

8180:12/89

**AMERICAN BAPTIST RESOLUTION
ON EMPLOYEE RIGHTS AND THE SUPREME COURT
Biblical-Theological Rationale**

Our understanding of creation--that humanity (male and female) was made in the image of God (Gen. 1:27)--mandates equality for all persons. As Christians, we follow the Christ who lived and died for all. This inclusiveness has implications for all aspects of life. Our respect for each others' rights before God and in society is expressed in community. Scripture stresses the significance of justice within that community. From the Lawgiver of the Old Testament (Lev. 24:22) through the Prophets (Is. 61:1-2, 8) to Jesus (Luke 10:25-37) and his followers (James 2:1, 14-17), scripture challenges us to seek the good of others and to share our own privileges when others are being hurt.

We are dealing with an unrighteous system which denies justice to many in our society, a situation parallel to that which Jesus illustrated in Luke 18, in his story of the unrighteous judge. We must be as persistent as the widow in the parable about seeking redress of grievances. "And let us not grow weary in well-doing, for in due season we shall reap, if we do not lose heart." (Gal. 6:9 RSV)

Situation Analysis

During its 1988-89 term, the United States Supreme Court handed down several decisions which had an adverse impact on the rights of women and minorities in the workplace. These decisions reflect the growing gap between statutory guarantees of non-discrimination and enforcement efforts by the government.

The decade of the 1980's was a time of erosion of governmental and societal commitment to equal rights under the law for all persons. Appointees to the Supreme Court and other federal courts were selected in large measure because of their commitment to a judicial philosophy of an explicit rejection of what some call the "judicial activism" of the Supreme Court under Chief Justices Warren Burger and Earl Warren. In 1985, the Justice Department attempted to persuade fifty-one cities and counties to reexamine consent decrees in employment discrimination cases, an exercise which would have effectively dismantled these voluntary agreements. In 1985 and 1986, the Executive branch attempted unsuccessfully to stop the federal government's program of affirmative action in contracting.

Rising racial violence also reflects in part the anxiety of workers who fear for their jobs or of displaced workers who resent those whom they believe to be their supplanters. Many display indifference to the victims of past and

ongoing discrimination. Racism lives on as a sign of the sin which controls many decisions, personal and corporate. Sexism is tolerated or even urged as God's will.

The American Baptist Churches, USA, in recognition of our society's shameful history of discrimination against women and minorities, believes that affirmative action is a necessary corrective for the past. The achievement of the dream of a nondiscriminatory society requires continuous, vigorous action.

The Supreme Court's rulings on employee rights in its 1988-89 term triggered protests and condemnation from religious, labor and civil rights groups. However, the Administration announced that these were simply technical corrections to present law and did not require a legislative corrective. Other observers of the legal scene have stated that the decisions point up the need for Congress to write nondiscrimination statutes that are more explicit about the protections they intend to provide for women and minorities.

The cases decided by the Court in 1988-89 were:

1. City of Richmond v. J.A. Croson Co. The Court struck down a Richmond, Virginia law that channeled 30 percent of public works funds to minority-owned construction companies. The case was decided on constitutional grounds of equal protection (for white contractors) under the Fourteenth Amendment.

2. Wards Cove Packing Company v. Atonio. The Court held that employers do not have to justify on grounds of "business necessity" practices that are shown to have a discriminatory effect on minorities and women. Employers must show only evidence of a legitimate reason for the challenged practice.

3. Martin v. Wilks. The Court ruled that the white men who were not involved in litigation leading to a court-approved affirmative action plan giving preferences to minorities and women could challenge such a plan even years after its adoption.

4. Patterson v. McLean Credit Union. This decision limited the usefulness of a 19th century civil rights statute which had been used in the 1960s and 70s to attack discrimination in the private sector by the local government. The Court said that the Civil Rights Act of 1866 does prohibit discrimination at the initial hiring stage but has no effect on working conditions thereafter.

5. Lorance v. AT&T. The Court held that a female employee who was

harmed by the operation of a seniority system which was adopted to redress previous discrimination was required to file a complaint with the Equal Employment Opportunity Commission at the time the seniority system was adopted. Filing a complaint at the time of actual harm was too late.

