



VOICE OF REASON

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The Newsletter of Americans for Religious Liberty

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Editorial

Bork Nomination Threatens Basic Liberties

President Reagan's nomination of Robert Bork to replace retiring Justice Lewis Powell on the U.S. Supreme Court, if confirmed by the U.S. Senate, would seriously endanger the liberties of Americans until well into the next century.

Reagan's appointment of Antonin Scalia and Sandra Day O'Connor to the Court to join Chief Justice William Rehnquist and Justice Byron White narrowed the Court's pro-civil liberties, pro-church-state separation, and pro-women's rights majority to a shaky five to four. Replacing Powell with Bork would place in jeopardy most of the Court's forty years of rulings favorable to civil liberties and personal freedom.

Bork is an admirer of Chief Justice Rehnquist, who pontificated in a 1985 school prayer dissent that, "the 'wall of separation between church and state' is a metaphor based on bad history, a metaphor which has proved useless as a guide to judging. It should be frankly and explicitly abandoned." This shows, of course, how out of touch both Bork and Rehnquist are with history and with the reasoning of the country's founders, particularly the two most important, Thomas Jefferson, author of the Declaration of Independence and the Virginia Statute for Religious Freedom, and James Madison, chief architect of the Constitution and Bill of Rights.

Bork has made it clear that he disagrees with *Roe v. Wade*, the 1973 Supreme Court decision which recognized that the Constitutional right to privacy covers a woman's right to freedom of conscience on abortion. Bork claims that there is no right to privacy in the Constitution, although the Supreme Court explained that right in 1965 in *Griswold v. Connecticut* with regard to the privacy right to practice birth control.

Bork has indicated that First Amendment freedom of expression applies only to political expression and not to other forms of speech and press, an eccentric view that is almost unique to him.

Perhaps the most telling insights into Bork's thinking are found in a speech, "Tradition and Morality in Constitutional Law," which he delivered at an American Enterprise Institute conference in 1984 in Washington. Your editor was present at the speech and remembers thinking at the conclusion of the address, "Bork is just a Jerry Falwell in striped pants."

In his AEI speech, Bork placed the power of government and the power of majorities, whether permanent or transitory, over individual liberties. Bork said, "One of the freedoms, the major freedom, of our kind of society is the freedom to choose to have a public morality. As Chesterton put it, 'What is the good of telling a community that it has every liberty except the liberty to make laws?'"

Bork does not seem to grasp that the American democracy posited in the Declaration of Independence and institutionalized by the Constitution, Bill of Rights, and Fourteenth Amendment requires that majority rule, in carefully limited spheres, must be balanced by the widest possible latitude for individual freedom. Bork could weaken individual liberties in the interest of enhancing the power of big government and big religion over individual liberties. He would erect a "moral majoritarian" prison of conformity over the ashes of the Bill of Rights.

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Federal Parochialism Challenged Again

Americans for Religious Liberty and 33 other organizations in the Committee for Public Education and Religious Liberty filed suit in federal district court on April 28 in New York challenging federal and state aid to sectarian private education. The suit, *PEARL v. Secretary of Education*, was filed by attorney Stanley Geller on behalf of ARL and a broad coalition of Episcopal, Jewish, Humanist, Ethical Culture, education, parents, labor, and civic groups, plus several individual taxpayers.

Plaintiffs charge that "use of public tax-derived funds" (federal, state and city) "to provide teachers, guidance counselors and educational equipment, material, and supplies" for the benefit of religious schools or their students violates both the U.S. and New York State constitutions.

The PEARL suit charges that both the federal and state constitutions are violated by the following practices: providing remedial services in vans parked close to parochial schools, at a higher cost than providing those services in public schools; providing educational services in so-called "neutral sites," many of which are located in buildings owned by religious organizations and are being leased by the Board of Education to serve exclusively children of the same religious group (often with the religious buildings being renovated at public expense); providing educational and counselling services in classes in public schools when the classes "are composed exclusively of students from the same religious school"; providing educational services for students of certain Hasidic and Orthodox Jewish sects in classes segregated by sex.

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'Creationism' Bites the Dust

The U.S. Supreme Court's June 19 ruling against Louisiana's law requiring that public schools give equal treatment to "creationism" whenever evolution is taught was a landmark victory for church-state separation, academic freedom, public education, and science. That the ruling in *Edwards v. Aguillard* was by a strong 7-2 margin means that little hope remains for the fundamentalist "creationist" movement to bring their essentially religious doctrine through the front door of the public school.

