



# VOICE OF REASON

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The Newsletter of Americans for Religious Liberty

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## Webster: The Supreme Court's Black Monday

**O**n Monday, July 3, the U.S. Supreme Court ruled, 5 to 4, that a fundamental liberty enjoyed by women at the time the Declaration of Independence, the Constitution, and the Bill of Rights were drafted and approved is no longer immune to legislative infringement.

Ironically, the ruling in *Webster v. Reproductive Health Services* came one day before the nation celebrated the anniversary of the Declaration of Independence, which articulated the basic American democratic philosophy that governments are instituted in order to secure the fundamental "unalienable" rights of "life, liberty, and the pursuit of happiness."

The Court's majority (Rehnquist, White, Kennedy, Scalia, O'Connor) upheld a Missouri law designed to inhibit the right to freedom of choice on abortion by requiring expensive medical tests for fetal viability after twenty weeks of pregnancy, by barring virtually all abortions in public hospitals, by prohibiting publicly paid medical personnel from performing abortions or even providing standard counseling, and by defining "human life" as beginning at conception.

While the Court did not directly or explicitly reverse *Roe*, it may have done even more damage to women's rights by trying to create the illusion of moderation. It was anything but moderate. By declaring that "we do not see why the State's interest in protecting potential human life should come into existence only at the point of viability" and by upholding Missouri's restrictive law, the reorganized Supreme Court has sent a clear signal to state legislatures that they may feel free to pass all sorts of restrictive laws, which will then receive a friendly reception by the Court. The Court has already agreed to review three restrictive state laws in its next term: burdensome Minnesota and Ohio laws requiring parental consent or notification for minors, and an Illinois law designed to force most clinics to close down. The Roman Catholic bishops have already filed briefs in the cases, urging the Court to overturn *Roe v. Wade* and insisting that state legislatures be allowed to restrict fundamental rights.

If states can force up the cost of abortions, restrict hospital abortions, put clinics out of business, require anti-choice propagandizing of women seeking abortions, etc., the right to safe, legal abortions may be exercised only by relatively affluent women. Poor, young, and ethnic minority women will either be driven to illegal, unsafe back alley abortions or forced to continue unwanted pregnancies.

In any event, the Black Monday ruling will set the stage for endless political battles over abortion rights in nearly every state. Abortion rights will be secure in none. State and national elections could turn on candidates' views on abortion. What is essentially a personal, religious, and conscience issue could come to dominate, and distort, the whole political process, and all because Ronald Reagan wanted to cater to Protestant and Catholic fundamentalists by applying an abortion rights litmus test to Supreme Court appointments.

In his ringing dissent, Justice Blackmun, who wrote the original 1973 *Roe* ruling, blasted the majority's claim that *Roe* had not been disturbed:

"Not with a bang, but a whimper,' the [Rehnquist] plurality discards a landmark case of the last generation, and casts into darkness the hopes and visions of every woman in this country who had come to believe that the Constitution guaranteed her the right to exercise some control over her unique ability to bear children. The plurality does so either oblivious or insensitive to the fact that millions of women, and their families, have ordered their lives around the right to reproductive choice, and that this right has become vital to the full participation of women in the economic and political walks of American life. The plurality would clear the way once again for government to force upon women the physical labor and specific and direct medical and psychological harms that may accompany carrying a fetus to term. The plurality would clear the way again for the State to conscript a woman's body and to force upon her a 'distressful life and future'."

An additional consequence of the reorganization of the Supreme Court is that the Court now stands ready to tear down the constitutional wall of separation between church and state. Coerced public support for sectarian institutions and sectarian indoctrination in public schools cannot be far off.

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### NOW Praises ARL Brief

The National Organization for Women praised Americans for Religious Liberty's *amicus curiae* brief to the Supreme Court in the May-June issue of *National NOW Times*. The NOW report said:

"While the 167 scientists and physicians who signed what well may be the most powerful brief submitted to the Supreme Court in *Webster v. Reproductive Health Services*, by systematically and methodically destroying the credibility of those who claim a scientific basis for their assertion that life begins at conception, their bottom line conclusion in any context is crucial to reshaping the debate on abortion: 'Amici respectfully urge this Court to reject the assertion that *Roe v. Wade* should be overruled on the basis of alleged inconsistency with scientific 'truth' and to reaffirm its decision in that case.'"

ARL's brief represented 167 distinguished scientists and physicians, including eleven Nobel laureates.

