VOICE OF REASON

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Oregonians Face Nov. 6 Parochiaid Referendum

Oregon voters on November 6 will decide whether or not they will pay taxes to support sectarian private schools. Ballot Measure 11 was petitioned onto the ballot by a coalition of fundamentalists and political ultraconservatives calling itself Oregonians for Educational Choice.

Measure 11 would subsidize sectarian and other private schools through a combination of tuition reimbursement tax credits and grants worth $2500 per student per year. While Oregonians for Educational Choice claim that Measure 11 would be funded out of existing school budgets and require no tax increase, state officials say the plan would immediately cost the state $67 million in aid for existing parochial and private schools.

By late August the parochiaid group had collected an estimated $74,000 for their campaign, part of it donated by a Catholic Trappist abbey and by Paul Weyrich's Washington, DC-based ultraconservative group, Coalitions for America. Vice-President J. Danforth Quayle made a speech in September praising the Oregon parochiaid initiative.

Backers of Measure 11 say it will also allow students to choose not only among private schools but also among any public schools in the state. They apparently prefer not to discuss the fact that transporting students to a wide spectrum of private and public schools would greatly increase transportation costs. They also would prefer not to mention that, under their "choice" plan, private schools would be able to choose which students to admit and which teachers to hire along religious or ideological lines, and that private schools are not required to admit handicapped students as are public schools.

Measure 11's promoters also fail to answer the objection that their scheme for tax aid for sectarian schools violates the U.S. Constitution, as the Supreme Court ruled several times in the early 1970s.

Opposition to Ballot Measure 11 is being coordinated by Oregonians for Public Education and Religious Liberty, 707 13th St., SE, Salem, OR 97301. Oregon PEARL welcomes support from all who share its goals. Americans for Religious Liberty is supporting the Oregon PEARL coalition.

Tax aid for sectarian private schools has been consistently defeated in statewide referenda since 1967 in Massachusetts (twice), New York, Maryland (twice), the District of Columbia, Michigan (twice), Missouri, Nebraska, Idaho, California, Oregon, Washington State, and Alaska. ■

Abortion Rights Referenda Set in Oregon, Nevada

Abortion rights measures will be on in the Nov. 6 ballots in Oregon and Nevada. In addition, pro-choice groups in Washington State are collecting signatures for a 1991 referendum.

Oregonians will not only have to vote on parochiaid in November (see previous article) but on two measures designed to interfere with freedom of conscience on abortion.

Ballot Measure 8 would ban all abortions except those for pregnancies which threaten a woman's life or which are the result of rape or incest. Ballot Measure 10 would require physicians to notify one parent of a minor before an abortion can be performed. Measure 10 contains no provision for judicial bypass, would require a burdensome waiting period, and subject physicians violating the rigid terms of the measure to heavy penalties.

Coordinating the pro-choice campaign to defeat Measures 8 and 10 is "No on 8 and 10 Campaign" (formerly Oregonians for Choice), P.O. Box 1145, Portland, OR 97207 (phone: 503-227-0788). The campaign is soliciting funds and is providing material for citizens wishing to help defeat the anti-choice measures.

Nevadans supporting choice will be asked to vote "yes" on Nov. 6 on a referendum measure, Question No. 7, which, if passed, would preserve the freedom of conscience rights recognized by the Supreme Court in 1973 in *Roe v. Wade.*

The pro-choice effort in Nevada is being coordinated by the Campaign for Choice, P.O. Box 71644, Reno, NV 89570 (phone: 702-324-0350), which is seeking volunteers and donations.

Americans for Religious Liberty is supporting both the Oregon "No on 8 and 10 Campaign" and the Nevada Campaign for Choice.

Meanwhile, Washington State pro-choicers have launched a campaign to initiate a 1991 measure which would protect the *Roe v. Wade* conscience rights. The initiative would go directly to the legislature. If the legislature enacts the measure without amendment, it immediately becomes law. If the legislature amends the measure, both versions would be presented to the state's voters in 1991. If the legislature takes no action, the pro-choice measure will go on the ballot alone. The initiative effort is being led by Pro-Choice Washington, 711 N. 35th St., Seattle, WA 98103 (phone: 206-624-2180 or 2184).

Washington State anti-choice forces were unsuccessful in efforts to collect enough signatures to place a choice restriction measure on the ballot. Similar anti-choice efforts have failed this year in Colorado, Michigan, and Oklahoma. ■

What Religious Freedom Means

In August 1790 President George Washington wrote to the congregation of the Touro Synagogue in Newport, RI, the oldest in North America, that, "It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support."

To mark the bicentennial of the Washington letter and subsequent visit to Newport, the Touro Synagogue held a three-day celebration the weekend of August 17-19, 1990. The program included a panel discussion of current religious liberty problems, featuring actor Ed Asner, writer Robert Alley, American Jewish Committee attorney Samuel Rabinove, and ARL executive director Edd Doerr. The final ceremony at the Touro Synagogue included a reading of Washington's letter by Ed Asner and the following short address by ARL's Doerr.

Religious freedom, to many Fourth of July orators, is simply a matter of one's being free to believe as one pleases and to attend the church or synagogue of one's choice. This definition *will not do,* neither here and now, nor in any place at any time.

Religious freedom, real religious freedom—as that concept has been forged into shape over the centuries on the anvil of practical experience by Madisons and Jeffersons, by farsighted judges and lawmakers and religious leaders, by writers and ordinary people—means at least this:

Religious freedom means the right of every individual to believe or not believe, to profess or not profess, any religious proposition or creed on the basis of his or her own experience, education, study, or reasoning, and the concomitant right to change one's beliefs.

It means the right to worship or not to worship, to be or not be a member of a religious group, to change or discontinue a religious affiliation. It means the right to express one's religious views and to attempt to persuade others of their correctness, the right to travel for religious purposes, the right to use one's home and property for religious purposes.

Religious freedom means the right to live one's life according to one's own beliefs, up to the point, of course, at which that free exercise of religion begins to interfere with the equal rights of another person. It means the right to make and follow one's own moral judgments and decisions of conscience on such matters as marriage and reproduction. It means the right to provide religious and moral instruction to one's children. It includes the right to access to information and opinion.

Religious freedom means the right to determine whether and to what extent one will contribute to the support of any or all religious institutions or programs. It means no taxation whatsoever for any religious institutions or programs, as Madison made clear 205 years ago in his Memorial and Remonstrance Against Religious Assessments, in which he declared that such "establishments of religion" inevitably produce "bigotry and persecution."

As religious freedom includes the right of persons to form or belong to religious or lifestance organizations, these associations must enjoy the freedom to order their own worship, educational, charitable, and other activities; to formulate and change their teachings and doctrines; to determine their own forms of organization and governance; to set their own standards for membership and positions of authority; to operate programs of missionary outreach; to interpret to the public their views and principles.

Religious liberty means that government may not discriminate against or in favor of any person because of his or her religious beliefs or disbeliefs, for religious association membership or nonmembership. It means that government may not impose religious tests for public office or enact policies based on principles that depend for their validity on the doctrines or ethos of particular religious bodies.

The edifice of religious freedom, though still not completed, is one of the grandest and most magnificent ever erected by humankind. Yet it rests on the not always steady shoulders of all of us, of We the People. We must never allow it to wobble, to crack, to erode, or to be destroyed. We must resolve that that shall not happen. ■

Voice of Reason is the quarterly newsletter of **Americans for Religious Liberty,** P.O. Box 6656, Silver Spring, MD 20916. (Telephone: 301/598-2447.) The newsletter is sent to all contributors to ARL.

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Americans for Religious Liberty is a nonprofit public interest educational organization dedicated to preserving the American tradition of religious, intellectual, and personal freedom in a secular democratic state. Membership is open to all who share its purposes. Annual dues are $20 for individuals, $25 for families, $10 for students and limited income.