Americans for Religious Liberty joined the Anti-Defamation League of B'nai B'rith in filing an *amicus curiae* brief to the Supreme Court in the case. ARL executive Edd Doerr and ARL member Al Seckel originated the idea of having 72 American Nobel laureates in science file an *amicus* brief in the case.

In writing the majority opinion, Justice William J. Brennan held that the Louisiana law violated the constitutional test that legislation must have a secular purpose. Brennan noted that the state law clearly had as its main purpose "to restructure the science curriculum to conform with a particular religious viewpoint." The Brennan opinion upheld the lower federal court rulings against the state law.

The Court specifically held: "The Act does not further its stated secular purpose of 'protecting academic freedom.' It does not enhance the freedom of teachers to teach what they choose and fails to further the goal of 'teaching all of the evidence.' Forbidding the teaching of evolution when creation science is not also taught undermines the provision of a comprehensive scientific education. Moreover, requiring the teaching of creation science with evolution does not give school teachers a flexibility that they did not already possess to supplant the present curriculum with the presentation of theories, besides evolution, about the origin of life. Furthermore, the contention that the Act furthers a 'basic concept of fairness' by requiring the teaching of all the evidence on the subject is without merit. Indeed, the Act evinces a discriminatory preference for the teaching of creation science and against the teaching of evolution by requiring that curriculum guides be developed and

research services supplied for teaching creationism but not for teaching evolution, by limiting membership of the research services panel to 'creation scientists,' and by forbidding school boards to discriminate against anyone who 'chooses to be a creation-scientist' or to teach creation science, while failing to protect those who choose to teach other theories or who refuse to teach creation science. A law intended to maximize the comprehensiveness and effectiveness of science instruction would encourage the teaching of all scientific theories about human origins. Instead, this Act has the distinctly different purpose of discrediting evolution by counterbalancing its teaching at every turn with the teaching of creation science.

"The Act impermissibly endorses religion by advancing the religious belief that a supernatural being created humankind. The legislative history demonstrates that the term 'creation science,' as contemplated by the state legislature, embraces this religious teaching. The Act's primary purpose was to change the public school science curriculum to provide persuasive advantage to a particular religious doctrine that rejects the factual basis of evolution in its entirety. Thus, the Act is designed either to promote the theory of creation science that embodies a particular religious tenet or to prohibit the teaching of a scientific theory disfavored by certain religious sects. In either case, the Act violates the First Amendment."

Chief Justice William Rehnquist joined Justice Antonin Scalia in a vitriolic 31-page dissenting opinion which made it clear that the two justices are determined to do anything they can to undermine the Supreme Court's long series of decisions upholding and applying the First Amendment separation principle.

Fundamentalist activists are unlikely to try to get "equal treatment" legislation passed again soon, but they will try to have individual teachers promote "creationism" in classes. Further, many fundamentalists are likely to try to keep their children out of biology classes or shift them to sectarian private schools, for which they will seek public funding.

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Editor: Edd Doerr Associate Editor: Maury C. Abraham

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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Bork Nomination, continued from page 1

But Bork's appointment to the Supreme Court has not yet been confirmed by the Senate, which has the power to reject the nomination or to delay confirmation until President Reagan leaves office or replaces Bork with a more moderate nominee. Until then, the Supreme Court can function quite adequately with eight justices.

All Americans who appreciate the importance of our Constitution and Bill of Rights, and who value individual liberty, freedom of conscience, and our constitutional principle of separation of church and state must join in the effort to get the Senate to reject the Bork nomination. It is vitally important that every concerned American immediately contact (letter, phone, wire, in person) his or her state's senators and urge them to keep Robert Bork off the Supreme Court. Letters can be addressed to The Honorable _____, United States, Senate, Washington, DC 20510. Letters should be kept short and to the point.

The confirmation or rejection of Robert Bork by the Senate could be the most important single event of the latter part of this century. Tipping the balance of the Supreme Court toward the Moral Majority position could mean the end of the line for our most cherished freedoms.

Won't you do what you can today!

Federal Parochialaid, continued from page 1

These programs are funded under Chapter I of the 1965 federal education act. In 1985 the U.S. Supreme Court ruled in an earlier PEARL case, *Felton v. Aguilar*, that public school teachers could not be sent into parochial school classrooms under Chapter I. The vans and "neutral site" gimmicks were devised to circumvent the ruling.

The suit also challenges the constitutionality of a New York State statute passed in 1986 to provide \$10 million to local school districts for vans and "neutral site" leasing. Any funds left over are to be spent only for educational services for nonpublic students.

In addition, *PEARL v. Secretary* challenges the use of federal Chapter II funds to furnish "computers, computer software, audio-visual equipment, library materials and supplies and similar equipment, materials and supplies for use on the premises of religious schools."