# Teaching Religious Liberty—the Wrong Way

**T**eaching students in public schools about religious liberty and our American constitutional principle of separation of church and state is certainly a good idea. It's too bad it's not being done well or adequately in social studies classes. The reasons for this state of affairs are not hard to find: reluctance of many teachers and administrators to deal with "controversial" subjects; inadequacies of teacher training; lack of suitable material in available textbooks.

Comes now the Williamsburg Charter Foundation, rechristened the Williamsburg Charter Educational Trust, with proposed curriculum supplements for 5th, 8th, and 11th grade U.S. history courses. The materials, entitled "Living With Our Differences: Religious Liberty in a Pluralistic Society," will be tested this school year in pilot programs in New York, Maryland, Michigan, and North Carolina.

(Readers will remember that last year we criticized the Williamsburg Charter Foundation for producing a 6000-word "charter" long on glowing platitudes but short of real support for religious liberty and church-state separation. See Spring and Summer 1988 newsletters.)

Unfortunately, the Williamsburg group has produced a sorry mess which does not belong in our public schools without really extensive revision. The ARL staff reviewed the nearly 600 pages of a draft produced by the Williamsburg group and came up with 13 pages of criticisms, summarized below.

Generally speaking, the Williamsburg material is shallow, eccentric, poorly organized, confusing, poorly written. Much irrelevant material is included, while the omission of relevant material is mind-boggling. It assumes that teachers know more about the subject than they are likely to.

The material is based largely on the 1988 Williamsburg Charter, a document with very serious flaws. Indeed, the material (for want of a better term, as it could not be called a textbook) is so loaded with puffs for the Williamsburg Charter that it almost resembles beer or soft drink commercials. The Charter is even compared in importance to the Magna Carta and the Mayflower Compact!

Among specific flaws: uncritical acceptance of the myth that public schools are silent about religion; sloppy treatment of people with other than conventional religious beliefs; no definition of religious liberty; no mention of freedom from taxes for

religion as a key element of religious liberty; sloppy, misleading treatment of Spain's mistreatment of Jews and Muslims in 1492; confusing treatment of the Spanish Inquisition; inaccurate commentary on the First Amendment; much discussion of immigration to the U.S. with inadequate exploration of its relation to religious liberty; confusing treatment of group versus individual rights; extensive reference to Martin Luther King and the Abolitionist movement without discussion of strong religious support for slavery and segregation; an irrelevant quote from John F. Kennedy, but no mention of his statements on church-state separation; repeated suggestions that defenders of religious liberty are "just as bad" as their opponents; intimation that public schools date from the 19th century instead of the 17th; inaccurate information on Hispanic population in the U.S.; misleading description of U.S. public schools; misleading treatment of the courts' role in religious liberty controversies; no comparison of religious liberty issues in the U.S. with those in other countries; confusion of ethnic bias with religious bias; inaccurate treatment of Islam in the U.S.; confusing use of terms "believer" and "unbeliever"; confusing and unexplained references to "secular humanists" and "religious humanists"; misleading statement about a 1985 Supreme Court ruling against tax aid for religious schools.

Among the serious omissions from the material: the persecution of Anne Hutchinson, Quakers, and alleged "witches" in colonial Massachusetts; religious bigotry in the 1800 presidential election; discussion of European religious liberty problems which led to migrations to the New World; the Fourteenth Amendment; any mention of the constitutional clause barring religious tests for public office; religious liberty provisions in state constitutions; religious discrimination permitted under early state constitutions; controversies over evolution, parochialism, religion in public schools; diplomatic relations with churches; Deism; Jefferson's famous letter to the Danbury Baptists; Maryland's 1649 Toleration Act; religious support for and opposition to women's rights including abortion rights.

Among the irrelevant inclusions: material about or by Christopher Sauer, Jackie Robinson, Gen. George Custer, Dick Gregory, Aesop, Neil Diamond, Martin Luther King, E.B. White, Orwell, Solzhenitsyn, actor Richard Harris.

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**Voice of Reason** is the quarterly newsletter of **Americans for Religious Liberty**, P.O. Box 6656, Silver Spring, MD 20906. (Telephone: 301/598-2447.) The newsletter is sent to all contributors to ARL.

Editor: Edd Doerr

**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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*Webster* is already affecting state politics. Gubernatorial races this fall may well turn on the abortion rights issue in New Jersey and Virginia. In both states the Democratic candidates, Florio in New Jersey and Wilder in Virginia, are more supportive of abortion rights than their Republican counterparts, Courter and Coleman. Florida's anti-choice Republican governor Martinez has called a special session of the state legislature in October to deal with abortion rights issues, though Democrats in the legislature appear to be able to stop any restrictive legislation.