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Supreme Court Upholds Bible Club Act

On June 4, the U.S. Supreme Court upheld Congress's 1984 Equal Access Law requiring public secondary schools that have noncurriculum-related clubs to also allow religious clubs to meet. We can now expect increased violations of family rights as school Bible clubs bring in adult missionaries—permitted under the law—to proselytize secondary school students as young as 11 or 12 without parental knowledge or consent. We can also expect increased divisiveness among students as many of them separate into sectarian clubs on school premises, as well as the disruption of schools by radical groups such as skinheads, the Klan, and anti-choice groups.

The Equal Access Law was originally passed as a sop to sectarian pressure groups after the defeat in the Senate of President Reagan's proposed amendment to authorize government-regimented prayer in public schools. As Congress is unlikely to repeal this misguided law, local school boards can defend students and families, as ARL's Edd Doerr pointed out in the *New York Times* on July 6, by retailoring noncurricular programs to fit the Court's definition of "curriculum-related," thus keeping out religious and ideological clubs; by requiring written parental permission for students to attend all noncurriculum-related meetings on school premises; and by barring from clubs all outside adults who might try to proselytize students.

Writing for an eight-to-one majority in *Westside Community Board of Education v. Mergens,* Justice Sandra Day O'Connor held that the Equal Access Act did not violate the Establishment Clause because there was "a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Exercise and Free Speech clauses protect."

O'Connor admitted that "the possibility of student peer pressure remains, but there is little if any risk of official state endorsement of coercion where no formal classroom activities are involved and no school officials actively participate."

The Act is activated if only one noncurriculum-related activity is offered. O'Connor broadened the concept somewhat by arguing that "a student group directly relates to a school's curriculum if the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course." In a small glimmer of hope that opponents should remember, O'Connor wrote, "To the extent that a school chooses to structure its course offerings and existing student groups to avoid the Act's obligations, that result is not prohibited by the Act."

In a concurring opinion, the Court's two leading church-state separationists, William J. Brennan and Thurgood Marshall, concluded that while the Act was not patently unconstitutional it did "raise serious Establishment Clause concerns" if "the public schools are perceived as conferring the imprimatur of the State on religious doctrine or practice."

Brennan and Marshall wrote that the "schools bear the responsibility for taking whatever steps are necessary to make clear that their recognition of a religious club does not reflect their endorsement of the views of the club's participants." Furthermore, the school "must fully disassociate itself from the club's religious speech and avoid appearing to sponsor or endorse the club's goals."

The only dissent came from the Court's most consistent maverick, John Paul Stevens, who objected to the federal government's increasing intervention in local school activities. Stevens expressed concern that school authorities were losing their control over constitutional activities on campus. He complained of "a sweeping intrusion by the federal government into the operation of our public schools."

The first test of the *Mergens* decision came on June 22 when the U.S. Court of Appeals for the Third Circuit voted two-to-one to uphold a lower court ruling requiring the Centennial School District in Bucks County, PA, to permit the use of school facilities for religious organizations. The case (*Gregoire v. Centennial School District*) arose in 1987 when Student Venture, a branch of Campus Crusade for Christ, was denied use of a high school auditorium for a "Christian" magician's performance on Halloween. The group sued and won a temporary injunction permitting the performance, but the school district adopted a policy in 1988 barring religious groups from school facilities.

This case differs somewhat from other equal access rulings because the central issue involved off-campus groups that rented space on campuses. The Pennsylvania district in question had allowed more than 65 groups to use their facilities, creating what the appeals court called a "limited open forum" for advocacy. The court also observed, "granting a religious organization permission to use school facilities does not imply an endorsement of religious goals."

Americans for Religious Liberty had joined with other organizations in an *amicus curiae* brief to the Supreme Court opposing the Equal Access Act. ■

Editorials

Justice Brennan . . . and His Successor

Supreme Court Justice William J. Brennan's retirement at age 84 in July marked the end of probably the most distinguished judicial career in history. In his 34 years on the the nation's highest court Brennan took seriously the words of the Declaration of Independence to the effect that the purpose of government is to protect the inalienable equal rights of the people. More than any other justice who has served on the Court, Brennan championed the individual rights promised explicitly or implicitly in the Constitution, the Bill of Rights, and the Fourteenth Amendment. He was our staunchest defender of church-state separation, religious liberty, and reproductive and privacy rights. His calm, reasoned voice and unquenchable courage will be sorely missed, and his shoes impossible to fill.

To succeed Brennan, President Bush hastily—some say too hastily—nominated New Hampshire federal judge David Souter, whose judicial philosophy is rather a mystery to us, writing on the eve of the hearings on his nomination by the U.S. Senate.

What little is known of Souter's views (as of Sept. 13) is not terribly encouraging. As New Hampshire Attorney General he defended the state's efforts to fly the flag at half-staff on the religious holiday of Good Friday and once prosecuted a man who, on grounds of conscience, blanked out the words "Live Free or Die" on his car license plate. In 1976 his office filed a brief in a case involving federal Medicaid funding for abortions which referred to abortion as "the killing of the unborn." As a superior court judge in 1981 Souter wrote a letter urging the state legislature not to put a judicial bypass in a bill requiring parental consent for abortions for minors. In a 1977 newspaper interview Souter said, "I don't think unlimited abortions ought to be allowed," and added that New Hampshire's repeal of a pre-*Roe* abortion law might allow the state to "become the abortion mill of the United States."

President Bush has the right, of course, to nominate anyone he pleases for the Supreme Court, but the U.S. Senate has the right and the sworn duty to carefully scrutinize such nominations and to reject them if they show insufficient zeal for defending basic constitutional liberties. The Senate, therefore, should require Judge Souter to explain his judicial philosophy in detail. The Senate may and must find out from Judge Souter precisely what he thinks of such prior Supreme Court rulings as *Roe v. Wade* (abortion rights) and *Lemon v. Kurtzman* (tax aid for sectarian schools). The Senate needs to know where the nominee stands on honoring Supreme Court precedents that he might disagree with. Before approving or even voting on Mr. Souter's nomination, the Senate should be satisfied that he supports the important precedents upholding individual liberties and church-state separation. ■

What's Happening to Brookings?

The Brookings Institution, once regarded as a liberal think-tank, seems to have joined forces with those trying to wreck church-state separation. In June, Brookings published *Articles of Faith, Articles of Peace,* edited by James Davison Hunter and Os Guinness, which includes some of the papers presented at a Williamsburg Charter Foundation conference in 1988. While ostensibly defending the religious liberty clauses of the First Amendment, the book's seven contributors (including a Canadian, a German, and an Anglo-Irishman) push the church-state "accommodationist" line while none too subtly attacking the separationist position. The Supreme Court's separation rulings are looked down upon, while tax aid for sectarian schools is talked up. Hunter and Guinness include in the book the text of the 1989 Williamsburg Charter—a deeply flawed, pretentious position paper (see Newsletter No. 25).

A second book published by Brookings in June, *Politics, Markets, and America's Schools,* by John E. Chubb and Terry M. Moe, is a blatant attack on church-state separation and the democratic public school. The authors blame the structure of public education for our school problems, overlooking the real causes —underfunding, poverty, family pathology, and so on—and propose a half-baked plan for tax support of sectarian and other private schools. They show little understanding of how schools —public *and* private—operate in the real world, and they ignore the harmful economic consequences of fragmenting education. Chubb and Moe seem not to understand how sectarian ideology tends to permeate most nonpublic school curricula or the kinds of sectarian, ethnic, class, academic, and ideological discrimination and segregation that would be fostered by their plan. They also ignore the serious constitutional flaws in their scheme and the fact that statewide electorates have consistently rejected similar plans.

