

**SBC EXECUTIVE COMMITTEE MEETING
FEBRUARY 17-18, 2020**

RESOLUTION TO REVIEW THE ETHICS AND RELIGIOUS LIBERTY COMMISSION

Whereas, the members of the Executive Committee are entrusted with the responsibility to recommend the Cooperative Program Allocation Budget to the Southern Baptist Convention on an annual basis, as required by SBC Bylaw 18.E(6); and

Whereas, the Executive Committee is directed by the Convention to study and make recommendations to entities, and the Convention when advisable, concerning adjustments required by ministry statements or by established Convention policies and practices, as described in SBC Bylaw 18.E(9); and

Whereas, the Executive Committee is directed by the Convention to present to the Convention recommendations required to clarify the responsibilities of the entities for ministries and other functions, as provided in SBC Bylaw 18.E(13); and

Whereas, ongoing concerns have been expressed both publicly and privately to various members of the Executive Committee and other Southern Baptists regarding how the Ethics and Religious Liberty Commission's actions in relation to its ministry statements are affecting the Convention and its relationships with local churches, local associations, and state conventions; we recommend

That a task force be created consisting of the now-serving Executive Committee chair (who will continue serving until the task force concludes its work) and six Executive Committee members appointed by the Executive Committee chair; and

That the task force review the past and present activities of the Ethics and Religious Liberty Commission in the fulfillment of its Convention-approved ministry assignments and;

That the task force assess whether the actions of the Commission and its leadership are affecting Cooperative Program giving or the further advancement of the Cooperative Program; and

That the task force report back to the Executive Committee on or before its September 2020 meeting.

GUENTHER, JORDAN & PRICE
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To: Dr. Ed Upton and Mr. Bill Townes
From: Jim Guenther & Jaime Jordan
Re: Executive Committee February 18 Action Relative to
the Ethics and Religious Liberty Commission
Date: February 24, 2020

This memo is in response to specific questions from Dr. Upton:

1. Could and should the Executive Committee have communicated with the Ethics and Religious Liberty Commission prior to the EC's action of February 18?
2. Does the Executive Committee have the authority to take the action regarding the ERLC approved by the EC on February 18?

The short answer to question 1 is "No" and the short answer to question 2 is "Yes." For detail, see the following discussion.

1. Could and should the Executive Committee have communicated with the Ethics and Religious Liberty Commission prior to the EC's action of February 18?

The motion approved by the Executive Committee (attached to this memo as an exhibit) called upon a group of EC *trustees* to communicate with the ERLC. As we understand the EC's action, it was the intention of the EC that this group of trustees engage in a dialog with ERLC trustees.

Individual trustees have no authority to act on behalf of a corporation. Trustees act collectively when the Board takes an action or when a committee of the Board which is authorized to act on behalf of the Board takes an action. No committee of the EC's Board was authorized to have official communications with the ERLC or members of its Board prior to the EC's action. Prior to the EC's action, no EC staff member had the authority to initiate communications on the relevant issues.

In our opinion, the only proper procedure by which EC trustees, individually or as a group, could properly communicate with ERLC trustees (or ERLC officers, for that matter) was by the adoption of an action such as the action which the EC took on February 18. Only after such an action would a group of EC trustees be in a position to communicate with the ERLC officially and on behalf of the EC rather than

as individual Southern Baptists.

2. Does the Executive Committee have the authority to take the action regarding the ERLC approved by the EC on February 18?

The Southern Baptist Convention created the EC and assigned it certain duties and responsibilities to perform. The EC's duties and responsibilities are primarily found in the SBC's Bylaws (particularly Bylaw 18) and in the SBC-approved Ministry Statement for the EC.

Specific responsibilities imposed on the SBC by Bylaw 18.E are relevant to the February 18 ERLC action. Some of those are excerpted below (the italics are ours):

The Executive Committee shall be the fiduciary, the fiscal, and the executive entity of the Convention in all its affairs not specifically committed to some other board or entity.

The Executive Committee is specifically *authorized, instructed, and commissioned* to perform the following functions:

- (7) To present to the Convention a comprehensive budget for the Convention and for all its entities, which budget shall include the budgets of all the entities of the Convention whether or not they receive Cooperative Program funds, as reviewed by the Executive Committee. *The Executive Committee shall recommend the amount of Convention funds which may be allocated to each cause. . . .*
- (8) To conduct the general work of promotion and the general work of publicity for the Convention in cooperation with the entities of the Convention. *The Executive Committee shall provide a Convention relations service and a Convention news service to interpret and publicize the overall Southern Baptist ministry.* These services shall be available to support the work of all Convention entities and ministries.
- (9) *To maintain open channels of communication between the Executive Committee and the trustees of the entities of the Convention, to study and make recommendations to entities concerning adjustments required by ministry statements or by established Convention policies and practices, and, whenever deemed advisable, to make recommendations to the Convention. The Executive Committee shall not have authority to control or direct the several boards, entities, and institutions of the Convention. This is the responsibility of trustees elected by the Convention and accountable directly to the Convention.*
- (13) To maintain an official organization manual defining the responsibilities of each entity of the Convention for conducting specific ministries and for performing other functions. The manual shall cite the actions of the Convention that assigned the ministries and other functions to the entity. *The Executive Committee shall present to the Convention recommendations required to clarify the responsibilities of the entities for ministries and other functions, to eliminate overlapping assignments of responsibility, and to authorize the assignment of new responsibilities for ministries or functions to entities.*

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Under (7) above, the EC is required to make a judgment about how to recommend the distribution of Cooperative Program among the various entities of the Convention. That duty clearly calls upon the EC to make value judgments regarding the work and effectiveness of the Convention's entities. The EC must decide where Cooperative Program funds can best be used to accomplish the purposes and ministries of the Convention.

It is clearly appropriate for the EC to review the ministries and functions which the Convention has vested in the ERLC, to assess how well the ERLC is accomplishing those ministries and functions, and to decide whether to recommend that the Convention commit more, less, or the same percentage of Cooperative Program funds for use by the ERLC.

Under (8) above, the EC is charged with the task of interpreting and publicizing "the overall Southern Baptist ministry" to the public, and to publicize and promote the work of the Convention's entities, with the cooperation of those entities. The EC is well within its defined role to discuss with the ERLC's trustees their work and how their work can be better interpreted and promoted to the Baptist public and the general public. A dialog between the EC and the ERLC would be crucial in performing this task, particularly in light of reports coming to the EC that some sectors of the Baptist public are not presently sympathetic with the work of the ERLC.

Section (9) above specifically empowers the EC's trustees to open a dialog directly with the ERLC's trustees. The purpose of the dialog is to study the ERLC and its effectiveness in accomplishing the work delegated to the ERLC in its ministry statement. After being informed by its study, the EC is directed to make recommendations "when advisable" about adjustments for the ERLC to consider.

The EC is fully aware that it cannot direct the ERLC's operations, nor direct the ERLC to make adjustments in its work or programs. The EC's duty is to study and recommend. If the EC, after study, forms the opinion that the ERLC is not properly performing its "responsibilities. . . for ministries and other functions," or that some clarification is needed regarding the ERLC's responsibilities for ministry, then both section (8) and section (13) give the EC the responsibility to present appropriate recommendations to the Convention.

Given these responsibilities thrust upon the EC by Bylaw 18.E., it is our opinion that the EC has acted prudently by taking the first step to open a line of communications with the the ERLC's trustees. It is now incumbent upon the ERLC to cooperate, communicate, and assist the EC to promote the mission and ministries of the ERLC and, if necessary, to consider adjustments to those ministries so that they better reflect the ERLC's assignment from the Convention.

- END -

EXHIBIT: EC Motion Relating to ERLC

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That a task force be created consisting of the now-serving Executive Committee chair (who will continue serving until the task force concludes its work) and six Executive Committee members appointed by the Executive Committee chair; and

That the task force review the past and present activities of the Ethics & Religious Liberty Commission in the fulfillment of its Convention-approved ministry assignments and;

That the task force assess whether the actions of the Commission and its leadership are affecting Cooperative Program giving or the further advancement of the Cooperative Program; and

That the task force report back to the Executive Committee on or before its September 2020 meeting.