Meanwhile, an outpouring of majority public support for freedom of choice has shaken some previously anti-choice lawmakers into taking more moderate stands. In August, for example, the U.S. House of Representatives voted 219 to 206 to defeat an effort to deprive the District of Columbia of the right to spend its own money on Medicaid abortions for poor women.

In other developments, the White House announced on July 4 that President Bush would support an anti-choice amendment to the Constitution. Adverse public opinion apparently led Mr. Bush since then to keep quiet about such an amendment, though the administration did indicate it would support the anti-choice side in new cases to be heard by the Supreme Court in the term beginning in October.

In the wake of the *Webster* ruling public opinion became even more supportive of freedom of choice. A July *New York Times*/CBS News poll showed that 60% of those surveyed agreed that government has no business preventing a woman from having an abortion. A Mason-Dixon Research poll showed that Maryland respondents disapproved of the *Webster* decision 55% to 35%.

Two polls in Washington State showed 62% of those polled in favor of public funding of abortions. A Media General/AP poll found that 63%, up from 57% in March, want choice kept legal in their state even if the Supreme Court overturns *Roe*.

A July 5 *Boston Herald/WCVB Radio* poll found that Catholics favor retaining use of public funds for abortions by 55% to 37%. A *USA Today*/Gannett poll found the *Webster* ruling opposed 50% to 40%, while Gallup reported opposition at 55% to 37%. A *Minneapolis Star and Tribune* poll found that 71% of respondents supported free choice. *USA Today* found that high school student leaders think abortion should be legal by 63% to 30%, up from 53% to 40% a year earlier. The Harris poll found opinion running against the *Webster* ruling 55% to 37%. ■

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## Teaching Religious Liberty

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These few paragraphs can barely hint at how bad this proposed curricular material is, or how unsuitable it is for use in public schools. A copy of our 13-page analysis is available at cost (\$3) from ARL, P.O. Box 6656, Silver Spring, MD 20906.

It is not hard to understand why some observers have concluded that the Williamsburg group—with these curricular materials, with their "charter," and with the conference they sponsored in Charlottesville, VA, in 1988—is trying to weaken support for church-state separation for the benefit of sectarian special interests. ■

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# Creche + Candelabrum = Confusion

In another contradictory and confusing ruling from the Supreme Court, *County of Allegheny v. ACLU*, it appears that local authorities may erect a menorah symbolizing the Jewish holiday of Hanukkah if it is part of a general secular program emphasizing religious pluralism and the winter season. But city authorities may not erect a creche or pictorial representation of the birth of Jesus if it stands alone and conveys the message that the city is endorsing the religious event which the creche depicts. That is the gist of the Supreme Court ruling on July 3.

By 5 to 4 the Court ruled that Pittsburgh officials violated the First Amendment when they placed a nativity scene inside the main entrance to the county court house. That nativity scene also included a banner saying "Gloria in excelsis Deo." The majority in this instance, which included the three liberals Brennan, Marshall, and Stevens, joined by Blackmun and O'Connor, held that "the government may acknowledge Christmas as a cultural phenomenon but under the First Amendment it may not observe it as a Christian holy day by suggesting that people pray to God for the birth of Jesus."

But by 6 to 3 the Court's four conservatives—Kennedy, Scalia, Rehnquist, and White—joined again by the swing votes Blackmun and O'Connor, held the city could erect a Hanukkah menorah next to a Christmas tree in front of a city county building a block away from the creche. In this case it was the "particular physical setting" that made the difference. The menorah was next to a Christmas tree and had a sign saying "salute to liberty" on it with a greeting from the mayor. It was considered secular enough to pass constitutional muster.

Blackmun, for the majority, wrote "by contrast, the menorah and lighted trees, along with the sign with the mayor's name declaring a salute to liberty . . . must be understood as conveying the city's secular recognition of different traditions for celebrating the winter-holiday season."

The decisions in this case represented sharply divergent views about not only religious symbolism but about the whole First Amendment question. An unusually nasty debate between Justices Blackmun and Kennedy broke out when the decision was announced on July 3. Kennedy accused Blackmun and the other liberals of "latent hostility" and "callous indifference" to religion and said the decision "reflects an unjustified hostility toward religion." Justice Blackmun responded that "nothing could be further from the truth and these accusations could be said to be as offensive as they are absurd."

