities in public schools, however, Stevens said.

"Nothing in the Constitution as interpreted by this court prohibits any public school student from voluntarily praying at any time before, during, or after the school day. But the religious liberty protected by the Constitution is abridged when the state affirmatively sponsors the particular practice of prayer," he said.

The Santa Fe school board adopted the prayer policy in 1995. It allows students selected by their colleagues to deliver invocations and benedictions at graduation ceremonies and a "brief invocation and/or message" during pregame ceremonies at football games.

An anonymous group of Mormon and Catholic students and their mothers challenged the policy in court.

See RULING, Page 4

Key Supreme Court School Prayer Rulings

Engel vs. Vitale (1962): State-written prayer in public schools unconstitutional.

Abington vs. Schempp (1963): Devotional Bible reading and recitation of the Lord's Prayer in public school classrooms unconstitutional.

Wallace vs. Jaffree (1985): Moment of silence designed to promote prayer unconstitutional.

Lee vs. Weisman (1992): School-sponsored, clergy-led commencement prayers unconstitutional.

Santa Fe Independent School District vs. Doe (2000): School-sponsored, student-led prayers at public high school football games unconstitutional.

New legislation protects religious broadcasters from FCC limits

The House voted June 20 to protect religious broadcasters by barring the Federal Communications Commission from regulating the content of speech aired by noncommercial educational television and radio stations.

In January, the FCC commissioners voted to drop controversial language in a December ruling that declared that some religious programming aired on noncommercial stations – including that which focused on proselytizing – could not be considered educational. But the new legislation intends to prevent similar moves in the future.

The measure, which passed on a 264-159 vote, was hailed by the National Religious Broadcasters.

"We're one step closer to being sure that the government, in this case the FCC, will not be permitted to chip away our basic liberty of religious expression," the Manassas, Va.- based organization said in a statement.

According to the legislation, a nonprofit organization is eligible for a noncommercial educational license if it broadcasts material it believes serves an educational, religious, cultural or instructional purpose. It bars the FCC from imposing any requirements that link licensing to, for example, the number of hours of educational programming. Δ

AU says Falwell interview could risk SBC tax-exempt status

The Southern Baptist Convention's tax-exempt status may be placed at risk if its Ethics and Religious Liberty Commission airs a radio interview with Jerry Falwell taped on June 12, according to a church-state watchdog group.

Americans United for Separation of Church and State Executive Director Barry Lynn said Falwell's comments during a taping for the ERLC's nationwide "For Faith and Family" radio program were partisan.

In the interview Falwell said, "Ronald Reagan would not have been president unless Bible-believing Christians in 1979 and 1980 by the millions said, 'We've had enough,' and threw Jimmy Carter out and put Ronald Reagan in, to put it bluntly. If we don't do the same thing Nov. 7 with Mr. Gore and get somebody in there to rebuild the moral values and fabric of this nation, we're going to be in the same mess or worse than we were in 1980."

In a June 14 letter to ERLC Executive Director Richard Land, Lynn urged the ERLC not to air the interview because "many listeners of the SBC-produced program would certainly conclude that his partisan agenda has the official endorsement of the Southern Baptist Convention."

Lynn told Land that because "the program was taped for later broadcast, airing it now — knowing of its partisan content — could put the SBC's tax-exempt status in jeopardy. Accordingly, I am writing today to strongly urge you to refrain from airing this interview."

Lynn said Land's agency is "subject to the restrictions governing tax-exempt entities and partisan politics."

Land criticized Lynn's letter. "This is an attempt to threaten and an attempt by Mr. Lynn — bully that he is — to engage in prior restraint of our speech. Whatever decision we make considering that airing of our program with Dr. Falwell or with anyone else, Barry Lynn's opinions and his advice will have absolutely no influence or impact whatsoever."

Jay Sekulow, chief counsel for the American Center for Law and Justice, said he has given the ERLC advice and counsel on the dispute at the request of Land.

Land's interview with Falwell is "completely within the law," Sekulow said.

Falwell defended his statements and blasted Lynn's charges in a phone interview with Associated Baptist Press.

"As a private citizen," Falwell told ABP, "I'm working to elect George W. Bush in the same way I worked to elect Ronald Reagan. I'm not working any harder than Barry Lynn is working to elect Al Gore."

