



# VOICE OF REASON

Fall 1993

The Newsletter of Americans for Religious Liberty

No. 47

## Religious Freedom Restored?

**O**n November 16 President Clinton signed into law the Religious Freedom Restoration Act (RFRA). The new law is a needed response to the Supreme Court's 1990 ruling in *Employment Division of Oregon v. Smith*, which seriously weakened the free exercise of religion by holding that government need not have a "compelling reason" to apply generally applicable laws which incidentally restrict religious practice. More than 60 cases were decided since *Smith* in ways that interfered with free exercise.

The new law does not bar all government interference with free exercise, but does require government to have a "compelling reason" to do so. Free exercise could not justify, for example, human sacrifice or child abuse.

The RFRA was supported by a coalition of more than 60 religious and civil liberties groups, including Americans for Religious Liberty. Passage by Congress was delayed until this fall because of reluctance by the Catholic hierarchy, which feared that the act could provide grounds for abortion rights. While there are strong free exercise and establishment clause grounds for freedom of conscience on abortion and contraception, the RFRA itself is abortion neutral.

Passage of the RFRA, however, is but one step, though an important one, in the defense of religious liberty, and the courts will take years to implement it fully. Meanwhile, serious threats still face religious liberty and the constitutional principle of separation of church and state that is its primary safeguard and guarantor.

Sectarian, fundamentalist-tending special interests and their secular allies still pose formidable problems for defenders of church-state separation. Massive campaigns, led by the Catholic bishops and such Protestant fundamentalist activist groups as Pat Robertson's Christian Coalition, are working to get state legislation or state constitutional amendments to provide huge diversions of public funds to sectarian and other nonpublic schools through tuition voucher or tax credit schemes. Other major efforts, such as that led by Pat Robertson and his legal arm, seek to undermine the religious neutrality of public education either through outside pressure or by taking control of local school boards through "stealth" election campaigns.

Much the same forces are aligned to restrict access by women to abortion services, to get state laws that impose heavy burdens on women seeking to exercise their right to choose, to reduce or eliminate sexuality education in public schools, and even to retard the fight against AIDS by keeping condom ads off the electronic media.

The Religious Freedom Restoration Act is a step in the right direction, but it by no means reduces the need for concerned citizens and organizations to continue to work to defend church-state separation. Working with other groups, Americans for Religious Liberty will put even more effort into this vitally important cause. And how much we are able to do will depend, of course, on the generosity and dedication of our members and supporters. ■

## Separation Challenged Anew

**O**n November 29 the U.S. Supreme Court announced, without comment, that it will review an important church-state separation ruling by New York State's highest court. The case, *Board of Education of Kiryas Joel v. Grumet*, involves a 1989 state law passed to create a special public school district to serve about 200 special education children in the village of Kiryas Joel, a few miles north of New York City. Kiryas Joel is inhabited almost entirely by members of the Satmar sect of Hasidic Orthodox Judaism.

The special school district, which provides only special education services to handicapped children, was set up because the Satmar Hasidic parents claimed that their children suffered "panic, fear and trauma" when they had to attend special educa-

tion classes in a regular public school with a pluralistic student body, an argument similar to that used by white segregationists a generation ago.

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## Editorial

# The Next Voucher Referendum

California voters may face another voucher proposal just a year from now—at the November 1994 elections. While defenders of religious liberty and public education have a right to take pride in the smashing 1993 rejection of Proposition 174, we should not allow complacency to set in as the next challenge looms. However impressive the 70-30 margin of victory was this year, there is no guarantee of a repeat next year. At least three factors should be kept clearly in mind.

One is that only a third of the potential electorate chose to record an opinion in 1993. In 1994 Californians will choose a governor and 52 representatives to the U.S. House of Representatives. This will ensure at least a 50% turnout. An additional 2.5 to 3 million voters may cast ballots on a new voucher proposal. This additional pool of voters must be convinced of the dangers inherent in these proposals.