The Brookings Institution's 1990 offerings follow its 1986 publication of A. James Reichley's *Religion in American Life,* an eccentric, superficial book attacking church-state separation, promoting parochiaid and public school prayer, and distorting history (see Newsletter No. 20). ■

NY PEARL Conference

ARL president John Swomley will be one of the featured speakers at the October 16 conference of the New York Committee for Public Education and Religious Liberty. ARL advisor Ruti Teitel will also speak. Chair of New York PEARL is ARL board member Florence Flast.

Conference topics will include new efforts to bring religion improperly into public schools and new schemes for getting tax support for sectarian schools.

For information on the one-day conference and luncheon, contact:

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9 East 69th St., New York, NY 10021
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ARL in Action

Americans for Religious Liberty and the New York Civil Liberties Union Foundation have joined in a federal court challenge to New York City actions favoring a religious sect. ARL and NYCLU filed an *amicus curiae* brief, prepared by New York attorneys Jeremiah S. Gutman and Gail A. Wechsler, on August 23 in the U.S. District Court for the Eastern District of New York in *Southside Fair Housing Committee, et al. v. City of New York, et al.*

The suit, filed on behalf of Hispanic and African-American plaintiffs by attorneys for the Brooklyn Legal Services Corporation and the Puerto Rican Legal Defense and Education Fund, challenges the city's urban renewal agency's turning over city-owned land to a private school operated by the Satmar sect of Hasidic Judaism. The *amicus* brief notes "over the course of several decades [the City Defendants have] systematically and uniformly granted virtually every site, whether residential or institutional, within WURA I [Williamsburg Urban Renewal Area I] to Hasidic organizations for the known purpose of constructing exclusionary religious institutions (*i.e.,* synagogues and Yeshivas) and exclusionary housing (*i.e.,* Yeshiva faculty housing for faculty who must be members of the Orthodox Jewish faith, a mansion for the Grand Rabbi of the Satmar sect), and market-rate housing specifically designed for and marketed to the Hasidic Jewish community."

The *amicus* brief points out that the cumulative effect of the City's actions "evidences an unconstitutional intent to create and endorse a racially and religiously segregated community." The defendants' actions, the brief charges, have the constitutionally impermissible intent and effect of advancing a particular religion and of entangling government and religion, and also cause "cultural and political harm" to Hispanic and African-American residents of the community.

Since our last newsletter, ARL executive director Edd Doerr conducted a workshop on abortion rights and other church-state issues at the Unitarian Universalist Association General Assembly in June in Milwaukee. He was also a guest on five hours of radio talk shows in Milwaukee.

In August Doerr attended an International Humanist and Ethical Union conference in Brussels, Belgium, at which considerable attention was given to church-state issues. Doerr also visited Spain to study how secondary schools deal with religion and church-state issues in history, literature, and ethics textbooks.

Also in August Doerr was a featured speaker, along with Ed Asner, Robert Alley, and Samuel Rabinove, at a conference on church-state issues sponsored by the Touro Synagogue in Newport, RI, where he was also a featured speaker at a ceremony marking the bicentennial of George Washington's famous 1790 letter to the Touro congregation on religious liberty. (See related story in this issue.)

Doerr also addressed church audiences in Denver, CO, Adelphi, Baltimore, and Reisterstown, MD, and Fredericksburg, VA, and co-hosted a talk show on Washington, DC, radio station WNTR.

Update

Abortion Rights

On June 25, the U.S. Supreme Court upheld state laws requiring parental involvement in abortion decisions by young women. The Court held that state mandated one-parent or two-parent notification for abortions for minors is constitutionally acceptable as long as minors may obtain permission from a judge without notification. The rulings in *Hodgson v. Minnesota* and *Ohio v. Akron Center for Reproductive Health* mark a further erosion of the fundamental right to freedom of conscience on abortion. Parental notification laws in 32 states pose no problems for young women who are on good terms with their parents, but present formidable problems for those who cannot communicate with their parents or who may be too frightened or unsophisticated to seek judicial bypass from a judge. Critics of the rulings point out that while parental rights generally deserve respect, no minor should be placed in the position of being beaten or thrown out or forced to become a mother by her parents.

Guam's anti-abortion law, the strictest in the U.S., was ruled unconstitutional Aug. 23 by federal district judge Alex R. Muson, who held the law incompatible with the Supreme Court's 1973 *Roe v. Wade* ruling. The law would have banned abortions even in cases involving rape, incest, and severe fetal deformity. Earlier, Catholic Archbishop Anthony Apuron had threatened to excommunicate any legislators who voted against the bill. In a court brief in the case Gov. Joseph Ada claimed that banning abortion legally was appropriate because Guamanians "have embraced Catholicism and to the extent it is accepted that church doctrine prohibits abortion, it is accurate to say that Catholicism is a custom that supports a ban on abortion."

Parts of Pennsylvania's abortion restriction law was struck down on Aug. 24 by federal district judge Daniel H. Huyett, III. The state's attorney general immediately announced that the state would appeal. Judge Juyett said that his ruling leaves *Roe v. Wade* intact but he warned that its future might be uncertain due to Reagan's appointees to the Supreme Court. The provisions of the Pennsylvania law which were struck down included requirements that a married woman must notify spouse and listen to a prepared speech by a doctor about the risks and benefits of abortion and childbirth. Also struck was a 24-hour waiting period and a provision for parental consent for minors coupled with listening to the same lecture.

Louisiana Gov. Buddy Roemer twice in July vetoed strong anti-abortion bills. The first would have banned virtually all abortions, while the second would have made exceptions for pregnancies resulting from rape or incest but only if the crime had been reported within seven days.

In August the U.S. Senate narrowly rejected a proposal to allow abortions in overseas military hospitals. Women in the armed forces and military dependents have been denied this medical service since a Reagan administration ban was imposed in 1988. The House of Representatives could remove the ban through the Defense Department budget and give the Senate another chance to remove the ban, which a clear majority wish to do.

Dr. Etienne-Emile Baulieu, developer of the French abortifacient pill RU-486, declared in July that worldwide distribution of the drug is being blocked by fears of anti-choice boycotts of the drug's manufacturer, Roussel Uclaf. RU-486 is authorized for use in about 800 clinics in France, where 93% of the women users of the drug surveyed reported being satisfied with the procedure. Meanwhile, a group of California physicians is planning to ask the U.S. Food and Drug Administration for approval to begin testing the drug in the U.S.

In July Catholic Bishop Rene Gracida excommunicated abortion clinic director Rachel Vargas and Dr. Eduardo Aquino of the New Woman's Clinic in Corpus Christi. Frances Kissling, president of Catholics for a Free Choice, said that "the bishop's involvement in this constitutionally protected activity is completely and totally inappropriate." In June New York's Cardinal John O'Connor warned Catholic politicians that they risk excommunication if they fail to try to impose their church's position on all people by law.

In mid-August more than 200 Catholic bishops met in San Francisco to review the new anti-choice campaign being developed for them by the public relations firm of Hill and Knowlton. The PR campaign is

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reported to have a price tag of $3 million, much of which is to be provided by the Knights of Columbus.

An Arlington, VA, judge has sentenced anti-choice activist Christy Anne Collins to six months in jail for failing to pay a fine resulting from her arrest in 1988 for blockading a clinic and for inciting others to trespass. Collins claims to have been arrested about 40 times for activities at abortion clinics.

The AFL-CIO, bowing to pressure from the Catholic Church, has decided to remain neutral on the abortion rights issue. Cardinal John O'Connor and other bishops reportedly gave signals earlier this year that they might lobby union members to withhold dues if the AFL-CIO adopts a pro-choice position.

Private School Aid Upheld in MN, WI

U.S. District Court judge David S. Doty ruled in July in favor of a Minnesota law that allows public high school students to take courses in public or private colleges at public expense. The law was challenged by the Minnesota Federation of Teachers, which argued that the program violated the Constitution as applied to religious colleges. Judge Doty held that seven of the church-affiliated colleges were not "pervasively sectarian," but allowed the MFT to continue the suit as the program applies to Bethel College, which requires all students to be Christian.

