

Supreme Court ruling could have broad impact

by Paul M. Krawzak

WASHINGTON - The Supreme Court's review of a lawsuit next week challenging President Bush's faith-based initiative is more critical to the future of church-state relations than it would first appear, attorneys involved in the case said Wednesday.

In the narrowest sense, the case - *Hein vs. Freedom from Religion Foundation* - is about whether taxpayers have the legal standing to sue the federal government over regional conferences sponsored by the Bush administration to promote its faith-based initiative.

The foundation sued Jay Hein, director of the White House Faith-Based & Community Initiative, contending that regional conferences paid for by the faith-based initiative were "propaganda vehicles" for religion - a charge denied by the government.

But the larger issue at play, attorneys participating in a panel said, is whether the high court might overturn an earlier decision and in so doing narrow the grounds under which Americans can challenge what they view as violations of the First Amendment.

The panel was sponsored by the self-described "progressive" American Constitution Society for Law and Policy.

"Flast is the battleground here, not Hein," said attorney Benjamin W. Bull, referring to the court's 1968 decision in *Flast vs. Cohen*. Bull is opposed to the foundation's lawsuit.

In the *Flast* decision, the court carved out an exception to existing law, allowing Americans in their role as "taxpayers" to challenge alleged violations of the separation between church and state.

The Supreme Court generally bars Americans from challenging federal spending decisions in court.

When he established the office of faith-based initiatives in 2001, Bush said it would create a level playing field, allowing religious organizations to compete for federal funds for non-religious social-service programs they offered.

Critics charge the faith-based effort does not have clear enough safeguards against using federal money to support proselytizing or religious-based discrimination in hiring.

The Hein case, which will be argued in front of the Supreme Court next Wednesday, is the first challenge to the faith-based initiative that the court will hear.

Opponents of the Flast decision, such as Bull, chief counsel of the Alliance Defense Fund, hope the court will overturn it as part of its ruling on the Hein case.

Backers of the Flast decision warn that a reversal would make it much more difficult for Americans to challenge actions that erode the constitutional separation of church and state.

Overturning Flast would "cut out a whole class of cases," said Richard B. Katskee, assistant legal director for Americans United for the Separation of Church and State. The group supports Flast.

Bull countered that if Flast were reversed, Americans would still be able to challenge alleged violations if they could show personal injury.

For example, he said a schoolgirl forced to join in a prayer at a public school could sue, claiming her constitutional rights were violated.

Judith E. Schaeffer, associate legal director of People for the American Way Foundation, said Flast should be kept in place to preserve the right of taxpayers to challenge what they view as unconstitutional government support of religion.

"Taxpayers are injured when they're forced to subsidize religion," she said.

The attorneys at the forum said the court might only rule on the Hein case and not touch the Flast decision.

If the court rules that the Freedom from Religion Foundation has the legal standing to sue the administration over the regional conferences, the case would go back to be resolved in federal district court.

Were the court to rule the foundation does not have standing to sue, the case would end there.