Secondly, the anti-voucher forces had a decided financial advantage in this election, possibly by 5 to 1 or more. Considerable resources have already been expended in the education of the public. There is no certainty that such an advantage will be possible next time.

Finally, the voucher advocates will surely come up with a “new and improved” product that might prove more appealing to voters. There are already indications that a refinement process is occurring. One survey of voter opinion, conducted during the campaign by a nonpartisan think tank called Policy Analysis for California Education, found that 56% of those polled approved of the general concept of vouchers, especially the claims that such a plan would advance educational choices and options and expand competition. At the same time, large majorities of those surveyed wanted private schools to be subject to more regulations by state authorities. A solid 87% wanted a ceiling on private school tuition and state-sanctioned fiscal and safety requirements. About 82% of voters wanted private schools to educate more students with special educational or physical needs. A majority, 60%, wanted private schools to be required to hire certified teachers, and 70% think achievement test scores in private schools should be published.

## ARL in Action

Since our last report, ARL executive director Edd Doerr has spoken to civil liberties and church audiences in the Chicago and Baltimore areas and appeared as a guest on radio talk shows in Chicago and Washington. He debated abortion rights on the new National Empowerment TV cable network and was interviewed for British Broadcasting Corp. (BBC) radio.

Research director Al Menendez has appeared on radio interview programs in Seattle, Spokane, Grand Rapids, New Haven, Pittsburgh, and Flemington, NJ, and on the 93-station People's Radio Network. His new book *The December Wars* has received favorable reviews in *Library Journal* and the *National Journal*.

Since most nonpublic schools would not accept these controls, the questions may be moot. But some of the nonpublic schools might be willing to trade a degree of independence for financial support.

Polls like these have a tendency to overstate the constituency of support for vouchers and other kinds of private school aid. Other campaigns in other states have frequently shown that more voters eventually oppose these schemes at the polls than say they will in often vaguely worded surveys.

But strategists for “school choice” are just beginning a new nationwide campaign which could eventually reach 20 state ballots during the remainder of this decade. Therefore, opponents must remain alert and keep their ammunition ready for the next phase of what is certain to be an ongoing challenge.

Voucher advocates have not given up. They have lost a battle but they believe they will eventually win the war. John Coons, a law professor at the University of California at Berkeley and a prime theoretician of the voucher movement, said “a proposal that is more moderate and directed to low-income urban children” has a greater chance of success. A Republican fundraiser and voucher supporter from San Diego, Sam Hardager, said of vouchers, “This is an issue whose time has come. It will come back again and again and again.” ■

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**Americans for Religious Liberty** is a nonprofit public interest educational organization dedicated to preserving the American tradition of religious, intellectual, and personal freedom in a secular democratic state. Membership is open to all who share its purposes. Annual dues are \$25 for individuals; \$30 for families; \$10 for students and limited income.

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# How Californians Voted on Vouchers

Californians of all races, colors, creeds, backgrounds, and political philosophies handed voucher advocates a humiliating defeat by almost 70% to 30% on November 2. All 58 counties rejected the proposal. Voter opposition was so deep that the plan could not muster 40% support in a single county.

Opposition ranged from nearly 80% in liberal San Francisco to 61% in conservative Orange County. The proposal was rejected by 77% in liberal, highly educated and well to do Marin County and by nearly 72% in liberal Santa Cruz County—both north of the City by the Bay. Other San Francisco suburbs (Contra Costa and San Mateo Counties), gave more than 70% in opposition, as did Silicon Valley (Santa Clara County).

Vote-rich Los Angeles County voted no by 69%-31%, as did the rest of Southern California (Riverside, Santa Barbara, San Bernardino, Ventura Counties). Conservative Republican areas were somewhat more inclined to favor 174 but by no means by a majority. Orange County gave almost 39% support and San Diego 35%. The third strongest pro-voucher county (37%) was Sutter, the only county in the state to give George Bush a majority of the 1992 vote. Proposition 174 won a third of the vote in Kern County, the conservative Central Valley area around Bakersfield, where many voters are descendants of the Oklahoma migrants of the 1930s. The Bakersfield area, a country music bailiwick and a Baptist-Pentecostal stronghold, was once a Democratic bastion which supported Adlai Stevenson in the 1950s. Religious and cultural factors have pushed the area to the Right: both Ronald Reagan and George Bush swept the community. Even in 1992 Bush led Clinton by 11 percentage points. Even conservatives, though, failed to support Proposition 174, though their support was above the state average.

