

Reservations Concerning a Charter Amendment Proposal from New Orleans Baptist Theological Seminary

The purpose of this document is to explain why New Orleans Baptist Theological Seminary has reservations about the legal risks of financial liability and the possible effects on Baptist polity that could come if the attached proposal to make the SBC the sole member of the legal corporation of the seminary is adopted. The proposal is a request to make the Southern Baptist Convention the sole member of the legal corporation of the Seminary in order to clarify and strengthen the ties binding the Seminary and the Convention. Being in perfect agreement with this goal, the Trustees engaged in a process of careful research and study to evaluate the proposal. That process included the following steps.

(1) Listening carefully to be sure the proposal was properly understood.

That listening process included two meetings of the President with Executive Committee attorneys, three meetings between NOBTS Trustees and Executive Committee attorneys, one meeting of NOBTS Trustees with Dr. Morris Chapman and his staff, and one meeting of the entire NOBTS Board of Trustees with the officers and staff of the Executive Committee. Legal counsel for the seminary and other Louisiana attorneys were present in those meetings.

(2) Researching the implications of the proposal in light of Louisiana law.

Basic research was done by the permanent legal counsel of the Seminary. The results of his research were shared with other Louisiana attorneys and confirmed by them. An independent legal counsel was employed to review the proposal. One practicing Louisiana attorney has been on the Board of Trustees for several years. Another Louisiana attorney was added to the Board before the final decision of the Board was made. An attorney addressing the same issue of entity relationships between the Louisiana state convention and its entities was included in one of the key meetings between NOBTS Trustees and Executive Committee attorneys. Throughout the process the Trustees sought advice from Louisiana legal professionals who have practiced law for a lifetime in Louisiana.

(3) Exploring the implications of the proposal for historic Baptist polity.

Baptist polity was a major concern of the NOBTS Trustees and president from the beginning of consideration. The Trustees asked the president to prepare a paper exploring polity concerns with sole membership, had a panel discussion on the issue between the entire Board and a group of NOBTS theologians and historians, and asked the president to seek and report feedback from Convention leaders and other non-NOBTS conservative professional Baptist theologians and historians on polity concerns in light of sole membership.

By the time this process concluded, NOBTS made several discoveries, including the following.

(1) There are several matters on which the Seminary and the Executive Committee agree completely.

Both the Seminary and the Executive Committee are grateful for and supportive of the Conservative Resurgence. Both the Seminary and the Executive Committee agree the Seminary always has been and always will be an entity of the Southern Baptist Convention, with the Convention having complete control over the selection of Trustees, the content of the Seminary's charter, and the definition of ministry guidelines for the Seminary. Both the Seminary and the Executive Committee agree that this relationship and these rights of the Convention must be secured in perpetuity in a manner clearly protected by Louisiana law. The disagreement is over the most appropriate way to accomplish this objective.

(2) Louisiana law differs from that of the states in which other SBC entities are located, and that difference is significant.

The basis of this recommendation is a piece of corporate law called the Model Act. The Model Act has been passed as law in nine states. Ten of the entities of the Southern Baptist Convention are in the nine states which passed the Model Act. Louisiana is not one of those states, and therefore New Orleans Baptist Theological Seminary is under a different legal code than the other SBC entities. The Model Act has one interpretation of sole membership, but Louisiana law appears to have a different interpretation. Sole membership in Louisiana means something different than sole membership in the home states of other entities.

(3) The most important legal problem with sole membership in Louisiana is an increase in liability for the Southern Baptist Convention.

Out of concern for increasing the exposure of the SBC to liability lawsuits, the Trustees of NOBTS feel compelled to warn the convention messengers about three possible negative consequences of utilizing the sole membership strategy in Louisiana.

First, this strategy could potentially put the Cooperative Program at risk. The motion passed by the SBC in June 2004 asked the NOBTS Board of Trustees to make the SBC the sole member of the seminary's corporation in a way that assured the messengers historic rights and gave the Convention legal immunity. Multiple Louisiana attorneys have told us it is impossible for this proposal to fulfill both requests. The general counsel for the seminary has spent a lifetime practicing law in the state of Louisiana and specializes in the church and Louisiana law. We consulted numerous other Louisiana lawyers, Baptist and non-Baptist, including hiring as a consultant a man widely recognized as one of the top corporate lawyers in the state. We noticed even the Louisiana Baptist Convention did not use sole membership to strengthen the ties to its state entities. The overwhelming consensus of all the opinions we sought is that making the SBC the sole member of our Louisiana corporation will dramatically increase the risk of financial liability for the SBC in the state of Louisiana. ***Messengers must decide if the possibility of putting the Cooperative Program at risk in a lawsuit is worth adopting this measure without considering any alternative way to accomplish the same goals.***

Second, this change could have irreversible legal consequences. If sole membership is implemented at this point in time, and a later Convention were to decide to change from sole membership to another corporate model, the Louisiana attorneys we have consulted tell us it would probably not change the liability of the SBC in the state of Louisiana. Once this form of control is implemented, it will always be recalled as an indication of the true nature of the relationship between the seminary and the Convention. If this change does prove to be a problem, there will be no going back.