* Should be 18.E(7)

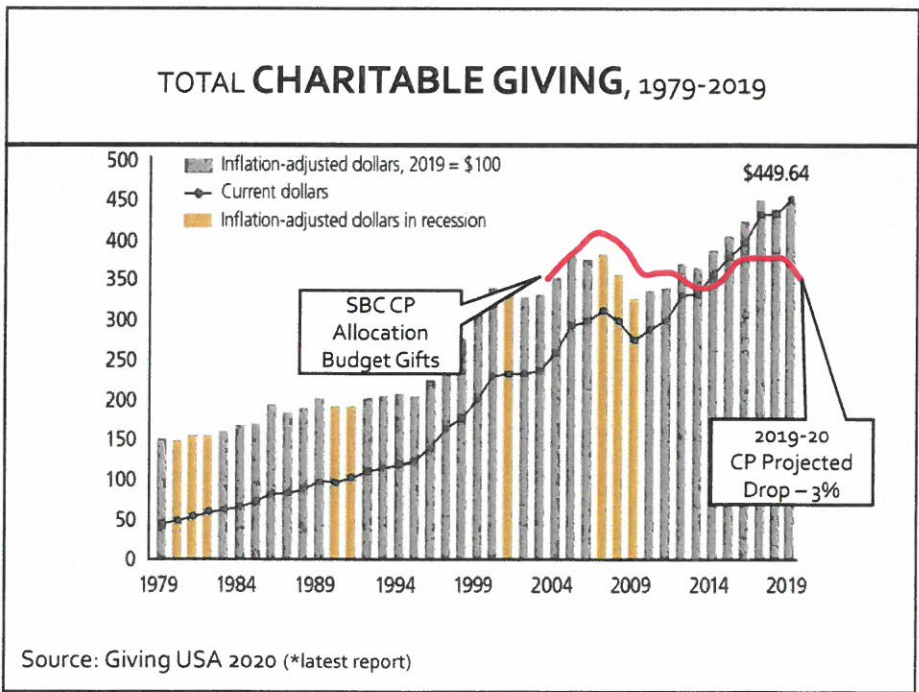
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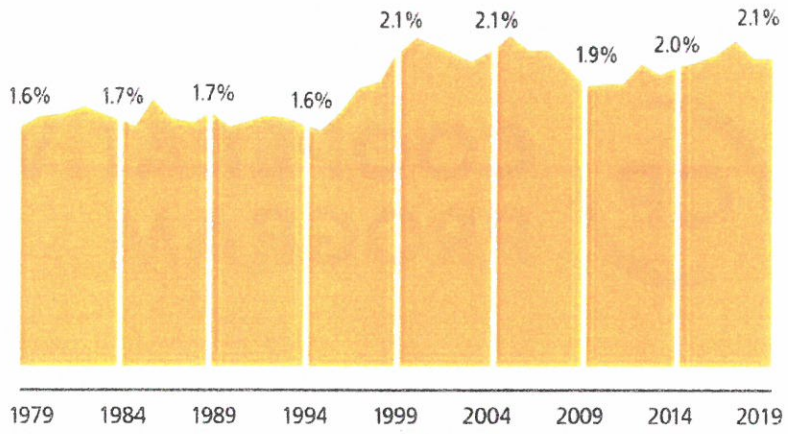
- E. The Executive Committee shall be the fiduciary, the fiscal, and the executive entity of the Convention in all its affairs not specifically committed to some other board or entity.

The Executive Committee is specifically authorized, instructed, and commissioned to perform the following functions:

- (1) To act for the Convention ad interim in all matters not otherwise provided for.
- (2) To be named in transfers of real and personal property for the use and benefit of the Convention either by deed, conveyance, will, or otherwise and to affix the seal of the Convention to all approved transactions; and to take title to and hold or to convey title to all properties, real or personal, and all funds, monies, and securities that are donated or transferred or left by will to or for the use of the Convention. As to such properties, funds, monies, and securities as the Executive Committee shall hold and not convey title to, the Executive Committee shall be custodian of such, holding them in trust for the Convention to be managed, controlled, and administered by the Executive Committee in accordance with the direction, general or specific, of the Convention. Rules governing the handling of securities set out in Article VII, Section 3, of the Constitution shall be observed by the Executive Committee.
- (3) To receive and receipt for all current funds of the Convention including all undesignated cooperative missionary, educational, and benevolent funds and all current special or designated funds for missionary, educational, and benevolent purposes which may be contributed by individuals, churches, societies, corporations, associations, or state conventions; and to disburse all undesignated funds, according to the percentages fixed by the Convention and all the designated funds according to the stipulations of the donors. The Executive Committee shall keep the accounts of all inter-entity groups and shall disburse their funds on requisition of the properly constituted officers of the inter-entity organization.
- (4) To recommend to the Convention a time and place and to have oversight of the arrangements for the meetings of the Convention, with authority to change both the time and place of the meetings in accordance with the provisions of Article XI, Section 3, of the Constitution.
- (5) To act in an advisory capacity on all questions of cooperation among the different entities of the Convention, and among the entities of the Convention and those of other conventions, whether state or national.
- (6) To present to the Convention each year a consolidated and comprehensive financial statement of the Convention and all its entities, which statement shall show the assets and liabilities of the Convention and all its entities, and all the cash and other receipts of the year.
- (7) To present to the Convention a comprehensive budget for the Convention and for all its entities, which budget shall include the budgets of all the entities of the Convention whether or not they receive Cooperative Program funds, as reviewed by the Executive Committee. The Executive Committee shall recommend the amount of Convention funds which may be allocated to each cause. It shall not recommend any direct allocation of funds for any entity or institution for which the Convention does not elect trustees or directors.
- (8) To conduct the general work of promotion and the general work of publicity for the Convention in cooperation with the entities of the Convention. The Executive Committee shall provide a Convention relations service and a Convention news service to interpret and publicize the overall Southern Baptist ministry. These services shall be available to support the work of all Convention entities and ministries.
- (9) To maintain open channels of communication between the Executive Committee and the trustees of the entities of the Convention, to study and make recommendations to entities concerning adjustments required by ministry statements or by established Convention policies and practices, and, whenever deemed advisable, to make recommendations to the Convention. The Executive Committee shall not have authority to control or direct the several boards, entities, and institutions of the Convention. This is the responsibility of trustees elected by the Convention and accountable directly to the Convention.
- (10) To make its own bylaws in keeping with the Constitution and Bylaws of the Convention in carrying out these instructions to the Executive Committee; to hold meetings whenever deemed necessary; to make reports of all meetings to the Convention; to notify all the boards, entities, and institutions of the actions of the Convention and to advise with them as to the best way of promoting all the interests of the Convention.
- (11) To derive, in accordance with the action of the Convention in Atlanta in 1944, the expenses of the Executive Committee from the Operating Budget of the Convention specifically established for this purpose and formally approved by the Convention.
- (12) To utilize an appropriate report format which will enable the Executive Committee to obtain from the entities adequate and comparable information about ministry plans, accomplishments, and financial data.
- (13) To maintain an official organization manual defining the responsibilities of each entity of the Convention for conducting specific ministries and for performing other functions. The manual shall cite the actions of the Convention that assigned the ministries and other functions to the entity. The Executive Committee shall present to the Convention recommendations required to clarify the responsibilities of the entities for ministries and other functions, to eliminate overlapping assignments of responsibility, and to authorize the assignment of new responsibilities for ministries or functions to entities.
- (14) To send copies of the minutes of the Executive Committee to the heads of all Southern Baptist Convention entities, and copies of the minutes of all entities shall be sent to the office of the Executive Committee.

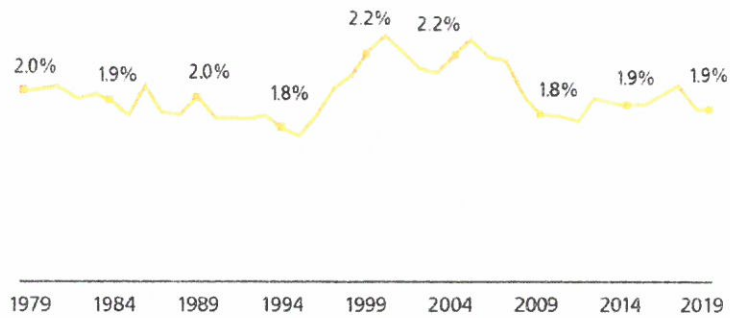


Giving as a % of GDP, 1979–2019 (in current dollars)



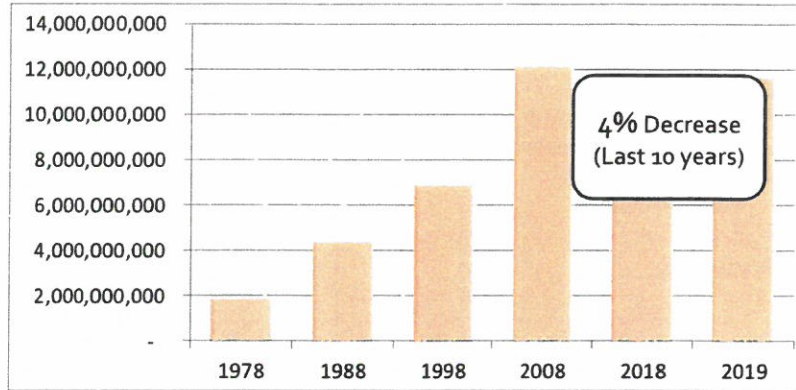
Source: Giving USA 2020 (*latest)

INDIVIDUAL GIVING AS A SHARE OF DISPOSABLE INCOME, 1979-2019



Source: Giving USA 2020 (*latest report)