On Aug. 6 Dane County Circuit Court judge Susan Steinglass upheld a Wisconsin law which allows 1,000 low income students to attend non-sectarian private schools at public expense, even though the participating private schools are not required to admit handicapped students. The Wisconsin law has been opposed by teacher organizations, the state PTA, and the National Association for the Advancement of Colored People as adverse to the interests of public schools and children.

Pro-Choice Wins Big in Maryland

Abortion rights became the hottest issue in Maryland politics this year when the anti-choice minority in the state legislature used a Senate filibuster to block passage of a measure to defend abortion rights in the event the Supreme Court overturns *Roe v. Wade*. In stunning upsets in the state's Democratic primary election on Sept. 11, four entrenched incumbent state senators were defeated by challengers and one senator only narrowly won renomination.

In populous Montgomery County, where ARL's offices are located, Sen. Margaret Schweinhaut, a 26-year veteran legislator, was defeated 64% to 36% by challenger Patricia Sher, despite Schweinhaut's having been endorsed by leading newspapers in the area. Sen. Frank Shore was clobbered 71% to 29% by challenger Mary Boergers, a pro-choice Catholic. Prince George's County Sen. Frank Komenda was edged out 52% to 48% by challenger Gloria Lawlah, while in Baltimore County, powerful Senate incumbent Francis X. Kelly was upset 61% to 39% by Janice Piccinini, a pro-choice Catholic who formerly headed the Maryland State Teachers Association. Anti-choice Sen. Leo Green barely defeated an unknown pro-choice challenge. In rural Carroll County a pro-choice incumbent Republican senator was picked off by an anti-choice challenger.

The Maryland primary results would seem to show that when electoral push comes to shove, most voters want to preserve freedom of conscience for women and will turn out legislators whose records on other issues, while good, cannot compensate for their being anti-choice.

Religion and Public Schools

On the public school/religion front there were several developments in late summer. In Utah the American Civil Liberties Union filed a suit in federal district court to prevent formal prayers at high school graduations and other school events in the Granite and Alpine districts of suburban Salt Lake City. The school districts are heavily Mormon.

People for the American Way and the National Center for Science Education issued a report praising new public school science textbooks for improved coverage of evolution "across a wide range of topics in biology." The report, praising nine books submitted for adoption, was prepared for the Textbook Adoption Commission of the Texas Board of Education.

In Rockland School District in heavily Mormon southern Idaho, school officials agreed, under threat of an ACLU lawsuit, to remove all ties of the local schools to the Mormon Church. Mormon seminary classes had been held in the school building during school hours, sectarian prayers and devotionals were commonplace, and school-sponsored events were held at the Mormon church. ACLU brought suit (*Brown v. Rockland School District*) on behalf of two non-Mormon students. While a victory was won for religious liberty, the families of the children were ostracized by the community, and a family-run business was forced to close. Observers say this is a common practice in many counties in Southeastern Idaho and Utah, where 80-90% of the population are Mormons.

The Shenandoah County, VA, school board agreed in June to discontinue church-sponsored Bible classes on school grounds. The ACLU had filed suit against the practice in federal district court. The suit had charged that teachers had pressured a third-grade student to attend the classes and had harassed him when his parents refused to let him

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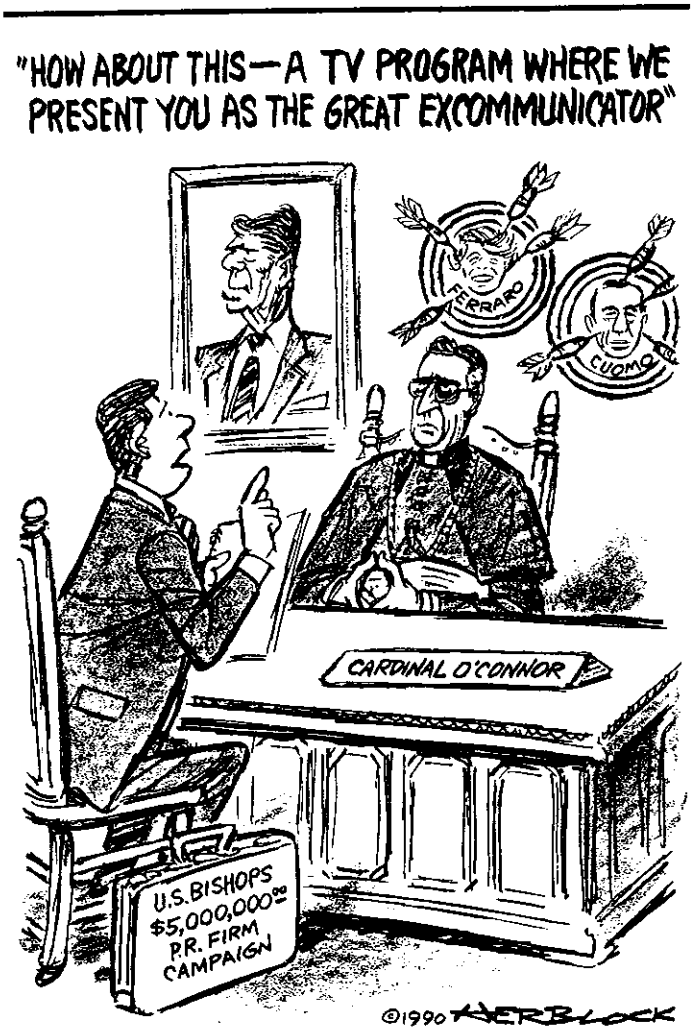

Books

The First Freedom: Religion and the Bill of Rights, edited by James E. Wood, Jr. (J.M. Dawson Institute of Church-State Studies, Baylor University, Waco, TX 78798-7308, 181 pp., $19.95 cloth, $8.95 paper) is a collection of the papers presented at a 1989 conference at Baylor. The authors—David Little, Edwin S. Gaustad, Henry Abraham, Douglas Laycock, John Wilson, Leo Pfeffer—are all eminent scholars and constitutional authorities. Their careful analyses make clear that the thrust of the Constitution and Bill of Rights is toward a firm church-state separation and not the mushy accommodationism now being touted by some jurists and lightweight "intellectuals." A more timely, useful, and needed book would be hard to find.

Edd Doerr

Book Reviews in Brief

Northern Ireland's "troubles" never cease and neither do books about them. ***Blood on the Shamrock*** (Peter Lang, $39.95) by San Francisco's Roman Catholic Bishop Mark J. Hurley is a thorough, documented history of the past 22 years of strife, focusing on the "root" causes of partition, economic injustice and the unequal administration of justice. The author is generally even-handed and his book is filled with unusual information and statistics. In common with most religious professionals, however, Hurley ignores another root cause, that of religiously segregated education. David McKittrick's ***Despatches from Belfast*** (DuFour Editions, $18.95) is an engrossing portrait of the religious and political antagonisms of the last three years. Insightful and compassionate.

The recent Peruvian elections, which swept many Protestants into the new Fujimora government, has focused attention on the subject of David Stoll's new book, ***Is Latin America Turning Protestant?*** (University of California Press, $29.95). Stoll looks at the "evangelical awakening" in Latin America's streets, and shows its conservative pro-status quo political orientation. Evangelicals supported right-wing dictatorships in Chile and Guatemala. They are particularly strong in Chile, Guatemala, El Salvador, Haiti, and Puerto Rico. More moderate, historical Protestants are strong in the Caribbean and in Surinam. They are weak in Colombia, Argentina, Ecuador, Mexico, Paraguay, Peru, Cuba, Uruguay, and Venezuela. Sociologist David Martin explores the same phenomenon somewhat more sympathetically in ***Tongues of Fire: The Explosion of Protestantism in Latin America*** (Basil Blackwell, $29.95). Both are excellent.