In this case the most important rulings appear to come from the two swing votes, Blackmun and O'Connor, and from the new conservative block which seems to want to dismantle the entire edifice of separation of church and state.

Justices Blackmun and O'Connor seem to feel that the key question in any case involving religious symbolism is "whether a display endorses religion by conveying a message to nonadherents that they are not full members of the political community and a corresponding message to adherents that they are favored members." O'Connor developed this statement in her ruling five years ago in the case from Pawtucket, Rhode Island, which allowed a city sponsored creche only as part of a general secular celebration of the holiday.

On the other hand, the newest Justice, Anthony Kennedy, writing for an increasingly influential conservative bloc, has developed a new theory which, if followed, could destroy the past forty years of church-state jurisprudence from the *McCollum*

case in 1948 to the present. It would undoubtedly affect school prayer and parochial school aid cases. Kennedy said that only two areas of government activity should be unconstitutional. One, "government may not coerce anyone to support or participate in any religion or its exercise." Two, the Court should outlaw only those "direct benefits" that tend to create a state religion. He said that there must be an obvious effort to proselytize on behalf of a particular religion." Thus, according to Kennedy's revisionist view, almost any government action impinging on religion would be considered constitutional. This may be the long range significance of *County of Allegheny v. Greater Pittsburgh Chapter of the ACLU*.

Reaction to the decision varied from mildly critical to wholly hostile. Very few people seem to approve of the ruling except the Lubavitchers, an ultra-orthodox group within Judaism, which has been lobbying for the erection of menorahs on public property for the past decade. The Lubavitchers also favor government sponsored creches. Most Jewish groups were displeased with the ruling. Henry Siegman, executive director of the American Jewish Congress, said, "We are unhappy that the Court strained to give the menorah a secular meaning. In a sense this denudes the menorah of its truly religious significance." On the far right, the National Legal Foundation, which is linked to Pat Robertson's Christian Broadcasting Network, criticized the decision forbidding the nativity scene. Its executive director, Robert K. Skolrood, said the Court was being manipulated "by anti-religious fanatics out to destroy the beliefs and cherished values that made our nation strong." Conservative writer Michael Novak denounced the decision, saying that it made "depressing and alienating reading. It made me feel like an outsider in my own country. . . . it seems that the less religious a symbol, the more acceptable it is to the new secular orthodoxy."

There was a deafening silence from the nation's two most influential religious groups, the United States Catholic Conference and the National Council of Churches.

A rare voice of reason seemed to come from Professor Douglas Laycock of the University of Texas Law School who said simply, "the government shouldn't celebrate religious holidays at all."

The Supreme Court has thus reversed an appeals court ruling, which in 1988 had struck down both the creche and the menorah as violations of the First Amendment. The appeals court decision in turn has overruled a federal district court decision which had found both practices acceptable. ■

— Albert J. Menendez

*Mr. Menendez is the author of Religion at the Polls and other books on church-state relations.*

## 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 ARI to your Will.

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## ARL Joins New Supreme Court Cases

Americans for Religious Liberty has joined with other concerned organizations in *amicus curiae* briefs in new church-state and freedom of conscience cases to be heard by the U.S. Supreme Court this term.

In *Board of Education v. Mergens* the Court will decide whether public schools can be required to officially sponsor student religious meetings.

In *Turnock v. Ragsdale* the Court will rule on whether Illinois can restrict abortion rights by imposing excessively strict requirements on clinics, restrictions which would either shut them down or double or triple the costs of first trimester abortions. The Illinois law also interferes with the physician-patient relationship.

*Hodgson v. Minnesota* and *Ohio v. Akron Center for Reproductive Health* will test how far states may go in restricting abortion rights of minors.

## ARL to Support Nov. 12 Mobilization

Americans for Religious Liberty was represented at the Sept. 7 nationally televised Washington press conference announcing the Nov. 12 Mobilization for Women's Lives. The mobilization will include events and activities in state capitals and major cities throughout the country and a massive rally at the Lincoln Memorial in Washington, D.C. Among the major sponsors of the events are the ACLU, Catholics for a Free Choice, the National Abortion Rights Action League, the National Organization for Women, Planned Parenthood, and the Religious Coalition for Abortion Rights.