6. Jett v. Dallas Independent School District. This decision bars suits against state or local governments for acts of racial discrimination under the 1866 law. The plaintiff must prove that the discrimination was not the random act of a public employee but the result of official "policy or custom."

In summary, the Court opened the door for challenges to what had seemed to be a commitment to reversing decades of discrimination. At the same time, the Court closed avenues of redress for women and minorities for past discrimination.

Action

In light of the deterioration of resolve in our society and government to strive for full and equal participation of women and minorities in the workplace, the General Board of the American Baptist Churches, USA:

- 1. Reaffirms its historic commitment to affirmative action and the redress of past discrimination;**
- 2. Urges all American Baptists to examine their own practices and attitudes as employers and workers in relation to this critical need for equality;**
- 3. Requests all American Baptists and American Baptist entities such as the Office of Governmental Relations to work toward the passage of legislation in the United States Congress which will reverse the decisions of the Supreme Court cited above and restore the mandate to government and society to move rapidly toward policies and practices which will ensure full and equal participation of women and minorities in the workplace.**

**Adopted by the General Board of the American Baptist Churches - June 1990
155 Yes; 1 No; 4 Abstentions**

POLICY BASE

American Baptist Policy Statement on Human Rights - December 1976

As American Baptists we declare the following rights to be basic human rights, and we will support programs and measures to assure these rights:

- 8. The right to develop skills and abilities, to utilize these in economic, political, social, intellectual and religious institutions, and to receive a just return for one's labor;**
- 9. The right to human dignity, to be respected and treated as a person, and to be protected against discrimination without regard to age, sex, race, class, marital status, income, national origin, legal status, culture or condition in society;**
- 12. The right to organize into groups to bargain with structures or powerful persons, to seek redress of grievances or to promote particular concerns;**

American Baptist Policy Statement on Racial Justice - June 1983

Based on the mandate of our Christian faith and our belief that a nation cannot be secured unless it is founded on justice and opportunity for all, we believe that Christians must work for racial justice within their own societies and within the world. Therefore, as American Baptists:

- 3. We recognize the responsibility to protect the rights of and support opportunities and equity for racial minorities in the political, economic, social, educational and judicial systems in this country. We will initiate and support actions to enable persons of all racial backgrounds to become full participants in and beneficiaries of the life of this country.**
- 5. We recognize that our economic system has exploited racial minorities. We will continue to examine our economic system and to engage in actions by which racial minorities may participate fully in the decision making and control of the economic system fully benefiting from its productive processes.**
- 10. We recognize that racist decisions (individual, corporate and political) result in policies which adversely affect racial minorities and ethnic groups in areas which**

include housing, mental health, criminal justice and employment. We will initiate and support efforts to correct such policies.

SUPPORTING POSITIONS

American Baptist Resolution in Support of Affirmative Action - December 1977

In light of the widespread public misconception of affirmative action and the danger that the movement toward affirmative action may be slowed or reversed, American Baptists:

_ believe that it is in society's interest to apply affirmative action in the areas of employment and educational opportunities to racial and ethnic minorities and women.

_ recommit ourselves to the ends and purposes of affirmative action in society with the determination that if one means of achieving these ends is not permitted we will seek and use other formal and informal means to accomplish these ends.

American Baptist Resolution on Cutback in Employment of Minorities and Women - December 1980

To ensure that gains which have been made in the past are not lost:

1. We call the American Baptist Churches and their constituents to continue to work with corporations, labor unions and the government to accomplish the goals of affirmative action.

American Baptist Resolution on Power - March 1981

Recognizing that American Baptists as individuals and as groups organized in local churches, associations and conventions are stewards of the power entrusted to us and in the spirit of Christ who came to preach good news to the poor, release to the captives and to set at liberty those who are oppressed, we call upon the churches and church members to:

(e) protest the subtle and open retreat from the enforcement of present civil rights legislation and plead for the continued recognition of and emphasis upon the objectives this legislation was meant to achieve. We call for vigorous enforcement of current legislation and strong administrative policies to implement these laws;

American Baptist Statement of Concern on Affirmative Action - 1989 Biennial