Finally, the suit charges a conspiracy among the defendants to provide those programs for the benefit of religious schools without regard to the First Amendment and relevant Supreme Court rulings, thus depriving PEARL's members of the "fundamental right to live free of any law respecting an establishment of religion."

Swomley Book Answers First Amendment Revisionists

Americans for Religious Liberty president John M. Swomley's new book, *Religious Liberty and the Secular State: The Constitutional Context* (Prometheus Books), is a clearheaded, authoritative response to the efforts of Chief Justice William Rehnquist and others to promote a revisionist interpretation of the First Amendment which would allow the constitutional principle of separation of church and state to be eroded away.



John M. Swomley

Rehnquist and an alliance of Catholic bishops, Protestant fundamentalist leaders, and secular New Right politicians and writers have been trying to gain acceptance for the notion that the framers of the U.S. Constitution and Bill of Rights had no intention of erecting what Jefferson called "a wall of separation between church and state." In this extremist view, the First Amendment would allow government to promote and provide tax support for religion as long as the aid is not preferential.

Swomley's book shows clearly that the First Amendment framers considered and specifically rejected the idea that government could aid religion nonpreferentially. It also shows that Rehnquist and others err in supposing that the word "establishment" in the First Amendment referred to the British-model single church establishment, whereas at the time that Congress considered and passed the First Amendment, no state had a single establishment while those which retained any form of establishment had rather nonpreferential multiple establish-

ments.

Swomley shows how church-state separation evolved rapidly between 1776 and the adoption of the First Amendment, and leaves no doubt that the "original intent" of the framers, a phrase abused by Attorney General Edwin Meese, was to erect the strong Jeffersonian wall between church and state.

Unfortunately, Swomley notes, the Supreme Court, although it has generally supported a fairly strong separation, has not been entirely consistent and has a certain timidity in applying the separation principle vigorously.

The current threats to church-state separation, Swomley makes clear, are the efforts to get government regimented group prayer and "creationism" into public schools, Congress's 1984 "equal access" legislation which allows sectarian proselytizing in public schools, the campaign to get tax support for sectarian private schools through tuition tax credits and/or vouchers, the effort to impose a sectarian anti-abortion policy on women, and the Reagan administration's alliance with church-state unionist factions among Catholic and fundamentalist Protestant leaders.

Religious Liberty and the Secular State is an important and needed contribution to the campaign to preserve religious liberty, freedom of conscience, and our tradition of secular democratic government. The book may be ordered from ARL, P.O. Box 6656, Silver Spring, MD 20906 (\$15.95 hardcover, \$10.95 paperback, plus \$1.50 to cover postage and handling).

Author Swomley is chair of the American Civil Liberties Union Church-State Committee. Among his previously published books are *Religion, the State and the Schools* (1968), *The Military Establishment* (1964), *Liberation Ethics* (1972), and *Politics of Liberation* (1984).

Alabama, Tennessee Textbook Cases Appealed

Textbook rulings by federal judges in Alabama and Tennessee have been appealed, respectively, to federal circuit courts of appeal in Atlanta and Cincinnati. Americans for Religious Liberty, along with other concerned groups, has filed *amicus curiae* briefs in both cases, opposing the lower court rulings.

In the Tennessee case, *Mozert v. Hawkins County Public Schools*, Judge Thomas G. Hull ruled last October 24 that parents whose sincerely held religious beliefs are offended by matter in elementary school reading texts may opt to remove their children from the reading program and to teach them reading elsewhere. Judge Hull found no fault with the reading texts and even found that there were no texts on the market which would satisfy the plaintiffs without raising serious establishment clause problems. Plaintiffs objected to such books as *The Diary of Ann Frank* and *The Wizard of Oz* and stories which mentioned religions other than those of the plaintiffs without condemning them.

Not only did Judge Hull allow the plaintiff parents to opt their children out of reading classes, but he later awarded them \$50,000 to cover costs of the children attending private fundamentalist schools during the court proceedings.

If *Mozert* is not overturned on appeal, it is probable that large numbers of fundamentalist and other parents will try to opt their children out of reading, social studies, science, and other classes where the children might be exposed to readings or utterances offensive to the parents. This in turn would lead to administrative and educational chaos. Further, in order to prevent widespread opting out of classes, teachers, administrators, and textbook publishers would be under tremendous pressure to precensor from books and class discussion anything that might offend those fundamentalist and other parents who might object to something read or said in class.