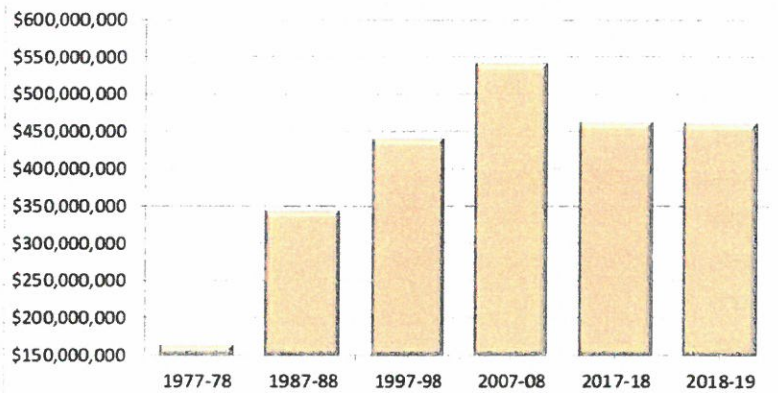
Southern Baptist Churches Total Receipts (Gifts)



DECADE BY DECADE

SOURCE: SBC Annuals

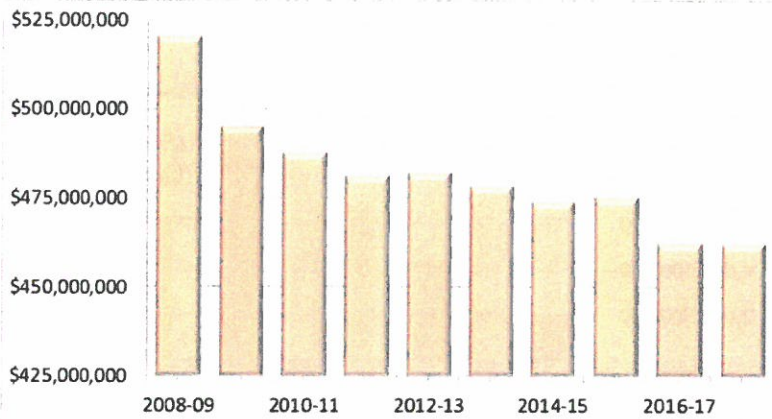
Total Cooperative Program Gifts Forwarded by the Churches to State Conventions



DECADE BY DECADE

SOURCE: www.cpmiissions.net

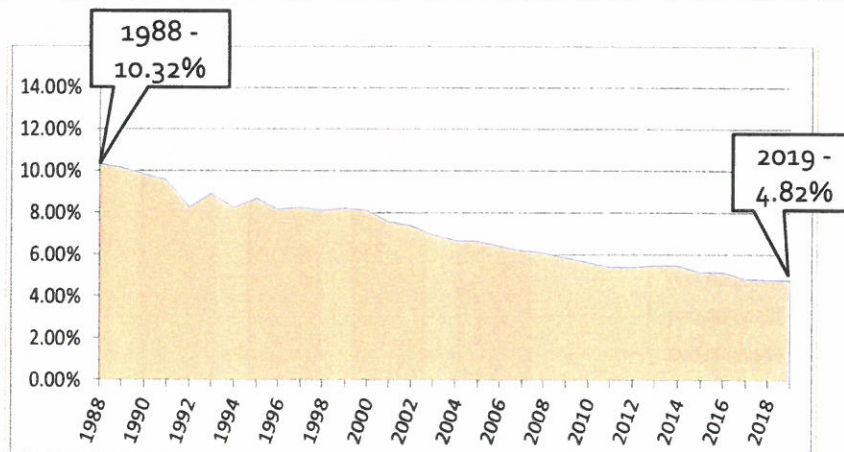
Total Cooperative Program Gifts Forwarded by the Churches to State Conventions



LAST TEN YEARS

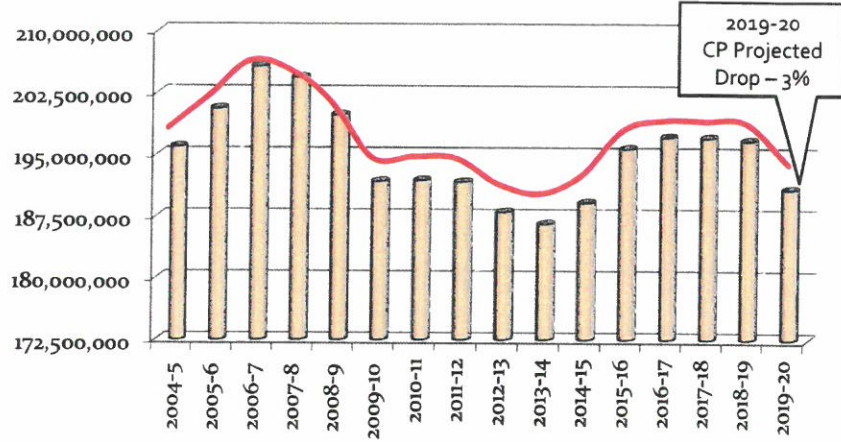
SOURCE: www.cpmiissions.net

Total Cooperative Program Gifts as a % of Undesignated Offerings



SOURCE: SBC Annuals

Actual Receipts SBC Cooperative Program Allocation Budget





THE ETHICS & RELIGIOUS
LIBERTY COMMISSION
OF THE SOUTHERN BAPTIST CONVENTION

1. ***On a scale of 1–4, please rank the current prioritization of SBC approved ERLC ministry assignments which “express the policy of the Convention with respect to the ministries of the entities of the Convention.”***

This is a reasonable question, but one, admittedly, we find ourselves unable to answer, not because we are unwilling, but rather because we are not sure it is possible to assign higher priority to one over any other. The reality is each of these four areas are of equal importance to the ERLC. Allow us to elaborate briefly as to why.

First, both the trustees and staff of the ERLC recognize that the Commission itself exists first and foremost to serve churches. This being the case, the ERLC will happily carry out any and every assignment given to it by the churches we serve. This is also because the ERLC believes that it does its work not just in service to churches, but in service to our denomination’s cooperative efforts to advance the gospel around the world. Jesus said in the Great Commission to “go,” and the ERLC recognizes that religious freedom is the highway upon which evangelism moves most freely, which is why it works tirelessly to defend and promote it; at the same time, Jesus said in the Great Commission that we are to “make disciples,” which means that moral and ethical transformation are necessary for obedience to our Lord’s command, which is why the ERLC strives mightily to address these issues with faithfulness and vigor. The upshot of all of this is that the ERLC sees its work as done in service to local churches, before God and for his glory; as such, we receive these assignments as a charge from our churches which we are to steward with care, skill, and devotion. As such, we couldn’t possibly designate one of our ministry assignments as more important than another. They are of equal importance to the ERLC, and, we believe, each strategically vital for the cooperative missions strategy of the Southern Baptist Convention.

Second, the ERLC ministry assignment represents the great wisdom of Southern Baptists in uniting these assignments together. That is to say, the ERLC has received the ministry assignment it possesses in part because of the tight, organic connection between internal transformation and external public witness. Behind it is the conviction that the power of the gospel in the life of local churches is the primary vehicle for redemptive transformation, both in individual lives and in the broader culture. That’s why the ERLC exists to equip churches *and* to speak into the public square—because the two are vitally connected. That’s also why the ERLC strives to take every aspect of the ERLC’s public witness and frame it in terms of the mission of Christ, a mission that starts with a universal offer of salvation for every person and a universal command for all to repent and believe. Part of the ERLC’s mission is to call attention to the way the reality of Christ’s kingship and promised return compels us to reframe our present situation (to explain the moral demands of the gospel as our ministry assignment states it), whether it’s the way we live our lives, the way we order our societies, or anything in between. Nearly every issue the ERLC addresses is related to each aspect of our ministry assignment. Religious liberty, for example, has implications for local churches, legislation, advocacy, and for evangelism. As such, we cannot easily disentangle these issues because they themselves are all connected to one another.

As trustees of the organization, we are mindful that the ERLC exists to serve Southern Baptist churches—ever surveying the legislative and cultural landscape, equipping churches to live and bear witness faithfully, sounding the alarm for churches when there are clear and present threats or unseen but advancing dangers, all the while speaking from churches as advocates for the freedom of conscience for all people for the sake of the free flow of the gospel. We believe this service appropriately “expresses the policy of the Convention” by pursuing all four areas of the ministry assignment with equal emphasis.

2. Please provide a specific list of examples/details providing clarity for each of the ERLC ministry assignments.

At the outset, it may be useful to point to the ERLC's [2019 Ministry Report](#) (linked) as a reference in answer to this question, organized as it is around goals and accomplishments for each area of our ministry assignment. Additionally, another document which might be useful is the ERLC's [2020 Legislative Agenda](#), (linked) an annual report we make public about the legislative goals the ERLC is pursuing on behalf of Southern Baptist churches. Below, then, it may be most helpful to provide a handful of representative areas of focus and show how they are integrated across each aspect of the organization's ministry assignment. This is far from an exhaustive list of all the work the ERLC does, but our hope is that these areas will be illustrative of how our work extends across each of our various assignments.

Standing for Life

At the forefront of the ERLC's work is the issue of life. The Bible makes clear that God knows us at our earliest stages (Ps. 139:13) and that safeguarding children is a paramount concern (Matt. 19:14). As such, this issue has long been a priority for Southern Baptists and the organization they send to speak from them into the public square.