In a letter of response June 21, Land referred to Lynn's "thinly veiled threat" to file more complaints with the IRS if necessary and said AU is not as quick to file IRS complaints about churches that endorse Democratic candidates as it is for those endorsing GOP candidates.

But an AU fact sheet notes that of the 28 religious ministries it has reported to the IRS, eight stem from endorsement of Democratic candidates and 10 from endorsements of GOP candidates. Seven related to churches handing out Christian Coalition voter guides and three dealt with independent or other candidates. Δ

Justices reject bid to reinstate Louisiana evolution disclaimer

Over the objection of three of its most conservative members, the U.S. Supreme Court rejected a bid to reinstate a Louisiana school district's requirement that teachers read a disclaimer before classroom presentations on evolution.

A three-judge panel of the 5th U.S. Circuit Court of Appeals held that the disclaimer enacted by the Tangipahoa Parish Board of Education in 1994 violated the separation of church and state. The "primary effect of the disclaimer," the appeals court said, "is to protect and maintain a particular religious viewpoint, namely belief in the Biblical version of creation."

The disclaimer stated that the teaching of evolution is "not intended to influence or dissuade the Biblical version of Creation or any other concept," but to "inform students of the scientific concept."

The disclaimer recognized the right of students to form their own opinions or "maintain beliefs taught by parents on this very important matter of the origin of life and matter."

The full 5th Circuit rejected a petition for rehearing, noting that the disclaimer "is not sufficiently neutral to prevent it from violating the Establishment Clause."

Dissenting from the refusal to hear the case, Justice Antonin Scalia, joined by Chief Justice William Rehnquist and Justice Clarence Thomas, lamented that "we stand by in silence while a deeply divided Fifth Circuit bars a school district from even suggesting to students that other theories besides evolution — including, but not limited to, the Biblical theory of creation — are worthy of their consideration." Δ

Religious liberty helped, not harmed, by high court's ruling

The U.S. Supreme Court's June 19 decision declaring unconstitutional student-led prayer before public school football games adds another chapter in our country's long-running discussion regarding religious expression in the public schools. (See story, Page1)

The decision is significant because a solid court majority demonstrated that it would rule out prayers — even ones led by students — when the facts show that the school is orchestrating such prayers. In this case, the school was heavily involved in establishing and overseeing the policy and encouraging prayer. The reasonable observer would correctly perceive that the prayers had the government's stamp of approval.

The *Santa Fe* decision also is important because it correctly recognizes that a school-sponsored vote on prayer does nothing to cure, and in many ways exacerbates, the constitutional violation. Using the voting process to advance the religious views of the majority of students against the consciences of the minority violates a primary purpose of the Establishment Clause — to protect the rights of members of minority religions. Under Santa Fe's voting procedure, it is virtually assured that members of minority faiths will never have the opportunity to offer a pregame prayer. Moreover, elections, by definition, divide the student body into competing religio-political factions, an issue that troubled the court majority.

What does this case mean for future cases of religious expression in the public schools? The court's concern about the election component of the policy would appear to invalidate the policies of public school districts that use similar elections on prayer for other school-sponsored events, such as graduation ceremonies. Also, the decision indicates that school boards should beware: The mere fact that a student leads a prayer does not insulate a policy from constitutional infirmity.

This decision does not mean, however, that students cannot pray at public school events like football games. Students may pray at football games in many different ways that are consistent with the court's ruling. Prayers may be offered individually or by groups of fans and students (including football team members) before, during or after the game, as long as the religious expression occurs without school involvement. An appropriate use of the loudspeaker would involve calling for a moment of silence, which could be used for prayer by those who wish to pray as long as the school does not explicitly encourage prayer.

Needless to say, the court's decision does leave a number of questions unanswered in the area of religious expression in the public schools. But by maintaining a consistency with earlier rulings in a firm majority opinion, without qualifying concurrences, the court produced more clarity in this challenging area of the law.

Most importantly, contrary to the dissenting opinion's suggestions, respecting the Constitution's prohibition on state-sponsored religious activities is not tantamount to banning religious expression from the public square. Religion has and will continue to play a vital role in America's public life, and nothing the Supreme Court said in this ruling threatens it. With presidential candidates offering their testimonies over public airwaves, and religious rallies being held in almost every public park, religious expression in the public square is far from endangered.