In the Alabama case *Smith v. Board of School Commissioners of Mobile County*, Judge W. Brevard Hand ruled on March 4 that 44 elementary and secondary history, social studies, and home economics textbooks should be removed from Alabama public schools because they allegedly promote "the religion of secular humanism." Judge Hand "created" the case by taking some 600 intervenor defendants in the *Wallace v. Jaffree* case, in which the U.S. Supreme Court has ruled unconstitutional an Alabama school prayer law, and converting them into plaintiffs in a new case.

Hand held that the scarcity of references to religion in the social studies and history texts amounted to teaching "secular humanism," though he gave no hint as to how many and what kind of references to religion would be adequate. Actually, the high school history texts had numerous references to religion, but not enough to satisfy Hand or the fundamentalist plaintiffs.

The home economics books, Hand ruled, promote "secular humanism" by encouraging adolescents to learn to think and to make decisions in real life situations.

Although there is a Humanist movement, exemplified in the United States by the American Humanist Association, the Fellowship of Religious Humanists, the Society for Humanist Association, the Fellowship of Religious Humanists, the Society for Humanistic Judaism, the American Ethical Union, the Council for Democratic and Secular Humanism, and a large segment of Unitarian Universalism, distinctively or uniquely Humanist views are not taught or promoted in public schools. What Judge Hand and many fundamentalists object to is the

teaching of a large core of civilized values and ideas shared by most Humanists, Christians, Jews, and other Americans.

Then, too, when Judge Hand and the political fundamentalists try to define "secular humanism," they include a great deal that has no relationship to the real Humanism, such as pornography, mindless hedonism, total moral relativism, etc.

Whether Humanism or "secular humanism" is/are best categorized as religion or philosophy or "life stance," it/they are not being taught in public schools. After all, even in Alabama, public schools are governed by locally elected boards and textbook selection is a process in which all segments of a community are allowed to participate.

Judge Hand's ruling is expected to be handily overturned. If it is not, fundamentalist censorship of textbooks will be around a long time.

Supporting the fundamentalist plaintiffs in the Tennessee case is the large "moral majoritarian" group Concerned Women of America, while backing the Alabama fundamentalists is Pat Robertson's National Legal Foundation.

Resources

Available from ARL, P.O. Box 6656, Silver Spring, MD 20906.

Religious Liberty and the Secular State, by John M. Swomley. A clearheaded, authoritative response to the Rehnquist and other revisionist attempts to discredit church-state separation. (\$15.95 hardcover, \$10.95 paperback, plus \$1.50 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 \$2 for postage and handling.)

American Freedom and the Radical Right, by ARL co-founder Edward L. Ericson. An excellent guide to the aims and methods of the movement bent on "piecemeal repeal of the Bill of Rights." (\$4.95 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. (\$20.95 plus \$2 for postage and handling.)

Our Right to Choose: Toward a New Ethic of Abortion, by Beverly Wildung Harrison. A brilliant treatment of our culture's attitudes toward women, religion, law, and medicine by a noted theologian. (\$9.95 plus \$1 for postage and handling.)

Religion and the State, edited by James E. Wood, Jr. A 596-page treasury of essays on every aspect of religious freedom, published as a tribute to Leo Pfeffer, dean of church-state constitutional lawyers. (\$30, plus \$2 for postage and handling.)

Crusade of the Credulous, by William J. Bennetta. A collection of articles about "creationism" and the effects of that fundamentalist movement on public education. (\$2 plus \$1 for postage and handling.)

Gould, Sagan, Schulz Named ARL Advisers

Scientists Stephen Jay Gould and Carl Sagan and religious leader William F. Schulz have been named to the Americans for Religious Liberty National Advisory Board.

Gould, who teaches geology, biology, and history of science at Harvard University, is the author of *Ever Since Darwin*, *The Panda's Thumb*, *The Flamingo's Smile*, and other books. He and paleontologist Niles Eldredge (also an ARL adviser) developed the theory of "punctuated equilibrium" as a refinement of evolution theory.

Sagan is David Duncan Professor of Astronomy and Space Sciences and Director of the Laboratory for Planetary Studies at Cornell University. He is author, co-author, or editor of more than twenty books, including *Broca's Brain*, *Comet*, *Contact*, and *The Dragons of Eden*, and won Emmy and Peabody Awards for his television series COSMOS, which has been seen in 60 countries by over 250 million people.

Schulz was elected president of the Unitarian Universalist Association in 1985. At 36, he is the youngest head of any major religious body. A minister, he is a frequent critic of abuses of religion by Radical Right televangelists.