One of the most important church-state books of the season is ***No Turning Back*** (Poseidon Press, $19.95), by Barbara Ferraro and Patricia Hussey. The authors, long time nuns, recount their several-year struggle with the Vatican over the related questions of religious freedom, conscience, and abortion. Ferraro and Hussey were among two dozen prominent U.S. Catholics who signed a *New York Times* ad suggesting that Catholicism allowed dissent on abortion and urging dialogue and respect for pluralism within the church. Sadly, four other priests and 22 nuns who signed the ad recanted under intense ecclesiastical pressure. Ferraro and Hussey remained steadfast. They would not deny their conscience. As a result, they are no longer nuns. (They run a homeless shelter in Charleston, WV). Ferraro and Hussey have many thoughtful and relevant things to say about theology, feminism and the integrity of the human person. They thought this was what the post-Vatican II Church was all about.

David Duke: Evolution of a Klansman, by Michael Zatarain (Pelican, $18.95) is an eye-opener, a full-scale portrait of America's most sophisticated racist and anti-Semite, recently elected to the Louisiana State House. Zatarain explores the personal dimension to this curious story of a well educated young man who has parlayed bigotry into politics and now represents the best-educated and most well-to-do legislative seat in Louisiana—a district in suburban Jefferson Parish (county). In winning, he defeated the press, President Bush, and ex-President Reagan, who denounced their fellow Republican. The Catholic archdiocese of New Orleans also opposed him in its weekly newspaper, as did the president of Loyola University. (Duke's district is 65% Catholic.) But to no avail. The all-white voters responded favorably, at least by 51% to 49%.

Duke, who calls himself a defender of "Western Christian civilization" was raised a conservative Methodist but converted to the fundamentalist Church of Christ in his teens. He favors vouchers for church schools and was a student of a renegade Catholic priest, Rev. Lawrence Toups, from whom Duke learned the intellectual foundation for anti-Semitism. It is an altogether bizarre saga, even more relevant now since Duke is a candidate for the U.S. Senate in this fall's election.

Al Menendez

Update, *continued*

attend. Under the agreement the school board will bar any Weekday Religious Education teachers or officials from public school classrooms and school employees will be prohibited from any involvement "in the recruitment, registration or encouragement of participation" in the released time program.

Spottswood High School in Harrisonburg, VA, will stop distribution of Bibles to graduating seniors at commencement exercises. School attorney Phil Stone advised that the practice was unconstitutional after complaints were made by several students and the ACLU.

The ACLU has advised the Davie County, NC, school board that allowing the Gideons to distribute Bibles to fifth grade students in public schools is unconstitutional. In 1987 the board deadlocked over the issue and the Gideons were kept out. But in May 3,200 parents petitioned to restore the practice and school officials allowed the students to pick up the Bibles after school if their parents did not object.

Getting Tough

A number of U.S. Roman Catholic Church leaders are placing renewed pressure on Catholic candidates who favor abortion rights. The pressure varies from threats of excommunication to removal from parish offices and positions: Here are some examples:

New Jersey Democratic congressional candidate Mark Setaro was removed from his position as parish lector by Trenton Bishop John Reiss. The bishop recently banned pro-choice politicians from holding church office, speaking at church events or receiving honors from church-affiliated organizations. Setaro met with Bishop Reiss on August 8 and issued a statement explaining that while he remains "a devout Catholic," it would be "inappropriate for me to impose personal religious beliefs on those who do not share those beliefs." Added Setaro, "This issue is about dignity for women. I wholeheartedly support their personal and private constitutional right to choose. In the 1960 campaign John F. Kennedy put to rest the fear that religious pressures could affect public service. We cannot step backward from this." Setaro is an underdog in his race against Rep. Christopher Smith, the

(continued on next page)

Update, *continued*

Republican incumbent in the 4th District, himself a Catholic and a leading anti-abortion zealot.

New Jersey Governor Jim Florio, a Catholic supporter of abortion rights, resigned in June from the Knights of Columbus, a fraternal organization noted for its harsh anti-choice position. (The Knights recently pledged $3 million to a new anti-abortion public relations campaign.) Florio, whose election was partially due to his abortion rights position, took the step in response to Camden Bishop James McHugh's public denunciation of pro-choice Catholics in public office.

New York's outspoken Cardinal John O'Connor suggested in a 12-page article in *Catholic New York* that "bishops may consider excommunication the only option" to discipline Catholic politicians who espouse abortion rights. O'Connor called abortion "the most important issue of our day." Responded New York Governor Mario Cuomo: "It is very upsetting. I don't like to hear it but it is not going to change anything."

Cuomo is probably right. Ohio Democratic gubernatorial candidate Anthony Celebrezze, a Catholic, has increasingly stressed his pro-choice position.

In Maryland two Catholic candidates for the state House of Delegates lost leadership positions in their parishes because of their advocacy of freedom of choice. In both instances the parish priest made the decision to remove them. In Prince George's County, David M. Valderrama, a popular leader of the Filipino-American community, was dumped as lector at St. Columba's church in Oxon Hill. In Montgomery County John A. Hurson was removed from the parish council at Our Lady of Lourdes Church in Bethesda.

Even Senator Edward Kennedy's son was a victim of this new intimidation. Patrick Kennedy, a state representative in Rhode Island, was disinvited from a Catholic school banquet by Brother Daniel F. Casey, superintendent of the Providence diocesan school system.

Catholics for a Free Choice said in August that two dozen similar incidents have occurred throughout the nation during this election year.

German Unification Snag

Abortion has emerged as the most divisive issue separating East and West Germany as the two nations move rapidly toward unification.

East Germany allows abortion with no restrictions until the 12th week of pregnancy. All costs are paid by the government. West German law allows abortion for a variety of reasons but requires the approval of two doctors and a registered counselor. In conservative Catholic Bavaria unofficial social pressure and the medical establishment make abortion less accessible. As a result, 73,000 abortions were performed in East Germany last year compared to 75,000 in West Germany, which has four times the population. (Experts say the real rate is not that different, however, since many West Germans go to Austria or Holland for the procedure.)

West German authorities want East Germany to give up its concept of abortion rights, but women's groups and political leaders in the five East German states are adamantly committed to preserving abortion rights. Polls in the East show a 7-1 margin in favor of the present nonrestrictive law. Christa Schmidt, East German Minister of Health and Faily, said she would not "budge an inch" on abortion rights.

Anti-abortion forces in the West have demanded a "harmonization" of laws, claiming that the West German Constitution and a Supreme Court decision require the restrictions. Even after unification, West German women would be prohibited from having abortions in the East, if anti-abortionists have their way. A compromise solution proposed by some members of West German Chancellor Helmut Kohl's ruling coalition would allow both laws to remain in effect for two years. But women's groups fear a loss of freedom to choose if West Germany's powerful conservative forces have their way.

East Germany also provides free contraception and a wide array of child care and family benefits unavailable in West Germany.

Another key difference between the two Germanies: the West is 50% Roman Catholic, and the Catholic hierarchy is both archconservative and financially powerful. The East is less than 10% Catholic.

Religion in Eastern European Schools

Religious groups all over Eastern Europe are pushing for a return to religious instruction in public schools. The pressure is intense and the response varies from country to country.

In Hungary, the Minister of Culture, who has jurisdiction over education, advised public schools that they must provide "voluntary" religious instruction to students of all ages, beginning in September. The proposal calls for classes once or twice a week in facilities provided by the state and taught by publicly-paid teachers but separated by religion. In rural Hungary most classes will take on a Catholic flavor.

Already bitter divisions have occurred. A militant Catholic lay group, the Our Lady Society, tried to take over a public school, the Arany Janos School in Budapest, a former French convent school, last spring. While unsuccessful, the attempt angered many, including several Catholic parents. Meanwhile, the prominent Barmadas school was returned to the Protestant Reformed Church, which will assume financial responsibility for student education. Parliament is debating the status of private education, forbidden by the Communist government for 40 years.