Trinity County, in the rural North, was the one California county carried by Ross Perot. More than 73% of its voters opposed vouchers, as did 73% of those in Imperial County, a Hispanic majority county on the Mexican border.

Yolo County, a rural McGovernite liberal area which has supported 15 of the last 16 Democratic presidential candidates, was the fourth highest of the state's 58 counties in its 76% opposition to vouchers.

Voters of every ideological stripe and demographic pattern joined the anti-voucher rout. If there was any slight inkling of support, it came from Republican areas, six of the top ten pro-voucher counties were carried by Bush while only three of the ten most anti-voucher counties went for Bush. Seven of the anti-voucher strongholds had given Clinton a majority of the three-way vote. The other three narrowly favored Bush, with a large Perot vote.

Clinton and Perot high support counties were more opposed to Proposition 174 than Bush's strongest areas (see table). Nearly 73% of the top Clinton and 72% of the top Perot counties opposed vouchers, compared to 63% in the top Bush counties. The overall support for vouchers (30.3%) were close to Bush's support (32.6%). Education, geography and income were not predictors of the vote. All regions and all socio-economic groups were opposed to the scheme.

The turnout of registered voters was only 31.6%. There were some rather surprising turnout differentials. Fewer than 5 million of the state's 15 million registered voters cast ballots on Proposition 174.

The highest statewide turnout came in counties where Ross Perot ran strongly in the 1992 presidential race. Over 45% of registered voters expressed an opinion on vouchers, and 72% were opposed. This is similar to the strong opposition of Perot voters to vouchers in Colorado in 1992. (The towns Perot carried in Massachusetts in 1992 were also overwhelmingly opposed to parochialism in a 1986 referendum.)

Counties where George Bush did well in 1992 also registered a stronger than average turnout (39%) and an above average support for vouchers (37%). The strongest counties for Bill Clinton had the poorest turnout. Only 3 of 10 voters in the Clinton strongholds voted on vouchers, though 73% of those who did opposed them.

The turnout was particularly disappointing in Los Angeles, where only 26% showed up at the polls. About a third of voters cast ballots in other large counties, and a higher than average turnout occurred in rural areas.

Unlike referenda in other states, the California voucher referendum turnout was not significantly affected by voter income or education. In general, studies have shown that voters with high incomes and advanced education are more likely to vote in referenda. And some issues like abortion and gun control are strongly influenced by the voters' income and educational level. (The higher the income and formal education, the more likely voters are to be pro-choice and pro-gun control.) Vouchers and other schemes to aid parochial and private schools are historically less influenced by education and income, and more affected by factors like religious affiliation, ethnicity and race.

In California this time there was no significant difference in turnout based on income or education. In fact, counties whose voters have lower incomes and lower levels of formal education

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The California Voucher Referendum of 1993		
Type of County	% Opposed	% Turnout
High Clinton	72.7	30.0
High Perot	71.8	45.4
High Bush	63.4	39.3
San Francisco Bay	76.2	34.0
Los Angeles	69.2	26.4
Central Valley	70.9	32.6
High Education	74.3	34.5
High Income	71.0	35.0
Low Education	69.9	36.4
Low Income	68.9	35.9
Low Church Membership	71.0	43.3
High Church Membership	69.0	27.1
Statewide	69.7	31.6

## How Californians Voted on Vouchers

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had a slightly higher turnout than those in the higher income, higher education areas. Interestingly, middle income voters seem to have had the lowest interest in this election.

