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Church, Post Office Are Package Deal In Manchester

Case could put its own stamp on Establishment Clause debate

By THOMAS B. SCHEFFEY

In 2001, when Bertram Cooper patronized the tiny, semi-private post office run by Manchester's splashiest church, he felt distinctly uncomfortable. The 77-year-old Jewish World War II veteran knew that separation of church and state is a central feature of American government, and it just didn't seem right.

Instead of a large, classic post office, Manchester's Main Street is served by a hole-in-the-wall location known as Sincerely Yours Inc. It has ordinary post office boxes and a counter where letters and packages are mailed.

Small as it is, it also doubles as a church mission office. The "contract postal unit" is a non-profit subsidiary of the Full Gospel Interdenominational Church Inc., which has a large prayer tower church three blocks up Main Street.

At one time, the mini-post office had a TV monitor playing a video about church efforts to fight poverty in Africa. There was a church donation jar on the counter, and literature urging visitors to have church members pray on their behalf at the 24-hour prayer tower.

Cooper, with the aid of lawyers at Wiggin and Dana and the ACLU, has waged a seven-year battle in U.S. District Court to determine whether this display violated the U.S. Constitution's prohibition on government establishment of religion.

On Aug. 20, the Second Circuit Court of Appeals unanimously ruled that U.S. District Judge Dominick Squatrito's injunction against all religious paraphernalia went too far. It ordered the removal of the collection jar and prayer literature from the postal counter, with further instructions that the



Thomas B. Scheffey

At Manchester's Main Street post office, one of 5,000 contract postal units in the country, patrons could mail packages and view a video about Full Gospel Interdenominational Church's efforts to fight hunger in Africa.

district court divide the church and post office areas of the room with a velvet rope and metal stanchions, or some other "visual cues."

Both sides are calling the decision a win.

Attorney Aaron S. Bayer, of the Hartford office of Wiggin and Dana, said the real victory for Cooper and other plaintiffs is the fact the appeals court rejected the church's basic argument. Full Gospel claimed it was just a private church, and could not be held responsible for donning the guise of Uncle Sam as a "state actor."

Bayer explained that the church lost on three distinct positions: that the plaintiffs had no standing to bring a complaint; that the church was a private entity (even though it was running a U.S. post office);

and that its religious displays did not violate the Establishment Clause in any event.

"The court rejected every one of those arguments — which would have represented a sweeping change in Establishment Clause jurisprudence," Bayer said. "The court sent the case back to the district court to limit the church to religious displays in a segregated, clearly demarcated area — separate from the areas in which postal services and functions are provided."

If the Second Circuit had accepted the idea that the church, despite running one of the nation's 5,000 "contract postal units," still remained entirely private for constitutional purposes, that would mean it could

do anything—including hold services and conduct sacraments—in its post office space. “That is clearly not the law,” said Bayer.

Brookfield attorney Joseph P. Secola, Connecticut counsel for the church, also sounded pleased with the result. “I think it’s a very significant victory for the church and how it operates,” he said.

Although the district court judge ordered the church to remove all of the religious symbols and literature, he said, “the Second Circuit allowed them to keep 90 percent of it—even the television and the tapes that were played, which were evangelical in nature, [about] the church’s worldwide mission. I think the Second Circuit used a scalpel to carve out the violation here, instead of an axe.”

U.S. Supreme Dreams

In Washington, an appellate lawyer for the conservative Alliance Defense Fund, Jeffrey A. Shafer, said his church clients are mulling whether to ask the Second Circuit or possibly the U.S. Supreme Court to protect religious displays from Establishment Clause attacks.

Shafer argued the case before the Second Circuit, and is a senior litigation attorney for ADF. Speaking generally, he said his clients would like to make it harder for a citizen like Cooper to make a federal case out of mere “discomfort” over a religious display.

The question is, just who has legal standing to bring a constitutional challenge,

Shafer said. The threshold for a plaintiff to have legal standing to sue in a religious display case are incredibly low, he said, and ripe for change.

Shafer said Cooper’s legal standing is questionable on several grounds. After the suit began, Copper moved to a West Hartford adult care facility and had no reason to visit Manchester for his postal needs. To keep the case from being tossed as moot, Bayer worked through the arcane technicalities of having three new Manchester residents intervene at the appellate level, which the Second Circuit allowed. This saved having to bring a whole new suit on the same issue.

The more significant standing issue, said Shafer, is what religious freedom advocates informally call “offended observer standing.” Shafer’s brief did not mince words about Cooper’s aggrievement. It said Establishment Clause questions have to be based on issues of “objective facts, not postulated misperceptions of ignorant onlookers.”

Religious freedom advocates are looking at the Manchester case as part of a pair of important Establishment Clause cases. The other is *Salazar v. Buono*, which the U.S. Supreme Court has already agreed to hear.

In the *Salazar* case, an employee of a federal park, Frank Buono, has sued the U.S. Secretary of the Interior for permitting a cross, erected in 1934 by Veterans of Foreign Wars, to remain on Sunrise Rock, which is federal land in the Mojave Desert.



Aaron S. Bayer, of the Hartford offices of Wiggin and Dana represented the plaintiffs in this establishment-of-religion case.

Law Tribune File Photo

In 1999, a request to build a Buddhist shrine nearby was denied, and Buono alleged an Establishment Clause violation. His standing to sue, as an offended observer, is at the heart of that case as well. There is speculation that the high court may want to hear the Manchester case as well so it can clarify Establishment Clause issues.

Beyond the question of standing, Shafer hasn’t given up on his original argument in the Manchester case. He contends it remains highly questionable whether a church, acting on its own private property, can also constitute the federal government establishing a religion. “It seems somewhat counter-intuitive,” he said, “to claim that a church acting on its own is the federal government. We think that’s a disturbing conclusion.” ■