Yet, we live in a society in which our federal government—to this very day—subsidizes the work of Planned Parenthood, an organization that preys upon vulnerable women and profits on the backs of slaughtered, preborn children. We live in a society where multimillion dollar companies threaten state legislatures who would dare enact commonsense laws designed to protect women and children. We live in a world that thinks and speaks of preborn children made in the image of God as problems to be solved. Here, the ERLC is relentless in shining a light on this injustice, highlighting it for our churches, and speaking against it in the public square.

The ERLC's work on the Born Alive Abortion Survivors Protection Act is a good example of the ERLC's capabilities to lead in the midst of a cultural flashpoint—in this case, the passage of sweeping abortion legislation in New York and Virginia Governor Ralph Northam's comments on Virginia's abortion legislation. We translated this cultural moment into public policy advocacy, but at the same time, used it to make an argument about the logical conclusion of the arguments of the abortion industry. Another area of particular significance is our work to protect the Hyde Amendment, a decades-long policy of consensus in Washington that taxpayer dollars not be spent on abortion in order to protect American consciences. However, the abortion industry is working to remove any Hyde protection during the appropriations process. In 2016, the Democratic platform declared that “they would continue to oppose, and seek to overturn, federal and state laws and policies that impede a woman's access to abortion, including by repealing the Hyde Amendment.” The ERLC is working with the Senate Appropriations Committee and the White House to protect the Hyde Amendment.

At the same time, the staff of the ERLC are working toward a post-*Roe* future. In some cases, that takes the form of conferences and events like the annual Evangelicals for Life gathering that assists the churches of the SBC in applying the gospel to this most urgent of issues. In other cases, it manifests as content in the form of hundreds of articles, interviews, podcasts, and publications for our churches. In yet other cases, it looks like advocacy for legislation that will protect the lives of preborn children. In yet other cases, it takes the form of our Psalm 139 Project, which provides ultrasound technology to pregnancy resource centers and pro-life women's clinics around the country. In every case, though, this work means standing athwart a watching world that sees our care for the vulnerable as backwards. The ERLC exists to bring a prophetic word to the watching world, and to equip churches to do likewise, declaring that the way of the cross is one that cares for the vulnerable.

Protecting Religious Liberty

Religious freedom, Southern Baptists rightly insist, is not a privilege extended to us by the government but rather a gift given to us by God. Baptists have long been the vanguards of religious liberty in American culture, insisting that because no government bureaucrat will stand with you on Judgment Day no govern-

ment therefore gets to act as lord over the conscience. The ERLC strives to carry this mantle into the future, defending religious freedom in the public square and promoting its importance in the life of our churches.

That is why it is so alarming that Christians face assaults on religious liberty that would have seemed unthinkable just a matter of years ago. This Congress, the ERLC stood against and has worked to defeat legislation that would amend the Civil Rights Act to meet the demands of the sexual revolution. This includes, of course, the Equality Act, but also the so-called Fairness For All Act and dozens of attempts to sneak similar language into federal legislation. Over the last decade, the ERLC has also worked tirelessly to defend against threats to religious liberty seen perhaps most clearly in the previous administration's audacious contraceptive mandate and efforts to dictate hiring practices for religious employers. These are two fights the ERLC is actively engaged in at the Supreme Court this very term. The ERLC has also stood and spoken when senators tried to shame the Trump Administration's political appointees because of their faith.

More recently, just over the last year, the ERLC has worked successfully to reverse a decision in the current administration that would have led to steep tariffs on Bibles, leading to large financial burdens on Christian publishers and missions agencies, and most importantly, leading to a slowing of the production and transmission of God's Word around the world. Also this year, the ERLC led the charge in securing a reversal of the so-called "parking lot tax"—a provision in the 2017 tax reform bill that would have become the first income tax on churches in U.S. history, representing a major violation of the proper separation of church and state and setting a dangerous precedent for the future. Not only that, but the ERLC continues to oppose egregious legislation that would threaten healthcare providers and run roughshod over the consciences of medical professionals, all the while speaking into court cases that will set important legal precedent and carry significant implications for the freedom of Southern Baptist churches to carry out their mission in the future.

At the same time, the ERLC is working regularly to equip churches on this issue in the form of content, curriculum, books, and digital assets. Religious liberty can never be taken for granted, and can always be a mere generation away from jeopardy, if its centrality and significance is not continually upheld. Not only that, but the ERLC is working daily in both public and private ways, with media, elected officials, and thought leaders of all kinds to persuade others of the good of religious liberty. Simply stated, religious liberty is too important, and too foundational to American democracy, to allow it to devolve into merely one more political wedge issue. In conversations, at private events, and across countless events and interactions, the ERLC is continually striving to persuade others of the need for religious liberty to be an issue upon which all Americans agree.

Defending Human Dignity and Family Stability

The biblical reality that every human being, born and preborn, is created in the image of God and therefore worthy of dignity (Gen. 1:26–27) is foundational to Southern Baptist convictions and the work of the ERLC in seeking to uphold human dignity and family stability in the world around us. This has implications for the way we insist on a biblical definition of marriage; the importance of families; the evil of racism; the need to love our neighbors; the wickedness of elder abuse, euthanasia, and assisted suicide; and a million points in between—issues which the ERLC address each day.

But the interrelatedness of our ministry assignments can be seen with particular clarity here in one specific area. As an organization we believe, with Southern Baptists, that one should be free to live consistently with one's faith, that all life should be cherished, that marriage is exclusively to be the lifelong union of one man and one woman, and that children are served best in loving homes with both a mother and a father. Serious opposition to each of these issues has come together in recent years across the country, though, in the form of crippling regulations on adoption agencies. Increasingly, Christian adoption agencies are being bullied out of existence. If they choose, for example, to only place children in Christian homes, or only place children in homes with both a mother and a father, in a growing number of states they are being faced with the choice to either defy their faith or close their doors. This is bad for children, and bad for the country, and the ERLC has been active on this front across each of our ministry assignments.

In some situations this takes the form of advocacy, whether in courts or Congress. Just over the last year, the ERLC worked closely with the White House and the Department of Health and Human Services to reverse an eleventh-hour Obama administration provision that would have prevented any child welfare agency holding to a biblical view of marriage from serving vulnerable children and families, nationwide. In several key states the ERLC is proactively working to protect adoption agencies, such as in Oklahoma, Texas, and Tennessee. This year in Tennessee, the ERLC shepherded a bill through the legislature and into law that provides codified protections for adoption agencies to ensure that an agency is free to serve children consistent with their convictions.

This work was continued, though, in both media communication and church equipping, assisting churches to understand the need, the problem, and how they can be a part of the solution. With media, the ERLC worked regularly with reporters to combat the narrative that the White House, for example, was seeking to alienate the LGBT community with this regulation change. Instead, the truth was that this change was designed to eliminate the bullying of the faith-based community, and Dr. Moore published an op-ed in the *Wall Street Journal* and spoke widely with the media, vigorously defending the Trump administration's actions, even as the ERLC produced explainers, content, interviews, and updates for churches to inform them and to encourage them to be engaged in the adoption and foster care community.

Combatting Sexual Abuse

Elsewhere, the ERLC has sought to serve the churches of the SBC with a sustained focus on the issue of church sex abuse. We as trustees, and all the staff of the ERLC, have been continuously grateful for the seriousness with which churches across our denomination are taking this issue. We are convinced that our churches want to do everything in their power to rid the church of this wickedness in unity together, on behalf of the vulnerable, and for the sake of the gospel. Here too, the work the ERLC has done in this space is one that cuts across each of our ministry assignments.

In partnership with SBC President J. D. Greear and the Sexual Abuse Advisory Group, the work of which was made possible in part by the generosity of the Executive Committee, the ERLC spent a great deal of time and energy helping to develop resources, content, and strategies which would be of benefit to Southern Baptist churches. A key resource that typifies this work was the Caring Well Challenge, a program and curriculum designed to take churches through key steps to help provide training, resources, systems, and advice for how to guard against predators, protect the vulnerable, and care for those who have suffered at the hands of abusers.

Part of this work, though, also took the form of events, seen most clearly in the 2019 ERLC National Conference. Here, the ERLC changed the focus of its conference deep into the event-planning process, willfully taking on enormous logistical challenges in doing so, to serve Southern Baptist churches with a major event designed to equip churches to work through these issues helpfully.

More still, in the legislative space, the ERLC worked to advance several pieces of significant legislation. One example here is a bill the ERLC helped shepherd through the Texas legislature designed to protect churches from civil liability if they let another congregation know about a potential staff member about whom there may be questions or allegations. Much has been done, and yet much more work remains. This is yet another example of a way the ERLC applies the moral and ethical teachings of the Bible to the Christian life.

Addressing Pandemic Needs

Perhaps no other space has been as significant in recent months to the ERLC as has navigating the complexities of the coronavirus and the implications it has for our churches and families. During this moment, the ERLC has sought to make this issue an overriding organizational priority in service to our churches. It has done so in a number of ways.