One should keep in mind that this analysis is based on countywide census data. It may be that precinct data from large counties may reveal a low turnout in inner-city neighborhoods which have low education and income levels and large minority populations. This analysis is also based on turnout of registered voters, not the entire voting-age population. Many people, especially in low income areas, do not even register to vote.

Church membership played a very significant role in the outcome of this election. For one thing, only 42% of Californians are members of any religious group, though a high percentage identifies with some group. The rural areas, in particular, have a low affiliation level, while the greater Los Angeles area is somewhat above average. Proposition 174 was opposed by 71%

of voters in counties with low church membership and 69% in counties with high membership. The turnout was a good deal higher in the low church-membership counties, which are mostly rural.

Finally, there was no correlation between the private school population of a county and the vote on Proposition 174. San Francisco, which has the highest percentage of its students (21.2%) in private schools, cast, as we have seen, the highest anti-voucher vote. The Oakland metropolitan area (Alameda and Contra Costa Counties) has 12.3% of its students in nonpublic schools but voted decisively against the voucher initiative. Those results also suggested that not all private school parents favored Proposition 174. A *Los Angeles Times* poll in September found only 59% of them planning to support Proposition 174. That figure may have declined on election day. About 5.2 million pupils attend California public schools from kindergarten through twelfth grade compared to 550,000, or slightly under 10%, who attend private schools.

— Albert J. Menendez

## Separation Challenged Anew

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When the special district was created, it was challenged in state courts by Louis Grumet and Albert Hawk, director and president respectively, of the New York State School Boards Association. The Court of Appeals, the state's highest court, ruled on July 6 that the special district is unconstitutional. "This symbolic union of church and state effected by the establishment of the Kiryas Joel village school district," the court ruled, "is sufficiently likely to be perceived by the Satmarer Hasidim as an endorsement of their religious choices, or by nonadherents as a disapproval of their individual religious choices."

Writing for the court majority, Judge George Bundy Smith said that the primary effect of the special law was "to yield to the demands of a religious community" with "separatist tenets." Concurring, Chief Judge Judith Kaye added that the law was a "remarkable" piece of "special interest legislation" that constituted "de jure segregation for the benefit of one religious group."

The Supreme Court's acceptance of this case for review raises troubling questions. Why did the Court do it? We do not know, but we do know that any four justices can take a case for review. And we know that Chief Justice Rehnquist, Justices Scalia and Thomas, and possibly one or two others are not strong supporters of the constitutional principle of church-state separation and have been critical of the test of First Amendment constitutionality used by the Court since the *Lemon v. Kurtzman* decision in 1971. Under the *Lemon* test, to be constitutional a law must have a secular purpose and secular primary effect and not create "excessive entanglement" between religion and government. Accepting the *Kiryas Joel* case means that the *Lemon* test itself will be reviewed, and we cannot predict what will happen.

Americans for Religious Liberty will be joining with other concerned organizations in *amicus curiae* briefs to the Supreme Court defending church-state separation and the *Lemon* test. Justice Scalia earlier this year snarled in a concurring opinion that "Like some ghoulish in a late night horror movie that repeatedly sits up in its grave and shuffles around after being repeatedly killed and buried [the] *Lemon* [test] stalks our

Establishment Clause jurisprudence once again, frightening the little children and school attorneys." Scalia's repulsive view must not be allowed to prevail.

Sectarian special interests, from the Catholic bishops to Pat Robertson's mouthpieces, will ask the Supreme Court to use this case to undermine the wall of separation. We agree with the *New York Times* that "The Supreme Court's constant vigilance has preserved the religious liberty of all Americans by keeping churches and governments from meddling in each other's business. It has also spared the United States much of the religious strife that plagues other nations. Surely this is no time to pull down a wall that has served the nation well." ■

The White House

Washington

December 3, 1993

Mr. Edd Doerr  
Executive Director  
Americans for Religious Liberty

Dear Edd:

... I believe that a voucher system allowing public school students to apply tax revenue to private school tuitions would be detrimental to the public school structure. I fully recognize the value of private education and the contributions private schools make to our nation. But as President, I am committed to building a public school system as good as any in the world. During these times of federal budget cuts, our public school system needs our support. I do not believe that diverting public funds to private providers is the answer to our educational challenges. . . .