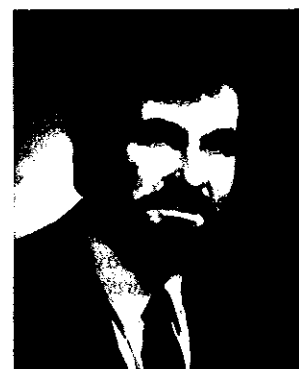


Photo by Eric Taylor

Editorial

Bashing Public Education

Bashing our democratic public schools is a favorite pastime of denominational special interest groups seeking tax support for their private schools and of "moral majoritarian" televangelists eager to bend public education to their will. The bashers complain that public schools don't teach values—or that they teach "secular humanist" values—and ignore religion.

Now, however, comes a study of 16,000 public and nonpublic high school seniors which shows that students in Catholic high schools—the oldest, largest, and most professional denominational school system in the country—use more alcohol, cocaine, and marijuana than their public school counterparts and are more likely to steal. The study, commissioned by the National Catholic Educational Association, was carried out by the respected conservative religious research group, the Search Institute in Minneapolis, on data gathered by the National Institute on Drug Abuse.

The actual figures in the Search Study: 45% of Catholic school seniors said they had been inebriated in the two weeks before the survey, compared with 39% of public school seniors; 21% of Catholic school students said they had tried cocaine, compared with 17% public school students; 57% of Catholic school students said they had used marijuana at least once, compared with 54% of public school students; 44% of Catholic school students and 41% of public school students had smoked marijuana in the half year before the study, and 40% of the

Catholic school seniors surveyed said they engaged in shoplifting in the past year, compared with 29% of public school seniors.

It needs to be emphasized that Catholic high schools select their students, are generally college prep institutions, are free to expel any and all "troublemakers," and require daily religious study and group religious devotions. Our public schools, on the other hand, are religiously neutral (except for infusions of fundamentalism in some Southern school districts), non-selective, and academically comprehensive. Families of nonpublic students also have significantly higher average incomes than public school students.

Whatever shortcomings our public schools might have, their graduates appear to have measurably better civic values than their more advantaged Catholic school counterparts. This would seem to pull the rug from under the intense propaganda of the advocates of tax aid for church schools and the fundamentalist preachers who misperceive public schools as hostile to religion and ethical values.

Decent Americans of all persuasions need to work together to defend our democratic common schools and make them ever better. Just because other countries like Canada, Australia, Britain, Northern Ireland, France, Belgium, and the Netherlands have made the tragic mistake of forcing their citizens to support sectarian segregation and indoctrination in education, is no reason for our country to institute educational feudalism.

Update

In the Courts

The U.S. Supreme Court ruled unanimously on June 24 that a 1972 federal law allowing religious organizations to limit employment in non-profit activities to members of their own faith is not unconstitutional. The case involved seven workers fired from their jobs in the Mormon Church-owned Deseret Gymnasium and Beehive Clothing Mills, both supposedly "non-profit" enterprises.

The Supreme Court has left standing a Michigan law which requires that all teachers, parochial as well as public, hold teaching certificates.

On March 30 the Supreme Court upheld an Oregon Supreme Court ruling barring a Sikh teacher from wearing distinctive religious garb in a public school classroom.

The Supreme Court has declined to review lower federal court rulings denying standing to plaintiffs, including ARL executive director Edd Doerr, to challenge President Reagan's precedent-shattering establishment of diplomatic relations with the Catholic Church.

ACLU of New Jersey filed suit in federal court in May to try to block the city of Long Beach from helping to create an "eruv," a symbolic Orthodox Jewish religious district.

A federal court in Tennessee is considering a lawsuit challenging a teacher's practice in Polk County of conducting Bible readings and teaching her own religious views.

Federal district court judge Ernest Tidwell ruled in February that prayers before public high school athletic events is unconstitutional. Arkansas federal district judge H. Franklin Waters handed down a similar ruling in March in a case involving a high school band director who led pre-game prayer sessions for band members.

New York federal district judge Robert J. Ward ruled on May 8 that barring women from driving school buses for Hasidic boys violates the First Amendment. An Orange County, NY, Hasidic Jewish school insisted that bus drivers for their sex-segregated schools had to be of the same sex as the students for religious reasons. Judge Ward held that the school districts compliance with the sex-segregation rule would have the unconstitutional primary effect of advancing Hasidic religious beliefs.

In a similar case, a New York federal appeals court has ruled against separating Hasidic children from non-Hasidic children in a federal remedial education program in a public school.

The Minnesota Federation of Teachers filed suit in federal district court in March charging that a program under which 11th and 12th grade students can take courses at approved colleges at state expense is unconstitutional as applied to sectarian colleges. Some of the colleges in the program, the union charges, require students to sign statements that they are "born again" Christians.