In Czechoslovakia the National Assembly voted to allow private religious schools for the first time since 1950. In Prague one school has been split in two, part taught by nuns, the other by public authorities. Churches now teach religion classes in public schools, and seminary training will be incorporated into the universities.

Religious education programs are returning to the public schools in predominantly Catholic Lithuania, though much opposition has been noted.

Russian Orthodoxy's new patriarch, Aleksy II, has called for optional religious education in Soviet schools.

In Poland Roman Catholic authorities are pressing for the reintroduction of mandatory religious education in the schools. The Polish Ecumenical Council, representing the Protestant and Orthodox churches, are wary that their members will be proselytized or ignored by such classes, which were required by the 1921 Polish Constitution. Catholic Church officials are also trying to link the reintroduction of religion classes with an attempt to outlaw abortion.

In Bulgaria and Rumania the powerful Orthodox Church has urged the return of religious education to schools at all levels.

Jews are visibly worried throughout the once blatantly anti-Semitic region. Anti-Semitism is clearly on the rise in Poland and a recent incident in Slovakia is disturbing. A plaque honoring Rev. Jozef Tiso, the head of the Nazi puppet state from 1939 to 1945, was placed on the wall of a former Catholic teachers college in Banovce. Tiso's government deported 70,000 Jews to death camps, where three-fourths of Slovakia's Jews perished. Tiso was executed as a war criminal in 1947. A Slovak Catholic bishop, Jan Korec, attended the unveiling ceremony, drawing widespread criticism. A few days later the plaque was removed, as the government of Slovakia requested.

Observers say that ultra-nationalists who want a separate Slovakian state are responsible for the upsurge of extremism, and that some elements of the Christian Democratic party are implicated in it.

Update, *continued*

Williamsburg Group Sued

The Williamsburg Charter Foundation, the group which produced the flawed "Williamsburg Charter" on religious freedom and an even more seriously flawed public school curriculum on religious freedom (see ARL newsletters 25 and 30), has been sued for allegedly failing to honor a contract. Prof. Henry C. Johnson, of the College of Education of Pennsylvania State University, and six other academics filed suit in Centre Country, PA, Court of Common Pleas in July to recover over $21,000 owed them by the Williamsburg Charter Foundation for work performed in developing curricula on religious freedom. The seven worked from June 1988 until December 1988 when they were dismissed and replaced by the team presently working on the curricula.

Religious Garb Ban Upheld

Pennsylvania's 1895 law banning the wearing of religious garb in public school classrooms does not violate federal anti-discrimination law, the Third Circuit U.S. Court of Appeals ruled in August. Alima Reardon was fired from her Philadelphia teaching job in 1985 for wearing a head scarf and a long, loose dress in accordance with her Muslim religious beliefs. The appellate ruling overturned a lower federal court ruling. In 1986 the U.S. Supreme Court declined to review a similar 1986 Oregon Supreme Court ruling.

Critics of the ruling fear that the state law could result in the banning of observant Jews who wear yarmulkes and Sikhs who wear turbans.

The Third Circuit ruling did not distinguish between ordinary religious garb and clerical garb which is a symbol of religious authority, the banning of which was apparently the legitimate intent of the 1895 state law.

Religious Painting Ordered Removed

On August 23 Albany, NY, federal district judge Howard G. Munson, ruled in *Joki v. Schuylerville School District,* that the public school district must remove a 12-by-16-foot painting of the crucifixion of Jesus from the school auditorium where it has hung since 1965. Munson held in a summary judgment that placement of the painting in the shcool unconstitutionally conveyed "a message of government endorsement of Christianity." Judge Munson's ruling was based in part on depositions by Christian and Jewish clergy and an art historian.

LA Leg Nixes Con-Con

Although the "good ol' boys" of the Louisiana legislature are strongly opposed to women's rights, they did have the good sense in June and July to repeal the state's call for a national constitutional convention, becoming the third state to do so after Florida and Alabama. Church-state separationists have warned that a new Con-Con, the first since 1787, even though called ostensibly for the single purpose of mandating a balanced national budget, could conceivably weaken the First Amendment and other sections of the Bill of Rights.

It's Kosher

A New Jersey appeals court upheld the Garden State's six-year-old Kosher food regulation law by a 2 to 1 vote in August. Opponents, including ACLU, had charged that the government's monitoring of food sales for religious reasons violated the principle of church-state separation. The two-judge majority, however, ruled that there was "a secular legislative purpose" in "protecting against intentional and negligent misrepresentation" of kosher food. The dissenting judge, William D'Annunzio, maintained that the state law "involved the definition and enforcements of the parameters of religious practice" and thus violated the Establishment Clause of the First Amendment.

WI Church College Grant Nixed

Dane County Circuit judge Robert Pekowsky ruled in June that a $100,000 grant to St. Norbert's College in DePere, WI, is unconstitutional. The grant was apparently inserted in the state budget without hearings or state Senate consideration. Judge Pekowsky held that the legislature earmarking the funds for St. Norbert's, run by the Norbertine Fathers, contained no safeguards against sectarian use. The suit was brought by Anne Gaylor and the Freedom From Religion Foundation.

New Creche Case?

The U.S. Supreme Court may hear yet another Christmas Nativity scene case. The Albemarle County, VA Board of Supervisors has voted to appeal an unfavorable decision by the 4th Circuit Appeals Court, which held the presence of a Nativity scene on county-owned property represented an unconstitutional government endorsement of Christianity. The case involves a life-size creche in front of the County office building in Charlottesville, home town of Thomas Jefferson and the University of Virginia. There is no indication whether the High Court wishes to hear another creche case, having ruled on a Pittsburgh case in 1989. The right-wing Rutherford Institute is pushing for a review, sensing perhaps a continued rightward drift at the Supreme Court.

Resources

Available from ARL, Box 6656, Silver Spring, MD 20916.

Abortion Rights and Fetal 'Personhood,' edited by Edd Doerr and James W. Prescott. The *must read* resource in the struggle to preserve freedom of conscience. ($12.95, plus $1.50 for postage and handling.)

Religious Liberty and the Secular State, by ARL president John M. Swomley. A clearheaded, authoritative response to revisionist attempts to discredit church-state separation ($15.95 hardcover, $10.95 paperback, plus $1.50 postage and handling.)

Religious Liberty in Crisis, by Edd Doerr. A useful introduction to the major church-state controversies in the U.S. today, by ARL's executive director ($5.95 plus $1.50 postage and handling.)

Dear Editor, by Edd Doerr. A "how to" book on writing letters to editors, plus a wide-ranging selection of published letters on religious liberty issues from *The New York Times, The Washington Post, National Geographic, Harper's,* and other periodicals. ($5.95 plus $1.50 for postage and handling.)

Voices for Evolution, edited by Betty McCollister. Statements and resolutions on "creationism," evolution, science, and school policy by scientific, educational, and religious organizations. ($5 plus $1.50 for postage and handling.)

The Supreme Court on Church and State, edited by Robert S. Alley. A comprehensive up-to-date collection of the major U.S. Supreme Court rulings on religious liberty, with commentary by a leading church-state scholar. Indispensable for lawyer and concerned layperson alike. ($15.95 plus $2 for postage and handling.)

Religion, the State and the Burger Court, by Leo Pfeffer. A comprehensive up-to-date examination of the whole range of church-state issues by the dean of constitutional authorities on religious liberty. An indispensable resource for layperson and lawyer alike. ($22.95 plus $1 for postage and handling.)

James Madison on Religious Liberty, edited by Robert S. Alley. Madison's own writings plus authoritative essays analyzing their importance. ($17.95 plus $2 for postage and handling.)

Child Care, Congress, and Sectarian Special Interests

After two years of wrangling, both houses of Congress have finally passed Child Care bills, the most far reaching social legislation since the Johnson administration. The bills (H.R. 3 and S. 5) are in conference committee to reconcile differences between the two versions.