Sincerely,

/s/ Bill Clinton

# The California Campaign

**B**oth sides in the hotly contested voucher referendum mounted strong and spirited campaigns and brought big names to the fight. Proponents of the plan showcased Jack Kemp, HUD secretary under George Bush, and former Reagan and Bush education secretaries William Bennett and Lamar Alexander. Opponents included President Bill Clinton, Republican Governor Pete Wilson, and, surprisingly, former President Ronald Reagan. Also opposed was newly-elected Los Angeles Mayor Richard Riordan, a Catholic Republican who said the voucher program would devastate the public school system.

Speaking to rousing cheers from AFL-CIO convention delegates in San Francisco in October, Clinton said the voucher measure "would start by taking \$1.3 billion right off the top to send to people who already have their kids in private schools." He added: "It would impose no real standards on the quality of the programs which could be funded. Wouldn't it be ironic that, at the very moment we're finally trying to find a way to measure the performance and raise the standards of the public schools, we turn around and start sending tax money to private schools that don't have to meet any standards at all."

Both sides engaged in expensive campaigns, oriented, as all California campaigns must be, toward television advertising. The anti-voucher coalition outspent the supporters.

Who were the supporters? Lennard J. Davis, writing in *The Nation*, labeled backers "a combination of business conservatives and politicians, libertarians, parochial school interests and religious fundamentalists." A San Francisco libertarian think tank led by businessman Everett Berg contributed at least \$170,000. Los Angeles businessman Joe Alibrandi gave \$142,000. Howard Ahmanson, who calls himself a "fundamentalist Episcopalian," gave \$411,823 as of September 18.

The pro-voucher side, called "yes on Proposition 174," claimed that support for the measure would increase educational diversity, "make public schools more accountable to the people" and result in an improved overall educational system.

But a thinly-veiled hostility to public education surfaced in campaign rhetoric and in interviews with many supporters. Sean Walsh, communications director for Yes on Prop 174, said that public education "in this country and in this state is the last monolithic monopoly." Mary Jane Viers, a board member of St. Catherine's School in Riverside, told *USA Today*, "The United States is supposedly the richest country in the world and we've got the lousiest education system in the world." The Rev. Burkert Cree, a pastor in Del Rey Oaks, called public schools "the last vestige of state socialism."

At the same time, the "Yes on 174" forces coined the slogan "A Better Choice for Education" and were based in El Segundo. The Republican Party and Attorney General Dan Lundgren endorsed the measure. Some conservative and libertarian groups were among the supporters, though many business enterprises that are the backbone of Republican fundraising failed to support Proposition 174.

Foes of Proposition 174 (officially "The Parental Choice in Education Initiative") mounted an effective campaign with a solid war chest. The National Education Association's 235,000 member California affiliate, the California Teachers Association, collected \$19 per member, resulting in \$4.6 million. The California Federation of Teachers, an affiliate of the American Federation of Teachers, also raised funds for the battle. Groups representing school boards, school administrators, and PTAs

created a coalition that presented a high level informational campaign.

Americans for Religious Liberty sent copies of its studies on fundamentalist and Catholic schools to every newspaper editor and most TV station heads in California, and provided valuable research information to other groups opposing the voucher plan.

The Los Angeles-based Committee to Educate Against Vouchers was a cooperative coalition of civil liberties, educational, religious, and parental groups. It was supported by the State Board of Education, most of whom are conservative-to-moderate Republicans.

The anti-voucher campaign hit hard at a few central points. The proposal, they said, would devastate public school budgets and could lead to tax increases, contained no oversight or accountability for new schools that could be established, legally sanctioned discrimination on religious and other grounds, transferred money from the needy to the wealthy, and abandoned those public school children who are poor and whose families speak languages other than English.