For starters, this work has taken the form of defending religious liberty. In some cases, it has taken the form of private communication with mayors and public officials, seeking to resolve conflicts and clarify misunderstandings at the start. In other cases, it has been reminding churches of the need for vigilance and calm in a difficult time. In others still, it has taken the form of public opposition and pressure when public

officials have dramatically overstepped their bounds. Over the coming months, this will be a particular focus of the ERLC as churches consider reopening plans through the summer.

Not only that, but the ERLC's work has taken the form of communicating positions internally and externally. Externally this has taken the form of daily interaction with media and journalists, focusing in particular on how churches are leading the way in serving communities in the midst of this pandemic. Internally, two of the primary questions that many Baptist churches grappled with over the last few months are (1) the relationship between church and state, and how churches could show proper honor to the authorities without ceding the freedom of the church; and (2) whether churches could in good conscience participate in programs designed to keep capital flowing to banks and to stave off unemployment. In both of these spaces, the ERLC has sought to provide clear and helpful counsel to churches, outlining what is reasonable and what is improper for governments to do. At the same time, as Baptists we adamantly oppose government funding of churches, but in review of the Paycheck Protection Program sought to provide helpful analysis to our churches showing how, in our view, the design of the program was such that it did not constitute government funding and churches need not necessarily consider this program as a violation of our proper Baptist rejection of state-funded religion.

More still, this has taken the form of regular interaction with public officials. Here, the ERLC has been in regular communication with the White House, Congress, and key administration departments. It has also made contact with every governor's office in the country. One key area where the ERLC has sought to be a strong advocate for our churches is with respect to the Paycheck Protection Program. We have worked to resolve potential religious liberty concerns with the program as well as to ensure that the unique characteristics of churches and houses of worship are taken into consideration with the program rules. After untold numbers of churches applied in good faith to participate in the program, the SBA, responding to large corporations who were abusing the program, put out new regulations implying that organizations who had reserve monies at their disposal might face government scrutiny. This could have been a considerable problem for churches were they to be unaware that the SBA changed the "rules of the game" after the fact. We pressed privately but persistently on this change, and, thankfully, were able to help secure new guidance which made clear those who received less than \$2 million would need not fear the government would later call into question the necessity of the loan. Many churches likely did not even realize the change in the fine print, and we were thankful to be able to help resolve the issue and communicate it to our state conventions before many churches even realized there was cause for concern.

Beyond that, though, work on this issue has taken the form of resources and counsel to churches. This has included an array of content dealing with everything from children's ministry to phased reopening plans to mental health needs to interviews with medical professionals and public policy experts. It has also included webinars designed to help churches think through important questions, even to content helping equip churches consider the pastoral implications of widespread unemployment—ranging from suicide to depression to upticks in pornography addiction and domestic abuse.

Finally, during the pandemic, the ERLC has also continued to vigorously defend the cause of life. We opposed arguments made throughout American society speaking callously of the elderly and the "waste" of treating the old. We supported the work of several governors to close down abortion clinics during the pandemic, ensuring that the abortion industry had fewer opportunities to prey on the vulnerable during this time of fear and instability in order to feed its bottom line. We worked to prevent as much federal relief from going to the abortion industry as possible. And we have advocated to ensure that any vaccine for the coronavirus is produced and developed ethically—not through aborted fetal tissue. The ERLC is seeking to protect life whether from pandemics or from predators like Planned Parenthood.

All told, the ERLC has sought to be the SBC's chief servants at this time and on this issue. This is a moment that is uniquely stressful to Southern Baptists, to our churches, and to many across our various entities. The ERLC feels uniquely positioned to serve, encourage, and help our churches in this time, and as trustees we feel privileged getting to see this team work so vigilantly on behalf of our churches.

3. Based on the current ERLC approved Ministry Assignment as listed in the SBC Organizational Manual, please provide a percentage of ERLC financial resources devoted to each of these assignments in your latest completed operating budget.

Here we find ourselves in a similar position as we did in trying to answer your first question: perfectly willing to answer, but not sure that it is possible to assign every expense to only one of our four ministry assignments. We hope, especially after the answer to question number two, you might see why—namely, the assignments of the ERLC are so closely related and mutually reinforcing.

Take for example our efforts to serve SBC churches in the midst of this pandemic, referenced in the question above. The monies which pay the salary and benefits of our ERLC staff go toward advocacy; content production; interfacing with media and public officials; leading discussions, webinars, and conference calls with churches, state conventions, and like-minded organizations; generating content on issues related to the coronavirus; brainstorming initiatives that would be helpful to SBC churches; and on and on. Were we to have a staff person devoted to one ministry assignment, and another staff member devoted to another, this classification would be much easier. But, like most of our SBC entities we suspect, neither the budget nor the staffing structure is organized by ministry assignment. Instead, while each staff member has an area of focus, each staff member also contributes to each of the ERLC's ministry assignments.

To be more specific, the ERLC budget has historically, and over the last twenty years in particular, been organized first by staff-related expenses, administrative and building expenses, and then by team. For accounting purposes, the organization currently has four primary areas: executive office, events, communications, and public policy. The process of our budgeting, though, does indeed include a focus on our assignments, a review of our initiatives, consideration of the changing needs in the public square and the life of our churches the ERLC is called to address, and then an apportioning to our teams designed to help make sure the ERLC carries out each aspect of its ministry assignment with faithfulness and excellence.

If we try to place ourselves in your shoes as we consider this question, though, it seems possible that the intent of the question could be to inquire whether the organization financially privileges some ministry assignments to the detriment of others. We believe the answer to that question is no. Rather, the ERLC strives to allocate resources in order to execute each of our interrelated assignments with equal faithfulness.

4. There seems to be some confusion regarding the most recently completed ERLC Ministry Inquiry response provided to the SBC Executive Committee in accordance with the SBC Business and Financial Plan. Please provide further explanation regarding the fact that only \$11,171 was listed as being spent in the 2018–19 fiscal year by the ERLC on “Public Policy and Research”?

Perhaps the most helpful way to frame the answer to this question is with an overarching budgetary principle that has guided the ERLC budget across both the Richard Land administration and the Russell Moore administration. That principle: the primary investment the ERLC makes in seeking to carry out the ministry assignments entrusted to it is in the employees themselves who carry out the work. In fact, the percentage of the overall budget allocated to personnel has remained largely the same over the last fifteen years. Part of the reason behind that is the culture and nature of the ERLC's work—as the smallest of our national entities, the ERLC has, for many years, prided itself on being nimble and doing much with relatively little, and has sought to identify talented staff to carry out the most vital work of the ERLC.

It is important to point out that many other costs associated with our public policy work are paid out of other areas. The largest single cost, of course, as mentioned above, are building and personnel costs of our full-time staff in D.C., which requires nearly a half million dollars on its own. Additionally, while the public policy team leads the organization's Research Institute, that area was funded until this fiscal year from the executive office budget. The policy team is regularly involved with public relations efforts, but costs here are also funded out of the executive office budget. Regular D.C. events such as our Capitol Conversations are

paid out of the events budget. Marketing and especially web and digital assets—efforts in which the ERLC invests considerably and the policy team rely upon heavily—are funded out of the communications budget. The list could go on.

When it comes to the particular line item you point out, in some respects this budget line, and this staffing strategy, is similar to the budgets of many SBC churches. Some churches may indeed have a “Sermon Preparation” line item in their budget, but in most cases, it is not one of the larger line items. That’s because the pastor himself, who is “funded” from a different part of the budget is the one who prepares the sermons. A \$500 “sermon preparation” line item does not mean that the church fails to value the centrality of biblical exposition. Nor do church budgets neatly subdivide the pastor’s salary—as if a particular amount of his salary pays for preaching, whereas another specific amount covers his shepherding, and yet another funds his evangelism. The same is true here.

What this line item exists to cover are tools that the D.C. staff need to accomplish their work which are not paid out of other budgets. To be even more specific, examples for what this area exists to cover are expenses such as printing costs and filing fees for Supreme Court amicus briefs; outside legal opinions on an area of particular and specialized focus; fees to outside specialists to help provide research or content necessary for our work; or incidental costs for items like coffee, audiovisual needs, or registration fees for meetings or press conferences we host or attend.

It is also worth mentioning that not only has the percentage of personnel costs remained relatively consistent over the last fifteen years, but so too has the percentage of this “Public Policy & Research” area across both the Moore and Land administrations. These costs are relatively low for a number of reasons. For starters, the day to day work carried out by our D.C. team consists of regular meetings; interactions with elected officials, agency officials, coalition partners, and thought leaders; it involves, primarily, interpersonal interactions and advocacy efforts. Outside of paying salary and benefits for the staff doing this work, these tasks “cost” much less compared to many other tasks the ERLC regularly carry out—such as hosting major events; publishing printed materials for churches; or developing professionally-designed video, web, or digital assets to serve our churches.