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- TV talk shows
- Etc.

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Where There's a Will . . .

Including a bequest to Americans for Religious Liberty in your Will is a good way to ensure that future generations will have the tools to defend our most basic freedoms. You can always add ARL to your Will.

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Anti-Choice, Parochial Amendments Defeated

Church-state separation scored victories in five out of six state constitutional amendment referenda on November 4 in Massachusetts, Rhode Island, Arkansas, Oregon, and South Dakota. Americans for Religious Liberty participated in coalition efforts in all six referenda.

Massachusetts voters, by an astonishing 70 to 30 margin, defeated a proposed amendment which would have allowed the legislature to provide virtually unlimited tax aid to sectarian private schools. By 58 to 42 the same voters rejected an amendment which would have allowed the legislature to limit or prohibit abortion, eliminate Medicaid funding for abortions for poor women, and prohibit private insurance coverage for abortions. Both proposed amendments, if passed, would have been limited in effect by U.S. Supreme Court rulings, but their sponsors were obviously hoping that President Reagan will be able to make enough appointments to the Supreme Court to weaken or overturn its rulings barring all major forms of tax aid for sectarian schools and acknowledging the right to terminate problem pregnancies as constitutionally protected.

In Rhode Island, similarly, voters defeated 65 to 35 an amendment which would have allowed the almost complete banning of abortions, subject to conformity with Supreme Court rulings.

Since Massachusetts and Rhode Island are 50 percent and 67 percent Catholic, respectively, and since the Catholic bishops in the two states gave the highest priority to the two issues, the three referenda are particularly significant. The two Massachusetts amendments were bulldozed onto the ballot by Boston's Cardinal Bernard Law, who was subsequently defeated in his bid to be elected president of the U.S. Catholic bishops' conference.

In Arkansas, by a paper thin margin, voters unexpectedly turned down an amendment which would have sought to outlaw abortion by having the state adopt the conservative theological view that personhood begins at conception. Defeat of Amendment 65 is considered an upset to the well-organized fundamentalist anti-choice forces in the state.

Oregon voters decided 54 to 46 to reject an amendment aimed not at prohibiting abortion but only at cutting off state funding for medically necessary abortions and those for rape and incest victims.

The only sour note in the six referenda was South Dakota's 60 to 40 approval of an amendment to allow the legislature to provide-tax paid textbooks to sectarian private schools. This parochial plan may still be limited by applying a 1973 Supreme court ruling which bars textbook loans to schools which practice "racial or other invidious discrimination."

Taken altogether, the six referenda, better than mere opinion polls, show that most Americans, even in states where clerical political clout is strong, reject the Old and New Religious Right agenda items of tax support for sectarian private education and government interference with the right of women to freedom of conscience on abortion. Thus public opinion happily coincides with the mandates of the Bill of Rights.

With the exception of the 1986 South Dakota referendum, parochial has been defeated in fifteen statewide referenda since 1967 in New York (1967), Michigan (1970, 1978), Nebraska (1970), Maryland (1972, 1974), Idaho (1972), Oregon (1972), Missouri (1975), Washington State (1975), Alaska (1975), District of Columbia (1981), California (1982), and Massachusetts (1982, 1986). Abortion rights have done almost as well in fewer referenda.

Constitutional Convention

The drive to call a national constitutional convention, which could radically revise the Bill of Rights, remains stalled. Two more states are needed to reach the 34 legislative resolutions needed to force Congress to call a convention. Although the Montana House passed the resolution, it was defeated 45-4 in the Senate. While the Michigan Senate passed a con-con resolution, it was defeated hours later on June 17 by the House Appropriations Committee 21-4. Opposition to the con-con resolution by key members of the Assembly in New Jersey appears to have halted the measure there. Both houses of the Maine legislature defeated the resolution in April.

Abortion Rights

On July 2 Health and Human Services Secretary Otis Bowen fired Jo Ann Gasper from her post as deputy assistant secretary of HHS for population affairs. Gasper, an anti-choice hardliner, was fired for refusing a direct order to renew grants for Planned Parenthood training programs. For some time Gasper has been trying to cut Planned Parenthood agencies out of the \$142 million Title X family planning program, even though no federal funds were being used for abortions. Gasper, regarded by many as the "Ollie North of the anti-choice movement," has sought to justify her insubordination by saying she was trying to carry out President Reagan's policies.

On June 4 the Second Circuit U.S. Court of Appeals in New York upheld a contempt-of-court ruling against the Roman Catholic bishops in the U.S. for their refusal to release records sought in a lawsuit brought by the Abortion Rights Mobilization. The bishops had been subject to a \$100,000 per day fine since May 1985 when federal district judge Robert L. Carter cited the church officials for contempt in ARM's suit to get the Internal Revenue Service to remove the bishops' tax exemption. The suit charges that tax exemption is not compatible with the bishops' political activity against abortion.