Many conservatives opposed the scheme. Rick Manter, a strategist for GOP Senate candidate Bruce Herschensohn in 1992, was campaign manager for the "No on 174" campaign. Journalist Bill Boyarsky found in his travels that "In Republican-leaning middle class and affluent suburbs, the public school remains the heart and soul of the community. And parents, afraid of hurting their public schools, know that vouchers would drain tax money from them."

Civil rights and civil liberties groups fought the proposal with gusto. A coalition of 15 organizations was led by the ACLU's Southern California office, which warned that passage of vouchers "could destroy California's public education system and re-segregate the schools." The ACLU's Allen Parachini wrote, "The voucher initiative would do nothing to improve the state's schools. Instead, it would drain millions away from an already embattled system and drastically worsen a critical situation. The campaign to pass the ballot measure also creates the false hope among mid- and low-income voters that their children could be enrolled at exclusive, academically prestigious private schools." The League of Women Voters and Common Cause also announced their opposition.

During the campaign's final days, many newspapers expressed editorial opposition. Typical were two editorials appearing in the state's largest circulation newspaper, the *Los Angeles Times*. In "Look Before You Leap," the paper's editors concluded: "174 would be an immediate, statewide, drastic change that would be extremely difficult to amend once implemented. It is anything but a small and measured pilot program. No one in California or in the rest of the nation has any experience with educational change on such a massive scale. Proposition 174 is, for Cali-

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*"Separation of church and state . . . is a lie of the left, and we won't buy it."*

Pat Robertson, speaking to a Christian Coalition rally in Greenville, SC., in November

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## The California Campaign

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ifornia's children, simply a leap too far into a very uncertain future." The *Times* was particularly concerned that Proposition 174 did not require voucher schools to meet any standards of academic or fiscal accountability. It did not require credentialed teachers, nor did it require schools to meet the needs of disabled or disadvantaged students.

In another editorial the *Times* warned that Proposition 174 was "fraught with uncertainties and potential problems that are difficult to predict."

The *Santa Barbara News-Press* was clear that "California taxpayers would be funding private and religious schools and that alone is reason to vote no."

Religious issues were relatively muted, though they were of concern to many voters. Not all private religious school interests favored vouchers. The Seventh-day Adventists were opposed. The California Catholic Conference of Bishops remained neutral. Interviews with evangelical and fundamentalist school parents revealed concern over potential government control of or intervention in their school activities.

Still, there was plenty of enthusiasm among the private school lobbies. A survey of 750 schools belonging to the Association of Christian Schools found two-thirds in favor. The Yeshiva Principals Council, representing Orthodox Jewish schools, voted to support Proposition 174. The chairman of the California Association of Private School Organizations, Charles Rowins, principal of St. James Episcopal School, said, "Personally, I will vote for it, but many people in the Episcopal schools I know will vote against it." Bishop Frederick H. Borsch of the Los Angeles Episcopal Diocese announced his opposition.

The Christian Right was active on behalf of Proposition 174. The Rev. Lou Sheldon, head of the Anaheim-based Traditional Values Coalition, distributed half a million flyers to conservative churches. Said Sheldon, "The greatest adversary to the average Christian parent has become the public schools curriculum on social values." Pat Robertson's Christian Coalition, head-

quartered in Virginia, announced plans to spend \$250,000 on radio endorsements aimed at African-American and Spanish language radio stations.

An old-line parochiaider, Denis P. Doyle of the Hudson Institute think tank, claimed that funding religious schools "would place California in the community of free nations that provide for the free exercise of religion and education as a matter of course." Using a hackneyed argument, Doyle added, "The United States is the only advanced democracy that does not provide public funding for religious schools. Poor youngsters who prefer a religious education are the nation's last unprotected minority."

Some levity was added to the debate in October when a coven of witches representing the Contra Costa Pagan Association traveled to Sacramento to cast a spell "asking that the initiative be put out into the universe." Chief witch Debbie Babcock said her group wanted to open a pagan school if Proposition 174 was approved. The incident pointed up one of the flaws in the plan. Any group with 25 students or more could establish a school and be eligible for \$2,600 per student vouchers as long as they did not discriminate along racial or ethnic lines.