That’s not the only reason costs in this area remain relatively low, however. For starters, our team is talented. Most of the time, for example, we do not have to solicit external legal opinions because our general counsel and D.C. staff possess the requisite expertise to meet our analysis needs. Not only that, but at any given time throughout the year there are 5–7 interns in our D.C. office who volunteer their time providing considerable and meaningful work—doing background research; drafting legislative memos; creating first drafts of coalition letters, policy briefs, and explainers; and attending meetings, hearings, and gatherings across Capitol Hill.

Not only that, but much of the most important policy advocacy, interactions with elected officials, media relations needs, and publication efforts are carried out by Dr. Moore himself. He travels regularly to and from D.C.; speaks daily with elected officials, journalists, and media personalities; and writes and speaks constantly on issues of public policy. These needs are at the very core of our public policy efforts, and yet none of the costs to make this possible, from salary to travel and everything in between, come from the “Public Policy and Research” budget area. The same is true for other ERLC staff who regularly contribute to the public policy and research aims of the organization. Simply stated, the vast majority of the ERLC’s work touches the area of public policy and research in some significant way and nearly every member of the staff contribute to this work in considerable ways.

- 5. *Is the ERLC aware of any specific instances where a church has made a decision to reduce/ stop giving through the Cooperative Program as a result of an action or position of the ERLC or the ERLC leadership? If so, please provide additional documentation.***

See question six.

6. Is the ERLC aware of any specific instances where a church has made a decision to increase/start giving through the Cooperative Program as a result of an action or position of the ERLC or the ERLC leadership. If so, please provide additional documentation.

The primary way the ERLC learns of churches joining or leaving the SBC is through communiques from the Executive Committee itself, most often in recent years through memorandum from the office of Convention Communications and Relations. The primary way the ERLC learns of fluctuations in Cooperative Program monies is similarly through reports we receive from the Executive Committee itself. When it comes to churches increasing or reducing their giving to CP based on an action or position of the ERLC or any of our entities, the primary objective dataset we are familiar with is the CP study committee's findings and recommendations, detailing in 2017 that less than 0.0016% of SBC churches could be identified as withholding, escrowing, or designating funds. More broadly, though, the ERLC does not possess a reliable means or authority to track or verify fluctuations well.

7. Does the ERLC track inquiries/contacts from local Southern Baptist Churches, local Baptist associations, and Baptist state conventions, which may be either positive or negative on various issues? If so, please provide a summary of that information by topic on these issues that may be of most importance to Southern Baptists.

The ERLC interacts regularly, as all our entities likely do, fielding questions and comments from people inside and outside the SBC. Below you can find our best representative summary of topics the ERLC has received most frequently over the last few years:

- General notes of appreciation or encouragement
- Information and/or appreciation re: SBA loan program / Paycheck Protection Program info
- Requests for coronavirus guidance
- Requests for guidance concerning local or regional issue of public policy (e.g., religious liberty violation, LGBT ordinance, pro-life initiative, etc.)
- Questions or concerns about public policy positions
- Feedback or questions on published resources
- Questions concerning misinformation
- Questions about implications of or involvement in Supreme Court cases
- Religious liberty
- Racial unity
- Economic distress
- Relative support or frustration concerning various elected officials
- Ethical conundrums / Difficult pastoral questions

The ERLC seeks to respond to comments as they are received whether that is pointing people to a relevant resource related to their query, providing an expert on the staff who can provide a timely answer to a question, or connecting an individual with the appropriate information they are seeking.

II. As it Stands, the Record Sufficiently Establishes that McRaney's Claims Impermissibly Entail Intrusion into Ecclesiastical Matters. Allowing the Matter to Proceed Because "It is not [yet] Certain" Whether Resolution of the Claims Involve "Purely Ecclesiastical Questions" Violates the First Amendment.

A. The Record Contains Sufficient Evidence.

In the instant case, there is sufficient evidence in the record that McRaney worked as a minister for BCMD, in concert with NAMD, with duties that included missions, church planting and other efforts to propagate the Southern Baptist faith tradition. (Doc. 2, Complaint ¶IV; Doc. 48-1, Affidavit of Carlos Ferrer, ¶4). McRaney directed a state-level body of the Southern Baptist faith tradition, an organization that supported 560 Southern Baptist churches. The primary, leading convention, or group, is the Southern Baptist Convention which is the umbrella Southern Baptist governing body over all of the various groups of churches. (Doc. 2, Complaint ¶V). Within that hierarchy are several organizations, including McRaney's previous employer and defendant NAMB. (Doc. 2, Complaint ¶VII. See also Doc. 48-1, Affidavit of Carlos Ferrer, ¶4). McRaney disagreed with the direction that NAMB wanted to go in terms of church governance. (Doc. 2; Complaint ¶X). According to McRaney, his employer, BCMD, was persuaded that it wanted to go in a different governance direction than that supported by McRaney. (Doc. 2; Complaint ¶¶X-XII).

- Baptist Press - <https://www.baptistpress.com> -

ERLC issues apology, explanation regarding amicus brief

Posted By *Baptist Press* On December 9, 2020 @ 3:00 pm In | [Comments Disabled](#)

EDITOR'S NOTE: The Ethics & Religious Liberty Commission, which recently joined an amicus brief in a lawsuit involving the North American Mission Board, has issued an apology and explanation for an inaccurate description of Baptist polity and church autonomy.

NASHVILLE (BP) – Several weeks ago, the ERLC was presented with an invitation to join a brief written by lawyers at the Thomas More Society, in support of one of our SBC entities. We decided to join the brief because of the importance of the underlying religious liberty issues at stake.

But there's no avoiding the fact that there were problems with language in the brief, specifically, language and statements that inaccurately describe Baptist polity and church autonomy and that are inconsistent with the positions the ERLC has repeatedly taken. We wish, instead of joining Thomas More Society's brief, that we had written our own. We fully recognize this brief created concern and unnecessary confusion. Before we say anything else, let us say – we apologize.

Last week, we issued a statement to [Baptist Press](#) ^[1], focused on the principal point of the autonomy of local churches. But over the last week we've asked ourselves how else we can serve Southern Baptists to the best of our ability. One thing that may be helpful is simply more information, particularly on the amicus brief itself and the legal doctrine at the heart of it. We're happy to provide that information.

The Autonomy of the Local Church

There are few issues nearer the center of what it means to be Southern Baptist than the autonomy of the local church. As Russell Moore has [noted](#) ^[2], "Some churches and denominations have decisions made at the top – by bishops or other leaders – and these decisions filter down to the churches. Our decisions go the other way. We think every church – no matter where or what its size – is governed by Jesus through His Word and by His gifts and is free from dictation by any other church or by some religious bureaucracy." In fact, Moore argues, the issue of autonomy is the very reason "the SBC was able to turn around from its direction toward theological liberalism in the 1970s and 1980s toward orthodox, evangelical conviction. The people had the final say."

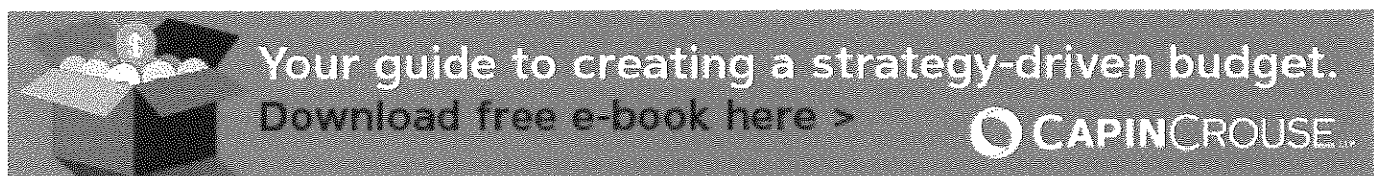
This Baptist distinctive is something we point out regularly. For example, in the most recent brief we filed [against the Governor of New York](#) ^[3] concerning religious liberty violations, the Southern Baptist Convention is described as "comprised of more than 46,000 autonomous churches and nearly 16 million members." In a recent legal comment letter to the Internal Revenue Service, we noted that Southern Baptists "are congregationally governed. The key feature of congregational governance is the autonomy of the local church or church-associated organization."

But autonomy is not only a Baptist theological distinctive but also an important legal category, commonly referred to as the ecclesial abstention doctrine or “the doctrine of church autonomy.” This legal doctrine of church autonomy means that the inner workings of local churches are free, or autonomous, from interference by the state. We advanced this argument in another amicus brief we filed in *Whole Woman’s Health v. Texas Conference of Catholic Bishops alongside the Southern Baptists of Texas Convention and the Christian Life Commission of the BGCT* [4]. In that brief, we argued that the First Amendment rights held by churches “not only includes autonomy in their selection of religious leaders, but also ‘the freedom to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’”

To the brief in question, the argument the brief was seeking to establish was not one about “hierarchy” or “umbrella organizations” (and, again, should not have used that language) but rather about the inherently religious character of Southern Baptist cooperative ministry. All Southern Baptist churches are autonomous, self-determining and subject only to the lordship of Christ. At the same time, we freely cooperate with each other for the sake of the Gospel, and any associations, entities or conventions are, as the *Baptist Faith and Message* puts it, “voluntary and advisory bodies designed to elicit, combine, and direct the energies of our people in the most effective manner.” But the fact that they are organized by and for our churches also means these bodies are inherently religious, and therefore protected by the First Amendment and fully autonomous from interference by the state.