Senate action on the Civil Rights Restoration Act (S. 557) is still pending. Anti-choice forces are trying to amend the bill to repeal long-standing federal regulations which protect students and employees from abortion-related discrimination in education programs. The purpose of the CRRA is to withhold tax funds from any college or university that discriminates against women in any aspect of its operations. Under the Supreme Court's ruling in the *Grove City* case, federal funds can be withheld only from the specific programs which discriminate and not from the entire institution. Civil rights groups oppose any changes in the bill, while opponents of antidiscrimination sanctions are trying to use the abortion "red herring" to sink the whole bill. ARL has urged the Senate to reject all amendments which would weaken the bill.

A federal jury in May ruled that 27 abortion protesters had intimidated patients and staff at a women's clinic in Philadelphia and awarded \$91,000 in damages in the case. The Alan Guttmacher Institute reports that in 1985, the most recent year for which data are available, 47% of the 2,660 non-hospital abortion facilities in the U.S. were harassed. Among the 689 larger clinics, 80% experienced picketing, 48% had bomb threats, 29% experienced invasion of the facility by demonstrators, 28% experienced vandalism, 19% had death threats, 16% had demonstrators tracing patients' license tags.

The Michigan legislature passed a veto-proof law in June to halt state Medicaid funding of abortions for poor women. Democratic Governor James Blanchard and his Republican predecessor William Milliken had vetoed similar measures 17 times in recent years. The only way the new law can be overturned would be in a referendum, which pro-choice groups in the state may try to petition to the ballot in 1988.

New York federal judge Robert J. Ward ruled in May that all foster-care agencies that do business with New York City, including the Roman Catholic Church, must begin providing contraceptive and abortion services to minors in group foster homes. The suit, originally filed by the ACLU fourteen years ago, charged that tax funding of foster-care agencies was not compatible with religious or racial

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ARL in Action

Since our last report on *ARL in Action*, ARL has played an increasingly active role in the courts. In April ARL joined with 33 other groups in filing suit in federal court in New York to challenge continuing federal aid to sectarian private education. ARL joined the Anti-Defamation League in an *amicus curiae* brief in the successful challenge to Louisiana's "creationism" law.

In January ARL joined 18 educational organizations in an *amicus* brief in the appeal to the Sixth Circuit Court of Appeals in the Tennessee textbook case, *Mozert v. Hawkins County Public Schools*, and in May joined ten educational and religious groups in an *amicus* brief in the appeal to the Eleventh Circuit Court of Appeals in the Alabama textbook censorship case, *Smith v. Board of School Commissioners of Mobile County*.

ARL joined with the Anti-Defamation League in an *amicus* brief to the U.S. Supreme court in the suit challenging New Jersey's "silence for prayer" law, *Karcher v. May*. The law was ruled unconstitutional by the lower federal courts. ARL has joined the ACLU of Illinois in *amicus* briefs in cases challenging a Nativity tableau in the Chicago city hall and a prayer room in the state capitol.

On May 30 ARL sponsored the first interdisciplinary conference on fetal "personhood" and abortion rights. A full report will appear in our next newsletter.

ARL president John M. Swomley has lectured on religious liberty and church-state issues at the University of Louisville, Swarthmore College, University of Missouri Law School, Florida State University, Missouri State University, University of the Pacific, California State University-Chico, Claremont College, Illinois State University, Pittsburg State University (Kansas), Westmar College, Everett Community College, and the University of Washington. He also spoke before church and other audiences in Sacramento, Fresno, Los Angeles, San Diego, Topeka, Kansas City, and St. Louis.

Executive director Edd Doerr has spoken at American University and Rutgers University Law School, at a league of Women Voters conference on the Constitution in Annapolis, MD, a meeting of the Society of Professors of Education, a Maryland Historical Society conference for high school students on "Religious Liberty in America," and a conference of the American Education Finance Association (copies of Doerr's AFEA address on "Public Funds and Private Schools" are available from ARL for \$1, which includes postage and handling). Doerr also spoke before conference and church audiences in Baltimore, MD, White Plains, NY, Adelphi, MD, Hagerstown, MD, Fairfax, VA, Bel Air, MD, Orlando, FL, St. Petersburg, FL, York, PA, Blacksburg, VA, New York City, Salisbury, MD, Maplewood, NJ, Garden City, NY, Towson, MD, the District of Columbia, and Potomac, MD.