S. 5 provides $1.75 billion in initial subsidies and increases tax credits for child care for millions of families of the middle and working classes. H.R. 3 increases Social Security Title XX funding, expands the highly regarded Head Start program, and provides grants for before and after school care. The House bill also increases tax credits.

The bills have gone through a tortuous process, with several versions having been debated in Congress. H.R. 3 enlarges existing grant funds for child care and requires states to set standards for providers. The final House bill, which received strong support from the Democratic leadership, passed 265 to 145 after members rejected a substitute bill by Rep. Charles Stenholm (D-TX) and Rep. Clay Shaw (F-FL). Their bill would have provided for less money, contained no requirements for standards, and offered nothing for "latchkey children."

The question now is the response of the Bush administration. The President has threatened to veto the bill because he does not like the cost or the provisions for latchkey children or the requirement for state standards. Bush and the Republicans consider this to be too much expansion of government involvement in what they feel should essentially be private. This was President Nixon's rationale for vetoing a more modest bill in 1971. Bush has endorsed the concept of federal assistance for child care but would prefer to do it indirectly through tax credits.

Most contentious is the church-state issue. Both final bills allow parents to use grant funds for child care provided by churches. After considerable wrangling in the House and Senate, the final versions bar federal funding for sectarian activities, except for care provided by a relative or paid for by voucher, which states would be required to offer if a parent requested one. The bill prohibits discrimination on the basis of religion in facilities which receive more than 80% of their funds from tax sources, although sectarian organizations could require that employees adhere to religious "tenets and teachings."

Facilities receiving less than 80% public funding could still give preference in hiring and admissions for nonpublicly funded slots to participating members of the religious organization. The bill also stipulates that such requirements would not supersede state laws regarding public funding for religious institutions.

But this is doubletalk. In the initial debates, Rep. Pat Williams (D-MT and a Catholic) offered an amendment to bar all funds for religious-based child care except where a separate governing board oversees the program. "Is religion bad? No. Should the state pay for it? No," said Williams. However, he was overwhelmingly rejected by his colleagues on the House Education and Labor Committee. A compromise amendment by Jim Jontz (D-IN), passed by voice vote, stipulated that no provider receiving money "shall engage in any sectarian activity, including sectarian worship and instruction." Tom Tauke (R—IA) said publicly, "There is the fundamental problem with the assumption that federal money can flow directly into a church." Still, intense pressure brought by religious care organizations and spearheaded by the U.S. Catholic Conference, resulted in the final outcome. An estimated 30%-40% of all child care providers are church-based or church-related, though not all engage in sectarian instruction or activities.

H.R. 3 prohibits use of financial assistance provided under the act "for any sectarian purpose or activity, including sectarian worship and instruction," except for care purchased by parents with a federal financed voucher and care provided by a relative. It prohibits expenditure of federal funds under the act "in a manner inconsistent with the Constitution," allows sectarian organizations to require that employees adhere to the religious tenets and teaching of such organization, generally prohibits discrimination in hiring on the basis of religion except that preference may be given to a person already participating on a regular basis in other activities of the church. It prohibits discrimination against children on the basis of religion, except that preference in admissions for slots not publicly funded may be granted to children whose family members participate on a regular basis in other activities of the organization. Notwithstanding the above provisions, H.R. 3 prohibits discrimination in hiring or admissions in any child-care program whose operating budget is 80% or more funded with public money and stipulates that none of the above requirements is intended to modify or supersede any provision of a state constitution or state law prohibiting the use of public funds in or by sectarian institutions.

The bill requires school districts to provide for the inclusion of children who attend private pre-school or elementary and secondary schools in the same manner as services provided to such children under the Chapter 1 program. This would seem to be an attempt to circumvent the Supreme Court decision n *Aguilar v. Felton,* which barred tax-paid teachers from serving in sectarian schools.

The best guess is that Bush will veto the bill, an example of a President doing the right thing for the wrong reasons. Bush and the Republicans, however, favor allowing church groups to participate in the programs and still teach religion. *Congressional Quarterly* reported that Bush feels the House version is still not strong enough in favor of religious group involvement. House Republican Whip Newt Gingrich accused Democrats of being anti-religious because of their objections to religious group involvement.

One valiant attempt to bar use of federal funds for sectarian worship or instruction and to prohibit religoius discrimination in hiring child care workers by sectarian institutions that receive federal funds was proposed by Rep. Don Edwards (D-CA), but the House rejected it 297 to 125.

This defeat for church-state separation was depressing. An analysis of the vote indicates some significant partisan regional and religious differences. Northern Democrats favored the Edwards amendment by 57% but Southern Democrats by only 20%. Republicans gave only 6% support. Support among all Democrats, North and South, was 45%.

Only California and New York delegations narrowly favored Edwards. These states are traditionally strongholds of church-state separation and members from those states have voted against school prayer amendments and other sectarian efforts in the past. Delegates from Rhode Island (both Republicans), Alaska (also a Republican), and Oregon also favored Edwards.

There were 18 states where every House member opposed Edwards. Here the influence of Evangelical and Protestant churches can be seen since many Southern states voted overwhelmingly against Edwards. This includes members from Alabama, Arkansas, Delaware, Kentucky, Louisiana, Mississippi,

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North Carolina, South Carolina, and West Virginia. Mormon-dominated Utah, Wyoming, and Idaho also unanimously opposed Edwards, as did all members from Kansas, Nevada, New Hampshire, North Dakota, South Dakota, and Vermont.

Religious differences over Edwards are among the most significant in many years. To begin with, the four religiously non-affiliated members of Congress (all Democrats) voted in favor of the anti-discrimination amendment. So did two-thirds of Jews, but only 27% of Protestants and 24% of Catholics.

It was among Democrats that cultural and religious divisions were most intense. Here 76% of Jewish Democrats favored Edwards, showing their historic concern for church-state separation. Protestant Democrats were 46% in favor, and among Protestants the main difference was North and West vs. South. Only about 20% of Southern Democrat Protestants favored the proposal but a majority of Northern Democrat Protestants were supportive. Edwards was strongly supported by congressional Black Caucus members. Most of these are Protestant, but two, Clay (MO) and Rangel (NY), are Catholic.

Unitarians voted 4-3 for Edwards. Unitarian Deocrats were 4-1 in favor, but both Unitarian Republicans voted no. Mormons, probably the most conservative religious group in Congress, voted 7-1 against Edwards. All six Mormon Republicans opposed it. Only one Mormon, Mo Udall (D-AZ) voted for it.

Catholic Democrats, who in the past opposed school prayer amendments and were lukewarm on Equal Access and other church-state compromises, this time were apparently influenced by the U.S. Catholic Conference. Catholic Democrats voted 54-25 against Edwards, despite the fact that two Catholic Democrats, Pat Williams (MT) and George Miller (CA) were leaders in the fight for Edwards. Catholic Democrats in states like Illinois, Ohio, Indiana, Pennsylvania, New Jersey and Massachusetts defected from their normal liberal positions in large numbers on this vote. Joseph Kennedy (D-MA), son of Robert Kennedy, and the occupant of President John F. Kennedy's old congressional seat, voted yes, following the Kennedy tradition of support for church-state separation.

Another significant aspect of the vote is the near-total Republican opposition. Only 11 of 171 Republicans voted for it. While 8% of Catholic Republicans and 6% of Protestant Republicans favored it, none of the Jewish Republicans did so. Even Bill Green of Manhattan, a Jewish Republican liberal who usually favors separation, voted no. Two Catholic Republicans who did vote yes were Claudine Schneider (RI, now running for the U.S. Senate) and Connie Morrella (MD), who represents the district where ARL's headquarters is located. Both women can be counted on to vote for separation, including on abortion rights. Not one Southern Republican voted for Edwards, showing again that the South is a bastion of religious conformity and conservatism since most Southern Democrats also voted no.