The ERLC, in service to the SBC, has always doggedly opposed state interference with the internal affairs of local churches and religious organizations. This is why we felt it was important to engage in this case in the first place. This does not dismiss concerns about the inaccurate language in the brief, but it does explain our underlying conviction, namely, the conviction that courts have no business interfering with the work of the church, whether deacon meetings or church discipline or even our cooperative Gospel work together as Southern Baptists.

What’s Next?

An advertisement banner with a dark background. On the left is an image of an open cardboard box containing several white, round objects. To the right of the box, the text reads "Your guide to creating a strategy-driven budget. Download free e-book here >". On the far right is the CAPINCROUSE logo, which consists of a white circle with a dot inside, followed by the word "CAPINCROUSE" in white, uppercase letters.

[5]

When it comes to defending religious liberty in the judiciary and the Christian ideal of a “free church in a free state,” as the *Baptist Faith and Message* puts it, we will continue to be tireless in our witness. To that end, we have already filed briefs in a number of cases this year, advocating for religious freedom for houses of worship in the midst of the COVID-19 pandemic, for the religious freedom rights of faith-based adoption and child welfare providers and in a range of other cases. That will continue.

Moving forward beyond this particular brief, we want to make absolutely sure that we live up to the high expectations we have for ourselves in service to Southern Baptist churches. That begins with a few internal procedural changes to ensure we don't find ourselves here again. To be specific, the process of drafting and joining amicus briefs regularly involves short timelines, but moving forward we will require a standardized minimum timeline for review. Such a measure would have either corrected the issues with the original brief or prevented our involvement with it.

At the same time, some have wondered, understandably, whether the language in this individual brief could have harmful future consequences. Let us reassure Southern Baptists on this point: an amicus brief is not binding precedent and cannot override the clear, consistent statements Southern Baptists – including the ERLC – have made about the autonomy of the local church. And to be clear, the language about “hierarchy” in this brief is an aberration from the clear pattern of not just how Southern Baptists carry out cooperative ministry together but also from the arguments we have made consistently in a number of legal venues. Finally, know that in the days ahead we will take every opportunity available to us in the judiciary to defend autonomy rigorously and to ensure there is unmistakable clarity on Southern Baptist polity.

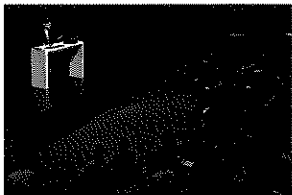
About the Author

ERLC Staff

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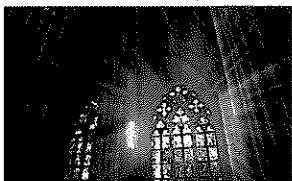
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THE ETHICS & RELIGIOUS
LIBERTY COMMISSION
OF THE SOUTHERN BAPTIST CONVENTION

December 11, 2020

ERLC Study Task Force
Executive Committee of the
Southern Baptist Convention
901 Commerce Street
Nashville, Tennessee 37203

Dear Members of the Task Force,

We are in receipt of your December 4 email. Earlier this week, the ERLC posted a [piece](#) on the ERLC website that addresses the very questions and issues about which you inquire. Additionally, as you may be aware, Travis Wussow, who serves as the ERLC's Vice President for Public Policy and as General Counsel, provided a [statement](#) to *Baptist Press* last week in order to speak to all Southern Baptists about this important matter. We trust that, together, these articles will be helpful to you.

As these articles point out, rightly, the ERLC has not only long opposed state interference with internal, church affairs, but has also regularly affirmed autonomy and rejected interference from any other church or religious bureaucracy as part of fulfilling its ministry assignment. So much so that these very convictions, as you may remember, were right at the core of the ERLC Executive Committee's protest of this very task force, namely, that the SBC Executive Committee functionally acted as a hierarchy itself—in our view, overruling the will of the messengers of the SBC and inappropriately seizing the responsibility and work of the ERLC Board of Trustees by creating this task force. You may not share that assessment, but the point here is our commitment to this issue is deeply rooted. The clumsy and mistaken wording in this brief written by lawyers for Thomas More Society is an aberration from our consistent advocacy on these issues.

Even still, the ERLC was clear in its recognition of the concerns, immediate in its affirmation of autonomy, and unmistakable in its willingness to work in partnership with both the Executive Committee and Convention attorneys to assess risk and determine what steps ought to be taken. All parties are in agreement that the necessary actions are being taken to make sure that legal documentation is in place to guard against and counter any legal questions. We hope that will encourage you.

We look forward to the completion of this task force's work. We wish you all warm blessings in Jesus over this Christmas season.

For Christ and His Kingdom,

David E. Prince, Chairman
Lori Bova, Vice Chairman
Justin Sampler, Secretary

Todd Howard, Chair, Administration and Finance
Mike Wilson, Chair, Research and Public Policy
Alan Gayle, Chair, Communications

CC: Ronnie Floyd
President & CEO
SBC Executive Committee

Becky Chandler
Senior Executive Assistant to the Board
SBC Executive Committee

Enclosure

NAMB en banc request denied by 5th Circuit; Confusion regarding amicus brief addressed

Baptist Press



NEW ORLEANS (BP) – A request by the North American Mission Board for an en banc hearing in a lawsuit brought by a former SBC leader was denied last week in a split decision by the 5th U.S. Circuit Court of Appeals. Additionally, an amicus brief filed in the case by an outside group in support of the en banc request has caused some concern over the essentials of Southern Baptist polity.

NAMB requested the en banc hearing in August 2020 after a lawsuit against the mission board was remanded back to a district court by a federal appeals court on July 16. The appeals court reversed a dismissal decision from April 2019 which stated the court could not consider claims made by Will McRaney, the Baptist Convention of Maryland/Delaware's (BCMD) former state executive director, because of the ecclesiastical abstention doctrine, which prevents the government from interfering in church or religious matters.

In his dissenting opinion accompanying the 8-9 decision, Circuit Judge James C. Ho argued in NAMB's favor, stating: "If religious liberty under our Constitution means anything, it surely means at least this much: that the government may not interfere in an internal dispute over who should lead a church – and especially not when the dispute is due to conflicting visions about the growth of the church. But it turns out that nothing is sacred, for that is precisely what we are doing here."

McRaney disagreed, issuing a statement saying: "This was the correct ruling given the lack of authority of NAMB over state conventions and the lack of hierarchy in the SBC in spite of the shameful coordinated deception to the courts by NAMB, ERLC and the BCMD. NAMB attorneys were either misinformed or participated in the deception, as did NAMB's Carlos Ferrer via affidavit, BCMD's CFO Tom Stolle via affidavit, and ERLC's Russ[ell] Moore through the lies shared in the amicus brief they filed.

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"I look forward to having truth emerge and justice served as we move toward having Ezell and other NAMB staff and Trustees testify under oath, as well as BCMD pastors and leaders," McRaney continued. "The NAMB trustees have refused to make Ezell meet with me or give an account under cross examination. Sadly, the court may do it for them unless they act

quickly.”

NAMB legal counsel George McCallum said: “This was not a ruling on the plaintiff’s unfounded allegations against NAMB, which we have consistently denied. As long as the plaintiff chooses to continue his lawsuit against our ministry, NAMB will continue to vigorously defend itself and religious liberty in the appropriate forum.”

In April 2019, Senior Judge Glen Davidson of the U.S. District Court Northern District of Mississippi dismissed the lawsuit, ruling the court could not consider McRaney’s claims because of the ecclesiastical abstention doctrine. McRaney’s counsel argued in the appeal that the ecclesiastical abstention doctrine did not apply.

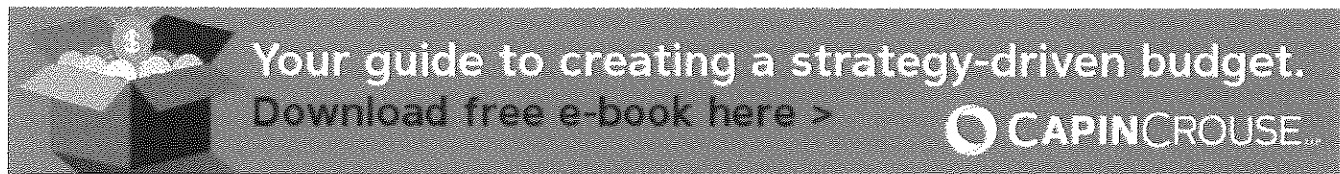
The July reversal stated “the relevant question is whether it appears certain that resolution of McRaney’s claims will require the court to address purely ecclesiastical questions. At this stage, the answer is no.”

It continued: “At this time, it is not certain that resolution of McRaney’s claims will require the court to interfere with matters of church government, matters of faith, or matters of doctrine. ... If NAMB presents evidence of these reasons and the district court concludes that it cannot resolve McRaney’s claims without addressing these reasons, then there may be cause to dismiss.”