Doerr also appeared on a one-hour interview on cable TV on C-SPAN and on talk shows on the following radio stations: WFBR, Washington, D.C.; KXL, Portland, OR; WBEZ, Chicago, IL; WAMU, Washington, DC; WBAL, Baltimore, MD; WKYS, Washington, DC; WHAG, Hagerstown, MD; WOAI, San Antonio, TX; WMYF, Exeter, NH; WMAQ, Chicago, IL; WKIS, Orlando, FL; KGIL, Los Angeles, CA; WMRO, Aurora, IL; KMBZ, Kansas City, MO; KOA, Denver, CO; KABC, Los Angeles, CA; KMJ, Fresno, CA; WNTR, Washington, DC; WORT, Madison, WI; KTOK, Oklahoma City, OK; WIHS, Middletown, CT; and KXLY, Spokane, WA.

Associate director Maury Abraham spoke at a B'nai B'rith conference and in churches and synagogues in the Washington area.

"BLOCK BORK" buttons (1½", blue & white), available from ARL, Box 6656, Silver Spring, MD 20906. \$2 each includes postage and handling.

Coming next issue . . .

a report on Americans for Religious Liberty's conference on

Fetal "Personhood," Brain Development, and the Abortion Rights Issue: Scientific, Ethical, and Legal Perspectives

Abortion Rights, continued from page 7

preferences practiced by some agencies and with imposition of religious prohibitions on access to contraceptive and abortion services and information.

The Planned Parenthood Federation of America has filed suit in federal court in New York to prevent the Reagan administration from withholding funds from overseas family planning groups that are involved with abortions, even though no U.S. tax funds are used for abortions.

More than 100 anti-choice groups have formed a coalition to try to stop abortions in cities the Pope will be visiting in September.

Miscellaneous

Paul Kurtz, editor of *Free Inquiry* and a member of the ARL board, asked the U.S. Court of Appeals for the District of Columbia in May (in *Kurtz v. Baker*) to order the two congressional chaplains to allow nontheists and humanists to open legislative sessions instead of permitting only theists to do so. Kurtz has not challenged the chaplaincy itself, as the institution was upheld by the Supreme Court in 1983. As a result of Kurtz's case before the federal district court, Senate chaplain Richard Halverson apologized to Kurtz for having used his Senate podium to disparage nontheists. Kurtz has also questioned the constitutionality of the practice of federal funds being spent to publish chaplain Halverson's sermons and prayers, a practice which has not recurred since Kurtz first raised the question.

Moral Majority leader Jerry Falwell offered in June to pay \$1.6 million in back taxes to the city of Lynchburg, VA. The offer came after the city council rejected an earlier Falwell offer to pay off the debt over a 15 to 20 year period. In March Governor Gerald Baliles signed into law a bill to excuse several of Falwell's Old Time Gospel Hour properties from paying taxes.

Nicaragua's Cardinal Miguel Obando y Bravo has denied press reports that the Catholic Church in Nicaragua may have received several hundred thousand dollars in aid from the CIA and former National Security Council staffer Lt. Col. Oliver North.

School superintendent Ronald Erickson was fired in June in the largely fundamentalist town of Allendale in western Michigan. His dismissal apparently grew out of his enforcement of a 1985 court order against group prayer and Bible classes in the local public schools.

Clipping Service

We depend on our members and readers to send us clippings of news items, editorials, columns, and letters to editors, as commercial clipping services are prohibitively expensive.

When you see an item in a newspaper, magazine, or professional journal you feel is relevant, please cut it out (or photocopy it), indicate the date and source, and send it to ARL, Box 6656, Silver Spring, MD 20906.

International

Canada's Supreme Court ruled unanimously in June that tax support of Catholic high schools in Ontario is constitutional. Non-Catholic private schools are denied public funding in Ontario. Canadian policy of tax support for sectarian private schools is an outgrowth of British colonial policy.

The Vatican has rejected Italian requests that it extradite Vatican bank president Archbishop Paul Marcinkus and two aides. Italy wants to try the trio for bank irregularities.

Joseph L. Blau

Professor Joseph L. Blau, a member of ARL since its foundation and a leader in the Ethical Culture movement, died in December. Blau, a long time professor of philosophy and religion at Columbia University, wrote and lectured often on religious liberty. He was author/editor of *Cornerstones of Religious Freedom in America*, an anthology of key documents in the development of church-state separation.

MOVING?

Send both old and new addresses, with bold old and new zip codes, to ARL, Box 6656, Silver Spring, MD 20906.

Americans for Religious Liberty

P.O. Box 6656, Silver Spring, MD 20906

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