

# **SBC secures its legal ties to New Orleans seminary\_62705**

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**By Marv Knox**

*Editor*

NASHVILLE, Tenn.—The Southern Baptist Convention has secured its ties to New Orleans Baptist Theological Seminary, concluding years of wrangling over the convention's legal relationship with the school.

Messengers to the SBC annual meeting in Nashville approved a charter change for the seminary, making the convention the sole member of the seminary's corporation.

They ratified the measure by a vote of 5,627 to 1,528 after allowing seminary President Chuck Kelley to explain the school's reservations for holding out on the convention most of a decade.

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The process began in 1997, when the SBC Executive Committee asked the convention's 12 agencies and institutions to make the SBC the sole member—or single controlling entity—of their corporations. By 2000, New Orleans Seminary was the lone holdout, with the exception of the Executive Committee, which pledged to submit its sole-membership amendments once the New Orleans dispute was resolved.

“The issue is one of ownership,” Morris Chapman, president of Executive Committee, stressed as he introduced the matter in Nashville June 21. “Do you or do you not believe the SBC should own the entities that receive Cooperative Program (unified budget) funds?”

If the answer is yes, then approving the seminary's charter change and making the convention the seminary's sole member is the right step, Chapman said.

The convention gave Kelley six minutes to explain the seminary's reservations with sole membership and to plead for the messengers to reject the charter change. He repeated concerns he and other seminary leaders have cited publicly for the past couple of years.

But to begin, Kelley noted both the seminary and the Executive Committee are “grateful for and supportive of the conservative resurgence,” which turned the SBC sharply to the right during the past 26 years and put like-minded trustees and administrators firmly in control of the convention's organizations.

Also, “both the Executive Committee and the seminary agree the seminary is and always will be an entity of the SBC,” he added.

That said, Kelley turned his attention to the seminary's reservations with sole membership.

New Orleans Seminary needs to be exempted from the sole membership

requirement because “Louisiana law differs significantly from (laws in) other states,” he insisted, noting the state’s legal code does not define sole membership the same way as the nine states where 10 other SBC organizations are located.

The full implications of sole membership have not been developed in Louisiana. If the SBC is the sole member of the seminary corporation, that liability to could extend to the convention, he warned. For example, he theorized, if a fire broke out in the seminary’s chapel, someone who sued the seminary for damages could sue the SBC as well.

“Since the law is unclear, a judge would decide,” he said. “How much are you willing to risk?”

Legal precedents that might be set by sole membership could be “irreversible,” even if the convention later changed its documents, Kelley predicted, noting: “Any future change to another charter would just be (seen by the courts) as an attempt to disguise the true nature of the relationship” between the seminary and the convention.

The change to sole membership not only could be damaging, but it also is unnecessary, Kelley charged.

“Many think Louisiana law would protect the seminary without sole membership,” he said, citing a “leading attorney,” who advised that minor changes in seminary documents could protect the convention against liability without resorting to sole membership.

The seminary’s other problem with the changes is the “step toward centralization of control and authority” exerted by the Executive Committee over all elements of the convention, Kelley said. “Southern Baptists always have resisted centralization. ... Baptist polity emphasizes influence through trustees” rather than the strong power of the Executive Committee, he said.

Convention leaders have argued for sole membership for two particular reasons, and SBC attorney Jim Guenther reiterated those arguments for the messengers' benefit. First, the measure prevents the organizations from breaking away from the convention without consent of SBC messengers.

Guenther described sole membership as "a lock with two different keys." Any future charter change or alteration in relationship between the seminary and the convention would require affirmative votes by both seminary trustees and convention messengers, he explained. So the interests of neither entity could be harmed without the consent of that body.

A sole-member organization couldn't leave the convention without ratification by the messengers. But likewise, the convention couldn't impose its will on the seminary without its trustees concurring.

The possibility of institutional withdrawal loomed as a latent fear in the late 1980s and early '90s, when fundamentalists were gaining control over SBC organizations. In fact, one seminary reportedly sought legal counsel regarding the possibility of leaving the convention, but it never took action to do so.

Now, all the SBC trustee boards have been elected since the convention came under fundamentalist influence. They are populated by members who have demonstrated their loyalty to the convention and its theological-political course.

But although none of the SBC organizations has attempted to withdraw from the convention, withdrawal has occurred in state conventions, at least to some degree.

For example, five agencies of the Missouri Baptist Convention declared their boards to be self-perpetuating after fundamentalists gained control of that state convention. Their actions are being challenged in court. In Texas,

both Baylor and Houston Baptist universities changed their charters so that their boards, and not the Baptist General Convention of Texas, elect a majority of their trustees.

Second, SBC leaders have claimed sole membership actually protects the convention from legal liability if an affiliated organization, such as the seminary, is sued.

Since the sole membership model recognizes each organization's trustees are responsible for its management and operation, the SBC is exempted from litigation by a legal firewall, they have said.

"The (sole) member is not responsible for the corporation's liabilities," Guenther told the messengers. He cited corporate law for four states in which SBC organizations are chartered. "If the convention is a member of the corporation in any of these states, including Louisiana, the member is immune to liability," he reported.

The issue is not whether Louisiana law is different than other states' corporate statutes, "but whether the difference is of any consequence," he said, asserting, "Louisiana law is no impediment to sole membership."

Guenther also disputed Kelley's claims that the seminary had sought to provide a viable alternative to sole membership and that the change in institutional governance is a power grab by the Executive Committee.

"This charter has nothing to do with centralized control. ... It simply is not true. It is a myth," he said. "The SBC, not the Executive Committee will be the (sole) member."

After Kelley and Guenther spoke, six messengers debated the proposal from the convention floor. Two of them were from Missouri, where the five institutions distanced themselves from the Missouri Baptist Convention. They both favored stronger controls to keep SBC institutions from leaving.

Three of them were from Louisiana, and they all sided with the seminary, mostly pointing to its loyalty to the SBC.

When debate ended, SBC President Bobby Welch asked messengers to vote by raising their ballots. But then he called for a tabulated vote.

The 5,627 ballots cast in favor of the charter change to sole membership comprised 78.6 percent of the total. The 1,528 votes against represented 21.4 percent.

A few hours later, SBC messengers approved a motion to make the convention sole member of the Executive Committee's corporation—without debate or dissenting votes.

Here's a timeline of New Orleans Seminary's recent sole-membership actions:

- Fall 2003. Seminary trustees declined to adopt the sole membership model. However, they declared their loyalty to the SBC.
- February 2004. Executive Committee leaders met with seminary trustees, who still declined to take action at that time. Later that month, the full Executive Committee voted to ask the seminary to adopt the sole membership model.
- April 2004. Seminary trustees countered. They voted to bring two options to the 2005 SBC meeting in Nashville—sole membership and an alternative governance plan.
- June 2004. The Executive Committee asked messengers attending the SBC annual meeting to request the seminary adopt sole membership. Messengers agreed by a 2-1 margin.

— October 2004. New Orleans Seminary trustees approved the change. They also voted to ask President Chuck Kelley to express their concerns about the legal arrangement to messengers at the 2005 annual meeting.

— June 2005. Messengers affirm the seminary's and the Executive Committee's charter changes, bringing all the SBC's affiliated organizations into compliance with sole membership.

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