Third, the specific process that has been initiated by the Executive Committee could increase the likelihood of legal liability for the SBC. In a letter the general counsel for the Executive Committee informed us that entity consideration of charter changes should precede any request for a change in charter by the Convention. He went on to say that if the Convention initiated a proposal asking an entity to change a charter it could “strain if not tear the corporate veil” of protection from liability, perhaps weakening the defense strategy of the Convention against lawsuits by making it appear the Convention is managing the subsidiary entity. Last April New Orleans Baptist Theological Seminary announced it would be bringing a proposal on changing its charter to the 2005 meeting of the SBC. However, the Executive Committee chose to ask the Convention to request a charter change before the seminary initiated a proposal. *If the written advice we received is correct, the danger is even more likely for liability problems coming from approval of this proposal.*

(4) The attorneys we consulted tell us that with minor changes in our present charter Louisiana law would protect all the Convention rights sole membership seeks to protect, but without the risk of increased liability.

Minor changes in the present charter would complete the protection of SBC rights without increasing SBC liability in lawsuits involving the seminary. Other alternatives could be explored, but the staff of the SBC Executive Committee asked us not to prepare any alternative to sole membership and has refused to consider any option but sole membership. We believe that a process that does not at least consider more than one option is a flawed process.

(5) There are grounds for significant concerns about the implications of sole membership for Baptist polity.

Sole membership in the eyes of many professional Baptist historians and theologians, many SBC leaders, and many SBC church members is a step toward the centralization of control and authority in Southern Baptist life. It is not the size of the step, but rather the direction of the step that causes concern. The centralization of control and authority will ultimately lead to a diminished voice for the messengers of the Convention. A diminished voice of the messengers leads to a diminished voice of the local church. The manner in which the staff and officers of the Executive Committee handled the discussion with the Seminary has reinforced, not lessened our concerns for the future implications of this change.

Historic Baptist polity emphasizes the decisive influence of the SBC over its entities through duly elected Trustees as opposed to direct control of the entities by the Convention itself. The Convention controls entity charters, ministry guidelines, and Trustee selection, while the Trustees exercise operational control and governance of the entity. The Conservative Resurgence used this historic polity to institute the most significant course correction in the history of the church in America. Our historic polity at the national level has proven itself in normal operations and in times of reformation.

(6) This proposal ignores a source of the problem of entities in state conventions which made abrupt changes in their relationships with state Baptist bodies.

The question no one has asked or discussed is why state entities that unilaterally changed their relationship with their state convention were able to explore such a move. If an SBC entity head dared to suggest this kind of change it would result in immediate dismissal or severe reprimand. Why? Every entity board is filled with Trustees who have a great allegiance to the Southern Baptist Convention, and every SBC entity needs Cooperative Program funds, the goodwill of Southern Baptists, or both to be able to survive. To our knowledge in those cases where a state entity has abandoned its historic relationship with a state convention, the entity head was playing a major role in the selection of his own Trustees, and in nearly all cases, the Cooperative Program did not provide a significant portion of the entity budget. What makes historic Baptist polity work is careful Trustee selection for all entities and continuous development of financial support and goodwill for entities.

As requested by the messengers of the 2004 Southern Baptist Convention, the Trustees of New Orleans Baptist Theological Seminary recommend the attached amendment proposal to the messengers of the 2005 Convention. We do so, however, with the reservations expressed above. These reservations are not born out of a desire for greater independence or an attempt to change in any way the relationship we have always had with the Convention. These reservations reflect our concern for the legal and fiscal health of the Convention and for the conservation of historic Baptist polity. Our passionate commitment to the Southern Baptist Convention gives us an obligation to share these concerns.

From the beginning of this discussion with the Executive Committee staff, however, we have always insisted that the messengers have the final say. Should the messengers, knowing these reservations choose to approve the proposed amendment, it will be implemented shortly after the close of the Convention. Should the messengers reject this proposal, an alternative approach to accomplish the same objective will be crafted in light of the peculiarities of Louisiana law and historic Baptist polity and presented to the next meeting of the Southern Baptist Convention. In either case the New Orleans Baptist Theological Seminary affirms without reservation the bedrock principle of Baptist polity that in any Southern Baptist discussion, the Convention messengers have the deciding voice.