The following is the text of the ARL statement presented at the press conference:

"Liberty is what our country is supposed to be about. The Declaration of Independence states that the purpose of government is to protect the equal and unalienable rights of the people. The Constitution and Bill of Rights—particularly the First, Fourth, Ninth, and Fourteenth Amendments—were intended to defend freedom of conscience and other fundamental rights.

"On January 22, 1973, the U.S. Supreme Court recognized that the constitutional right to privacy included a woman's right to choose whether or not to continue a problem pregnancy. On July 3, 1989, a new Supreme Court, by the barest majority, raised serious questions about its dedication to the protection of the fundamental privacy and conscience rights of women and, in effect, signalled the opponents of freedom of conscience in state legislatures that they may be free to experiment with ways of inhibiting or proscribing freedom of conscience on abortion.

"Both because the fundamental rights of all women to freedom of conscience are now in grave peril and because the threats to women's reproductive rights presage comparable attacks on other liberties, Americans for Religious Liberty enthusiastically supports the November 12 Mobilization for Women's Lives.

"Our members, representing men and women across the religious spectrum, support the view that freedom is indivisible, that freedom of conscience is an indispensable element in the religious liberty guaranteed by the First and Fourteenth Amendments, and that laws interfering with reproductive choice are tantamount to unconstitutional laws 'respecting an establishment of religion.'"

## ARL Opposes Child Care Abuses

ARL joined more than three dozen parents, educational, religious, labor, civic, and civil rights groups on September 12 in urging the U.S. House of Representatives not to change a pending child care bill, H.R. 3, to dilute anti-discrimination language in the bill or to provide tax support to sectarian child care centers. The ARL statement said: "Americans for Religious Liberty recognizes the need for child care

legislation, but also believes that it is important that public funds not be spent on any program that is in any discriminatory along religious, racial, ideological, or gender lines. Since child care generally involves a significant educational component, we oppose any amendment to H.R. 3 which would fund denominational child care programs by means of vouchers or tuition tax credits. The First Amendment principle of separation of church and state must be carefully observed. As the amount of funding for child care is unlikely to be adequate to meet all the needs, it would be reasonable for Congress to avoid unnecessary church-state controversies by confining public funding of child care to public and other nondiscriminatory, religiously neutral agencies."

## Other ARL Activity

In June ARL president John M. Swomley, executive director Edd Doerr, and Minnesota church-state expert Matthew Stark presented a workshop on religious liberty issues at the American Civil Liberties Union biennial conference in Madison, WI.

Since our last report, ARL's Doerr has been a guest on radio and TV talk shows in San Antonio, TX, Middlebury, VT, Washington, DC, Cincinnati, OH, Rochester, NY, Los Angeles, CA, Chattanooga, TN, Detroit, MI, Orlando, FL, and Wilmington, NC. Doerr also spoke at meetings and religious services in New Jersey, Maryland, Arizona, Florida, and Virginia. During the summer he met in the Netherlands and Spain with Europeans concerned with church-state problems.

## ARL's Swomley in Ireland

ARL President John M. Swomley met in May in Ireland with leaders of an Irish organization, the Campaign for Separation of Church and State, to learn about problems in Ireland and how ARL may be of assistance. That organization is composed of a few Catholics, including one parish priest, a few Protestants, Humanists, and others, as well as a handful of the Irish parliament, the Dail.

The Campaign is concentrating on the school system, which is entirely religious. There is no public school system in Ireland. The government finances a large Catholic Church-owned primary and secondary school system, which is under the direction of local bishops. Protestant acquiescence has been "purchased" by generous government financing and other denominationally owned schools. There are about six Presbyterian and 260 Church of Ireland (Anglican) schools. The only Jewish school is in Dublin.

An atheist, Humanist, Jew, Methodist, Unitarian or Quaker who wants to go to school in Ireland must receive a religious education, which in most places means a Catholic education. Religion is integrated with the entire curriculum so that parents cannot simply withdraw their children from such indoctrination.

The Rev. Pat Buckley, a Catholic priest who is a member of the Campaign, has said: "The Catholic hierarchy still exercises a crippling control on the whole of Irish life. This in fact means that we take our politics as well as our religion from Rome. The Irish Catholic Bishops in secret conclave thrice yearly at Maynooth have been nicknamed 'the purple parliament'."

The Papal Nuncio is automatically Dean of the Diplomatic Corps and has a great influence culturally and politically.

There is censorship of books and magazines that a Censorship Board deems "indecent or obscene," or that advocates the "unnatural" prevention of conception or abortion.