There was an attempt by Rep. Price (NC), to "permit" rather than require states to apply child care vouchers to church-related schools. It was rejected 243-182, but attracted some Southern Democrats who wanted to vote for a moderate measure. It would not have solved the problem of religious discrimination or the flow of public funds to sectarian education, as Edwards would have.

The fact that Catholic members of Congress were the least likely to favor Edwards is significant. This leads us to look at the role of the U.S. Catholic Conference in this affair.

For the first time since the 1978 tuition tax credit vote, Catholic members have been more conservative and less supportive of church-state separation than Protestant. This is the first time they have been closely in sync with the U.S. Catholic Conference (USCC) on a church-state issue.

Extensive interviews with officials of religious and educational organizations in Washington have made it clear that the USCC, the lobbying arm of the Catholic bishops, is "the number one reason we have such a bad bill." The USCC was the most influential player in pressuring Congress to approve vouchers and grants for church-related day care. They also "shaped the phraseology" and advanced the arguments that weakened the church-state argument. The USCC saw the child care bill as a "wedge to lead eventually to substantial aid to church-related schools." A *Congressional Quarterly* reporter said the USCC "cut a deal but reneged when they initially agreed to accept language limiting vouchers but then demanded a change" months later.

The USCC position was based on three premises: watered-down child care church-state provisions are a step toward tax aid for parochial schools, Catholic schools are declining at a high rate again and everything must be done to stop their decline, and government funding will enable Catholic parishes to expand their now-limited child care programs.

An important Protestant lobbyist labeled the USCC's actions as "tremendously influential" and based solely on "institutional self-interest." He said the bishops were interested in child care only as a pawn in a larger strategy aimed at reversal of U.S. policy against aiding parochial schools. He said bluntly that the USCC "called the shots" in shaping the final legislation that emerged. In his view the USCC institutionalists triumphed over the peace and justice sector, a group which would not have jeopardized good relationships with other religious groups solely to win a controversial decision. He and other critics suggested that USCC would encourage more Catholic parishes to participate in child care if and when the money is forthcoming.

Historic Catholic officialdom's approach to church-state relations continues to favor maximum cooperation with state authorities and public funding.

A nagging problem in researching the child care issues is the lack of good data. According to *Who Cares for America's Children* (National Academy of Sciences, 1990), there are 28.5 million children under 13 whose mothers are in the labor force, including 6.6 million under 3. This reflects rising living costs, declining conditions of the middle class since 1974, high divorce rates, and the number of households headed by women.

Today 56% of all mothers with children under 6 work outside the home, compared to 30% in 1970. (According to the Census Bureau, Americans now work 20% more hours and have 32% fewer hours of leisure time than in 1970.)

In 1988 an estimated five million children were being cared for in licensed and unlicensed (only 27 states require licensing) day care programs. The National Association for the Education of Young Children reported in 1986 that 2.1 million children were being cared for in 62,989 center-based facilities. (A National Academy of Sciences survey found 2,568,000 children in 64,078 facilities.) There are also school-based and Head Start programs, for which reliable data are not available.

The most extensive data—such as it is—available on church-based child care comes from the National Council of Churches' Child Day Care Project. In 1982 detailed questionnaires were mailed to 87,562 parishes representing 15 communions within the NCC, which itself represents 41 million Christians belonging

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to the mainline Protestant, Eastern Orthodox, and Anglican traditions. Almost 30% of the parishes responded. A study entitled *When Churches Mind the Children,* by Eileen Lindner, Mary Mattis and Jane Rogers, was published in 1983.

According to this study, about 35% of the responding parishes reported that some day care programs were available in their church. Denominationally, the range was from 62% of American Lutheran parishes to less than 1% of black Methodist ones.

In many respects, the authors say, churches are ideally suited for child care. "Many parishes are well equipped to provide facilities for child care." There is "an important financial advantage," the tax-exempt status. "This factor facilitates the development of child care and other community service programs within churches. First, child care programs can simply be operated under the churches' non-profit articles of incorporation, eliminating the need to establish a new corporation. Second, costs are lower because no new taxes are paid, yet churches receive city servies: fire and police protection, garbage disposal, and so forth."

There are two basic kinds of programs—*church-operated centers* and *independently-operated centers located on church property.* Of the total, 56% are church-operated and 44% are independently operated. (90% of the centers are also nonprofit.)

The key questions—constitutionally speaking—relate to the degree of religiousness or pervasiveness of sectarianism that may exist in these programs. Some significant differences emerge between church-operated and independently-operated programs. Religious belief is "very important" in staff selection in 28% of church-operated centers but only in 6% of the independents. Conversely, religious beliefs are not considered important in staff selection in 61% of independents but only in 22% of church-operated centers. The local parish board is formally involved in setting policy in 41% of church-operated centers but ony in 10% of independents. The church is also far more likely to subsidize building space, utilities, and repairs in church-operated centers and to provide scholarships for low-income families in church-operated centers than in the independents.

The religious factor is much greater, then, in child care centers operated by churches. There is no reason to believe that this would not also be true for Evangelical and Roman Catholic-based centers.

The authors of the NCC study suggest that up to 1,309,000 children participated in church-related or sponsored child care programs in 1982. This figure has surely increased by 1990.

An increasingly rancorous congressional conference committee has made little progress toward a compromise likely to withstand presidential veto. According to one educational official, there is even a possibility that no bill will reach the House and Senate for final approval before the congressional elections.

Still, one has to assume that proponents, the child care lobby and certain church groups, will lobby furiously for some kind of bill, any kind of bill.

Civil libertarians and public education interests have all but agreed to ask for a presidential veto of any bill that emerges, because of the deplorable language in both versions. It is certain that any bill will allow religious institutions to receive public funds and still impose religious standards in hiring and enrollment. This discrimination, coupled with the voucher language and the allowance for religious instruction and worship, will render any bill constitutionally infirm.

One official has warned that these bills "posit a new and unprecedented partnership between the federal government and sectarian institutions, one that goes beyond any relationship that has existed to date." She also stressed the dangers to religious freedom and parental choice: "Many parents will lose what choice they now have. When they find that a child-care program in their neighborhood is teaching a religion they cannot support, they will then have two choices: Either they will have to take their children out of the neighborhood program (or find they can't enroll them there) because the provider is indoctrinating their children in a religious tradition not their own, and next be forced to look for another program (which may or may not exist); or reluctantly send or continue to send their children to this sectarian, government supported, child care center, all the time worrying about their children being indoctrinated and their religion undermined.

"What I am stressing is that government support of sectarian institutions' provision of sectarian child care will *limit,* not expand, parental choice. The government has an obligation to help parents by supporting child care programs that meet their needs. It does not have the obligation, nor should it, to support their religious beliefs."

President Bush, meanwhile, has articulated the typical conservative view that almost any large scale child care legislation is too costly and involves an undesirable expanded role for the federal government in matters that are best handled by state and local interests or by families themselves. In a letter to Republican House members, White House Chief of Staff Sununu reiterated the Administration's view that "a tax credit would be fairer, more efficient, more easily administered, and would provide greater assurance that all needy families will benefit." This is doubtful. The *Washington Post* reported on June 24 that the IRS has said that 40% of those said to be eligible for the earned income credit are in fact *not eligible* under existing regulations.

Sununu also emphasized Bush's support for the sectarian lobbies. "We would view school-based care as an acceptable purpose for which states might use grant funds, *provided that sectarian providers be allowed to compete and participate on an equal basis.*"

This controversy shows the selfishness and parochialism endemic to sectarian special interests. As usual, the people most in need will suffer the most. In many respects, it's the ESEA all over again. The future of a democratic, pluralistic culture is threatened when sectarian interests emerge triumphant. ■

— Albert J. Menendez