In an August 2020 petition for the en banc hearing, NAMB was represented by First Liberty Institute. Hiram Sasser, First Liberty’s executive general counsel, said at the time that the Supreme Court’s decision in July 2020 in *Our Lady of Guadalupe School v. Morrissey-Berru* “made it clear that the Constitution protects religious organizations’ independence and their right to choose their own leaders and ministers.”

The lawsuit, originally filed in 2017 by McRaney, alleges NAMB had intentionally defamed him and wrongfully influenced his 2015 termination

by the BCMD after a dispute over collaborative missions efforts in the region.

An advertisement banner with a dark background. On the left is an illustration of an open cardboard box with a dollar sign above it. To the right of the box, the text reads "Your guide to creating a strategy-driven budget. Download free e-book here >". On the far right is the CAPINCROUSE logo, which consists of a circle with a dot inside, followed by the word "CAPINCROUSE" in all caps.

Amicus brief causes confusion related to Southern Baptist polity

Two friend-of-the-court briefs were also filed in support of the request for the en banc hearing.

The first, from the attorneys general of Texas, Mississippi and Louisiana, stated how they “are deeply interested in protecting the First Amendment rights of their citizens” and in “freeing their own courts from constitutionally improper involvement in matters of religious doctrine and church governance.”

The other brief, written by the Thomas More Society and joined by the Ethics & Religious Liberty Commission of the Southern Baptist Convention, contained language foreign to Southern Baptist polity and created concern among many observers of the case.

The ERLC joined the case due to its importance, “because of the underlying principle that courts have no jurisdiction over churches,” ERLC vice president for public policy and general counsel Travis Wussow said.

Wussow recognized the confusion brought about by the language in the brief and said: “As Southern Baptists, we believe that every church is fully autonomous, and that means autonomous from any other church, entity, or hierarchy, and also autonomous from the state. The ERLC has defended the underlying legal doctrines in this case for many years, and we will continue to defend them because of their importance to all Southern Baptists.”

But the brief’s arguments contradicted long-held Southern Baptist polity,

referred to the Southern Baptist Convention as the “umbrella Southern Baptist governing body” and described the convention of autonomous churches and groups as a “hierarchy.” Both descriptors incorrectly reflect Southern Baptist polity, according to a statement from the SBC Executive Committee.

Executive Committee president Ronnie Floyd corrected the error made by the brief’s authors, saying: “It is of highest importance that we are always clear about why we are organized and how we function as Southern Baptists. Our polity is driven by what we believe about Scripture as proclaimed in The Baptist Faith and Message, Article 6, ‘A New Testament church of the Lord Jesus Christ is an autonomous local congregation of baptized believers.’

“Since all Southern Baptist churches are autonomous and self-determining, they are not subject to any other church or organization, but only to the Lordship of Jesus Christ. Furthermore, our churches choose to cooperate together to reach every person for Jesus Christ in every town, every city, every state and every nation.

“The Baptist bodies serving our churches who undertake this great missional vision, such as associations, state conventions and national entities, do so knowing there is no relation of superiority or inferiority among our Baptist general bodies. There is no ‘hierarchy’ in any form or fashion in Southern Baptist polity. While each body is equal and autonomous, they serve the churches and operate with mutual respect for one another for the sake of cooperating together to advance the Good News of Jesus Christ to the whole world.”

Dates and court schedules for the continuation of the case in the U.S. District Court Northern District of Mississippi have not been set.

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POLICY BRIEFS

On ecclesiastical abstention and church autonomy

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📄 Several weeks ago, the ERLC was presented with an invitation to join a
f brief written by lawyers at the Thomas More Society, in support of one
🐦 of our SBC entities. We decided to join the brief because of the
in importance of the underlying religious liberty issues at stake.



But there's no avoiding the fact that there were problems with language in the brief, specifically, language and statements that inaccurately describe Baptist polity and church autonomy and that are inconsistent with the positions the ERLC has repeatedly taken. We wish, instead of joining Thomas More Society's brief, that we had written our own. We fully recognize this brief created concern and unnecessary confusion. Before we say anything else, let us say—we apologize.

Last week, we issued a statement to Baptist Press (<https://www.baptistpress.com/resource-library/news/namb-en-banc-request-denied-by-5th-circuit-confusion-regarding-amicus-brief-addressed/>), focused on the principal point of the autonomy of local churches. But over the last week we've asked ourselves how else we can serve Southern Baptists to the best of our ability. One thing that may be helpful is simply more information, particularly on the amicus brief itself and the legal doctrine at the heart of it. We're happy to provide that information.

The autonomy of the local church

There are few issues nearer the center of what it means to be Southern Baptist than the autonomy of the local church. As Russell Moore has noted (<https://www.russellmoore.com/2019/06/03/10-things-i-wish-everyone-knew-about-southern-baptists/>), “Some churches and denominations have decisions made at the top—by bishops or other leaders—and these decisions filter down to the churches. Our decisions go the other way. We think every church—no matter where or what its size—is governed by Jesus through his Word and by his gifts and is free from dictation by any other church or by some religious bureaucracy.” In fact, Moore argues, the issue of autonomy is the very reason “the SBC was able to turn around from its direction toward theological liberalism in the 1970s and 1980s toward orthodox, evangelical conviction. The people had the final say.”

This Baptist distinctive is something we point out regularly. For example, in the most recent brief we filed against the governor of New York (https://www.supremecourt.gov/DocketPDF/20/20A90/161400/20201120125212833_2020.11.-%20ERLC%20Motion%20and%20Amicus%20Brief%20--%2020A90.pdf) concerning religious liberty violations, the brief describes the Southern Baptist Convention as “comprised of more than 46,000 autonomous churches and nearly 16 million members.” In a recent legal comment letter to the Internal Revenue Service, we noted that Southern Baptists “are congregationally governed. The key feature of congregational governance is the autonomy of the local church or church-associated organization.”

But autonomy is not only a Baptist theological distinctive but also an important legal category, commonly referred to as the ecclesiastical abstention doctrine or “the doctrine of church autonomy.” This legal doctrine of church autonomy means

that the inner workings of local churches are free, or autonomous, from interference from the state. We advanced this argument in another amicus brief we filed in *Whole Woman's Health v. Texas Conference of Catholic Bishops alongside the Southern Baptists of Texas Convention and the Christian Life Commission of the BGCT* (<https://www.baptistpress.com/resource-library/news/erlc-texas-entities-advocate-for-church-autonomy/>). In that brief, we argued that the First Amendment rights held by churches “not only includes autonomy in their selection of religious leaders, but also ‘the freedom to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’”

To the brief in question, the argument the brief was seeking to establish was not one about “hierarchy” or “umbrella organizations” (and, again, should not have used that language) but rather about the inherently religious character of Southern Baptist cooperative ministry. All Southern Baptist churches are autonomous, self-determining, and subject only to the Lordship of Christ. At the same time, we freely cooperate with each other for the sake of the gospel, and any associations, entities, or conventions are, as the *Baptist Faith & Message* puts it, “voluntary and advisory bodies designed to elicit, combine, and direct the energies of our people in the most effective manner.” But the fact that they are organized by and for our churches also means these bodies are inherently religious, and therefore protected by the First Amendment and fully autonomous from interference by the state.

The ERLC, in service to the SBC, has always doggedly opposed state interference with the internal affairs of local churches and religious organizations. This is why we felt it was important to engage in this case in the first place. This does not dismiss concerns about the inaccurate language in the brief, but it does explain our underlying conviction, namely, the conviction that courts have no business interfering with the work of the church, whether deacon meetings or church discipline or even our cooperative gospel work together as Southern Baptists.

What's next?

When it comes to defending religious liberty in the judiciary and the Christian ideal of a “free church in a free state,” as the *Baptist Faith & Message* puts it, we will continue to be tireless in our witness. To that end, we have already filed briefs

in a number of cases this year, advocating for religious freedom for houses of worship in the midst of the COVID-19 pandemic, for the religious freedom rights of faith-based adoption and child welfare providers, and in a range of other cases. That will continue.

Moving forward beyond this particular brief, we want to make absolutely sure that we live up to the high expectations we have for ourselves in service to Southern Baptist churches. That begins with a few internal procedural changes to ensure we don't find ourselves here again. To be specific, the process of drafting and joining amicus briefs regularly involves short timelines, but moving forward we will require a standardized minimum timeline for review. Such a measure would have either corrected the issues with the original brief or prevented our involvement with it.

At the same time, some have wondered, understandably, whether the language in this individual brief could have harmful future consequences. Let us reassure Southern Baptists on this point: an amicus brief is not binding precedent and cannot override the clear, consistent statements Southern Baptists—including the ERLC—have made about the autonomy of the local church. And to be clear, the language about “hierarchy” in this brief is an aberration from the clear pattern of not just how Southern Baptists carry out cooperative ministry together but also from the arguments we have made consistently in a number of legal venues. Finally, know that in the days ahead we will take every opportunity available to us in the judiciary to defend autonomy rigorously and to ensure there is unmistakable clarity on Southern Baptist polity.