Abortions are illegal, but the Campaign does not work on that issue since other organizations are doing so.

The Campaign is also concerned about job discrimination, as teacher-training colleges funded by the state are owned and managed by church interests, as are all private hospitals. It is alleged that applicants for health-care positions as well as school teaching are advised not even to appear for an interview if they do not support orthodox church views.

Although the Irish Constitution guarantees certain rights, which are

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## Poor Cal

Ultraconservative columnist and former Moral Majority honcho Cal Thomas has worked himself up almost to a hemorrhage because the editors of a dozen or so women's magazines (*Woman's Day*, *Ladies Home Journal*, *Ms.*, etc.) met and agreed to work to defend women's freedom of conscience on abortion. Mr. Thomas calls this "conspiracy and scheming" and laments that "gone . . . are all pretenses to objectivity, balance and truth." Goodness gracious!

Poor Cal's tunnel vision evidently precludes his seeing the massive, well-heeled, years-long conspiracy by fundamentalist Catholic and Evangelical male (oh, yes, all male) hierarchs not only to get government to restrict women's consciences but also sometimes to encourage vigilante action against women's health clinics and their clients.

Cal moans that the women's magazines "won't consider all of their readers' opinions on this volatile subject," yet he neglects to mention that the anti-choice male hierarchs pay no attention to the pro-choice opinion of the majority of women. Or maybe Cal thinks men and women should be held to different standards.

In any event, it's a lot easier to cancel a magazine subscription than to leave the church in which one was raised, though many women and men are doing just that. ■

### MOVING?

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

## Resources

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

**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 paperback, plus \$1.50 for postage and handling.)

**ARL's amicus curiae brief** to the Supreme Court in *Webster* on behalf of Nobel laureates and other scientists. (\$5, includes postage.)

**Religious Liberty and the Secular State**, by ARL president 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 postage and handling.)

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

**Dear Editor**, by Edd Doerr. A "how to" book on writing letters to editors, plus a wide-ranging selection of the author's 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.)

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### ARL in Action, continued from page 5

ignored by a church-dominated politics, the Constitution is also a religious document. The Preamble begins with these words: "In the name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred. We the people of Eire, humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial . . ."

Swomley also learned that there is a periodical called *Church and State*, subtitled "A Forum of Irish Secularist Opinion," which ranges in size from 28 to 52 pages. It is independent of the Campaign for Separation of Church and State and is published by Pat Maloney, 26 Church Avenue, Roman Street, Cork. The chairman of the Campaign for Separation of Church and State is Dr. Mike McKillen, a professor of biochemistry at Trinity College, Dublin. The Executive of the Campaign is Dick Spicer, 112 Rialto Cottages, S.C. Rd., Dublin 8, Ireland. Contributions to their work may be made through ARL. ■

**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.)

**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.)

**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. (\$35, plus \$2 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.)

A complete list of resources available from Americans for Religious Liberty is available on request.

# Update

## ARM Suit Dismissed

On September 6 a federal appeals court in New York dismissed by 2 to 1, a 9-year-old suit which sought to have the Internal Revenue Service disqualify the Roman Catholic Church as a tax-exempt organization because of its extensive political activity against free choice on abortion. The suit was brought by a coalition called the Abortion Rights Mobilization. The suit was dismissed on the grounds that the plaintiffs lacked "standing" to sue, the same legal gimmick used to dismiss suits (in which ARL's executive director was a plaintiff) challenging President Reagan's unconstitutional establishment of formal diplomatic relations with a church and a giveaway of "surplus" federal government property to a church. ARM attorney Marshall Beil indicated that the plaintiffs will appeal the dismissal.

## Child Care Bills Advance

The child care legislation now pending in Congress is fraught with church-state problems. The so-called Act for Better Child Care Services, or ABC for short, provides substantial federal funding for church-run day care centers. The bill passed by the Senate on June 23 provides \$3.75 billion for child care, and specifically allows church-run centers to participate in the largess.

Even the most sectarian of agencies will be eligible for aid unless the House or a joint House-Senate committee adds restrictions to the eligibility requirements.

As it now stands sectarian child care agencies may feed at the federal trough as long as public funds constitute less than 80% of their budgets.

Under the Senate bill, sectarian agencies providing child care can require their employees to adhere to certain "religious tenets and teachings," may give preference to children from the sponsoring congregation, and may use public funds to repair or renovate existing facilities. They are supposedly prohibited from discriminating on the basis of religion in the admission of children and they may not use public funds for "any sectarian purpose or activity, including worship and instruction."