But we should and must continue to keep government out of the prayer business. Using governmental coercion to encourage participation in religious exercises strikes at the heart of our Constitution's guarantee of religious liberty and trivializes a sacred act. Placing the government's stamp of approval on some religions and not others (as inevitably happens in these cases) is like holding a match to the powder keg of our pluralistic nation.

In its ruling in *Santa Fe*, the Supreme Court faithfully distinguished between government-sponsored religious expression and that of private individuals. By doing so, the court helped rather than harmed the cause of religious liberty. Δ

Texas scholar says prayer ruling may affect graduations

Having students elected by their peers to lead public school graduation prayers may be in question, said a Texas Baptist church-state scholar discussing the impact of the U.S. Supreme Court's ruling against similar prayers at football games.

Derek Davis, director of the J. M. Dawson Institute of Church-State Studies at Baylor University in Waco, Texas, hailed the ruling against the football prayer policy. He also said it could overrule a lower court case that had sanctioned a similar voting procedure for student-led prayer at graduation ceremonies.

Davis, special counsel at the Baptist Joint Committee, said the *Santa Fe Independent School District vs. Doe* ruling, "does not directly address that issue, but the tone of it and the language included throws into question the process by which a majority vote names a student to lead in prayer at any kind of public school event."

The high court struck down the district's policy allowing students to lead stadium crowds in prayer over the intercom to open football games.

Davis said that "anytime you have a majoritarian process it violates the spirit of the Bill of Rights — which in many respects is intended to protect minorities." Δ

Baptist Joint Committee

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REPORT FROM THE CAPITAL

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Ruling, Continued from Page 1

A federal district court said that while clergy-led graduation prayers are not permissible, the Constitution permits student-led prayers as long as they are "nonsectarian" and "nonproselytizing."

The 5th U.S. Circuit Court of Appeals upheld the Santa Fe policy governing graduation prayers but said it cannot be extended to football games.

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

The high court ruling addressed only prayers at athletic events, but its criticism of the procedure for selecting students to lead public prayers could spill over into other cases involving graduation prayers.

The election of a student to pray "does nothing to protect the minority," Stevens said. And while the school district tried to craft a policy that passed constitutional muster, he said its intent was clearly to continue its tradition of opening football games with prayer.

"We refuse to turn a blind eye to the context in which this policy arose, and that context quells any doubt that this policy was implemented with the purpose of endorsing school prayer," Stevens wrote.

Chief Justice William Rehnquist filed a dissenting opinion, joined by Justices Antonin Scalia and Clarence Thomas.

Rehnquist said the tone of the majority opinion "bristles with hostility to all things religious in public life."

"Although the Court apparently believes that solemnizing football games is an illegitimate purpose, the voters in the school district seem to disagree," Rehnquist wrote. "Nothing in the Establishment Clause prevents them from making this choice."

Religious and civil liberties groups on both sides of the case reacted quickly to the ruling, the first on school prayer in nearly a decade.

Melissa Rogers, general counsel of the Baptist Joint Committee, said the decision "reaffirmed that prayer is none of the government's business."

The BJC, along with Baylor University's J.M. Dawson Institute of Church-State Studies and the General Conference of Seventh-day Adventists, filed a friend-of-the-court brief against the prayer policy.

Rogers said students may still pray at football games by gathering voluntarily in huddles or by praying during a neutral moment of silence.

"The thing students can't do is insist that government facilitate and endorse prayers," Rogers said.

Religious liberties "aren't up for a vote," she said, noting that a majority in a small Texas town would not likely elect a Muslim to pray at the games.

"But the First Amendment doesn't say 'freedom for me, but not for thee.' It protects the Muslim as much as the Methodist," she said.

Derek Davis, director of the Dawson Institute, said the ruling "champions historic Baptist principles of religious liberty." The Santa Fe community is "a very Baptist community, but historically Baptists have been a minority and have understood the problems of being a minority," said Davis. "It was disappointing to me that a Baptist majority in Santa Fe had forgotten those principles."

Jay Sekulow, chief counsel of Pat Robertson's American Center for Law and Justice, said the opinion "blurs the distinction between government speech and private speech" and censors the free speech of the students. Δ

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