One key provision may prove less helpful to religious groups. The bill mandates that these facilities are subject to periodic, unannounced inspections by state officials on an annual basis. Increasing government regulation of church-run facilities is thus a real possibility. Church-state entanglement is almost a certainty, and litigation invoking the *Lemon* test is a foregone conclusion.

The House Labor and Human Resources Committee had originally reported out a child care bill with stronger provisions against sectarian participation. The House bill, HR 3, approved by the Education and Labor Committee, bans public funds used for "any sectarian activity." It also creates a new public school-based pre-school program, expands the widely praised Head Start program, and provides grants to the states.

Sectarian lobbies have shown their clout during the past year. The U.S. Catholic Conference, in particular, has spearheaded the fight to weaken strong church-state separation guarantees. It has been joined by some Lutheran and evangelical groups. Church-state separation groups, in addition to the National Education Association and the National Council

of Churches, have so far been unable to convince Congress of the dangers inherent in the pending legislation.

Ironically, the Republican establishment and President Bush may unwittingly come to the rescue of church-state separation. Senate Republicans voted *en masse* for a tax credit scheme which would shift most of the tax funding and legal battles to the states. Their opposition to a federal role in child care is so intense that a presidential veto is considered likely, regardless of which bill emerges from the Congress. On this issue at least, Senate Democrats have shown little appreciation for the value of church-state separation.

## School Prayer Confusion

A *Parents* magazine poll shows that 68% of those surveyed agreed that there should be no vocal prayer in public schools, but that children should be allowed a moment of silence for prayer, meditation, or just doing nothing; 17% said that vocal prayer should be required for all students, while 12% opposed vocal prayer and moments of silence. Respondents were sharply divided over who should make decisions about school prayer: 36% favored a single national policy; 23% favored decisions by local school boards; 17% favored statewide policies; 10% would leave decisions to teachers and 2% to principals; 13% were not sure. Respondents seemed unaware that all students have ample opportunity for silent prayer throughout the school day and therefore do not need a state-designated special time for prayer.

*Parents* also reported that 84% of parents with children in school said that there were no sponsored prayers in their children's schools, while 9% said there were. Of the parents polled, 58% said there had been organized prayer in their school when they were students, while 39% said there had not been.

## Kansas City Voucher Suit

A new attempt to get tax support for sectarian private schools through a voucher plan has been launched in Kansas City. Such national big guns in the national parochial lobby as John Coons, Stephen Sugarman, William Ball, and Stephen Arons are backing a lawsuit, *Rixarde v. State of Missouri*, to compel the state and the Kansas City school board to pay to send minority students to parochial schools in the city, in surrounding towns, and across the state line in Kansas. (More details in our next issue.)

## New Prayer Amendment Filed

Rep. William Dannemeyer (R-CA) has filed a proposed amendment to the Constitution to authorize "voluntary school prayer and the teaching of the Judeo-Christian ethic in public schools." The amendment defines "teaching of the Judeo-Christian ethic" as including the Ten Commandments and the teaching of fundamentalist "creationism." The amendment also stipulates that none of the above "shall constitute an establishment of religion" nor permit government authorities "to prescribe the form or content of any voluntary prayer." No hearings have been scheduled.

## Birth Control Bill Introduced

Reps. Patricia Schroeder (D-CO) and Olympia Snowe (R-ME) have introduced a bill in Congress, H.R. 2956, to provide an initial \$20 million per year to fund three birth control research centers and two fertility research centers. The centers would do clinical research and conduct training programs for scientists and health professionals. In announcing filing of the bill, Schroeder said, "The recent Supreme Court decision in the *Webster* case sent a clear signal that it was time for a new pro-choice legislative offense to strengthen all reproductive rights. These bills make up the first line of the offense."

### Clipping Service

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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.

## Ohio's Friendly (?) Skies

Ohio is one of several states which require publicly paid transportation for parochial students up to several miles outside their school districts, often at two or three times the transportation costs per pupil for public schools. Ohio taxpayers now have to pay to fly four students from Kelley's Island in Lake Erie to Sandusky, where they must be taxied to their parochial school. The students' parents do not want them to attend the island's public school. Total cost of the combined aircraft and taxi transportation is about \$21,700 per year, which is more than Ohio spends to educate four students for one year. Columbus Common Pleas judge Frank Reda has approved the arrangement. ARL is looking into the possibility of an appeal.

## Sectarian School Districts Created

New York State has just created by law a special public school district in the town of Kiryas Joel for the exclusive use of one religious group, an Orthodox Jewish Hasidic sect. Both the American Jewish Congress and the New York State Education Department had urged Gov. Cuomo to veto the bill. American Jewish Congress attorney Marc D. Stern told Gov. Cuomo that a "school district established along religious lines" may well be unconstitutional. "It is also very bad precedent." State Education Department lawyer Karen Norlander said that, "To segregate children based on ethnic, religious and cultural lines is very destructive in a society where people have to live together."

## Holy See Envoy Confirmed

The Senate has approved President Bush's appointment of Thomas P. Melady as U.S. ambassador to the Roman Catholic Church. ARL had asked to testify at a Senate Foreign Relations Committee hearing on the appointment, but was told there would be no public hearing. ARL has opposed U.S. diplomatic relations with the Catholic Church on the ground that such relations violate the First Amendment by preferring one religion over all others and by creating an excessive entanglement between religion and government. President Reagan appointed the first envoy to the Holy See. The Supreme Court several years ago denied ARL executive director Edd Doerr and other plaintiffs "standing" to challenge the unconstitutional arrangement.

ARL also sought to call attention to an apparent religious test for this diplomatic post. Reagan's two envoys, William Wilson and Frank Shakespeare, were both Catholics, as is Melady, who is also a member of the Knights of Malta, a Catholic "chivalric" order with headquarters in Rome and treated as a sovereign country by the Italian government.

## West German Church Tax Challenged

West Germany, thanks largely to the 1933 Hitler-Vatican concordat allowed to stand after 1945 by the victorious allies, requires nearly all of its citizens to pay a church tax, a 9% surtax on their federal income tax. The government also gives churches access to the financial records of their members, apparently so the churches can be sure they are getting all the loot to which they are legally entitled. A citizen can escape the church tax only by formally withdrawing from the church. Thanks to this system, West German churches are swimming in money and need pay little attention to the opinions of their members, who are largely and increasingly absent from the pews.

All this could change, however. Edith Niehuis, a Social Democratic member of the Bundestag, has moved to have the state of Lower Saxony cut off of the church tax for the small Schaumburg-Lippe Lutheran Church, on the ground that the church does not ordain women. Should Lower Saxony cut off the tax for the Lutheran body, the smallest of the 17 regional Protestant churches in Germany and the only one which does not ordain women, the tax cash cow of the Catholic Church, which claims 27 million members, could dry up.

## Fundamentalist May Head Ethics Office

Texas state judge Paul Pressler is apparently the leading candidate to head the Bush administration's Office of Government Ethics. Pressler heads the fundamentalist group which has succeeded in taking over the leadership machinery of the U.S.'s largest Protestant denomination, the Southern Baptist Convention (SBC). In 1988 Pressler was the subject of a critical study of the Religious Right by Bill Moyers. Early in 1989 Pressler got the SBC Executive Committee to pass a resolution criticizing Moyers, who is also a Baptist and a Texan. Several years ago Pressler was the subject of a complaint to the FCC by a Southern Seminary (Baptist) student who charged that Pressler taped a telephone conversation with him and gave it to a Houston reporter.

## Contraceptive Failure Underestimated

High contraceptive failure rates contribute substantially to the U.S.'s high abortion rate. According to a new Alan Guttmacher Institute study, 44% of the women who have unintended pregnancies each year used contraception. Contraception failure rates for younger women, under 25, are considerably higher than for women over 25. Failure rates for women under 20 range from 11% for the pill to 34% for spermicides. For women 20-24 the failure rates range from 6% for the pill to 36% for spermicides. In both age groups the failure rates for condoms and diaphragms range from 14% to 25%.

## Miscellaneous

The Minnesota Supreme Court ruled on August 18 that Amish religious objections to "loud colors" and "worldly symbols" entitle them to refuse to put orange and red safety emblems on their horse-drawn vehicles as required by state laws. The Amish have said that at night and in bad weather they would not object to using reflective tape and red lanterns on their buggies.

Israel's supreme court ruled that women may not sing or read from the Torah while praying at the Wailing Wall in Jerusalem. Orthodox officials, who enjoy a religious monopoly in Israel, insist that only men may engage in these practices. Jewish women of the Reform and Conservative traditions have been abused and chased away from the Wailing Wall by Orthodox fundamentalists.

## Americans for Religious Liberty

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