On a more positive note was a letter to a Santa Barbara newspaper by local resident Rogelio Trujillo. He wrote, "I am a Chicano who has long been a strong supporter of private education. I continue to send my kids to parochial and other private schools. I personally would benefit by school vouchers. But Prop 174 does nothing to solve problems in the public school system and is almost certain to create greater problems for public education. Prop 174 seems to abandon the public school system and the end result could well be school segregation on a large scale. And let's be honest on another matter: Isn't Prop 174 a major breach of the separation of church and state? I cannot support Prop 174 merely because I could immediately save thousands of dollars. We all benefit from a strong public school system." With voters like Trujillo, the initiative's fate was sealed.

— Albert J. Menendez

## Update

### Reproductive Rights

Both the U.S. Senate and House of Representatives in November voted to pass the Freedom of Access to Clinic Entrances Act (FACE). The Senate passed the bill 69 to 30, while the House approved it by a voice vote, evidently to spare opponents the embarrassment of a serious defeat. Slight differences between the Senate and House versions of the bill will have to be worked out in January so that President Clinton can sign it into law. The FACE bill would make it a federal crime to use force, the threat of force, or physical obstruction to intentionally injure, intimidate, or interfere with women seeking reproductive health services. The bill imposes penalties of up to \$100,000 and a year in jail for a first offense. The bill is a response to more than 1,000 incidents of violence, arson, burglary, intimidation, and even murder over the past decade. Pro-choice groups are urging that letters be sent to members of Congress requesting quick agreement on the bill so that it can become law as soon as possible.

On December 8 the U.S. Supreme Court heard oral arguments

in the case of *NOW v. Scheidler*. In the case, the National Organization for Women holds that many anti-choice activists violate the federal Racketeer and Corrupt Organizations Act (RICO) as part of a nationwide conspiracy to shut down abortion clinics by extortion, burglary and criminal damage to clinic property and equipment, threats against clinics and staff, arson, and bombing. The question before the Court is whether the RICO statute applies if the wrongdoing is not motivated by money. NOW attorneys argue that the 1970 RICO law does not mention economic motives. The Clinton administration appeared at the hearing on the side of NOW.

In November the U.S. Supreme Court let stand a lower court ruling upholding a Mississippi law requiring women under 18 to have permission from both parents in order to get an abortion. The law was challenged by Dr. Helen B. Barnes, a Jackson area physician, who said that the state law imposed hardships on many young women.

The Florida Supreme Court ruled unanimously in October that imposing a 36-foot bubble around an abortion clinic and the homes of its staff did not violate the free speech rights of anti-choice protesters.

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## Update

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On December 17 the West Virginia Supreme Court ruled that poor women are entitled to receive Medicaid funded abortions.

Planned Parenthood, the Center for Reproductive Law and Policy, and several clinics filed suits in federal courts in Colorado and Arkansas to challenge state constitutional provisions which impose greater restrictions than the federal government on Medicaid abortions for poor women. One of the plaintiffs, Dr. Warren Hern of Colorado, called his state's restrictions "barbaric," saying they act "virtually as a death sentence for poor women who don't have the same access to medical care as women with money."

The Clinton administration in November granted \$13.2 million to the International Planned Parenthood Federation, part of a \$75 million five-year commitment. The grant marked a reversal of the so-called Mexico City policy adopted by the Reagan administration in 1984 and continued by the Bush administration. The *New York Times* praised the Clinton policy as intelligent and "profoundly humane."

The U.S. Catholic bishops voted 201 to 7 at their annual fall meeting to set up a network of a million Catholics to lobby Congress to exclude abortion services from the universal health care plan.

Plans by the federal Centers for Disease Control and Prevention to air public service TV and radio spot ads for condoms to promote safe sex and combat AIDS were stalled in mid-December, due to protests by conservative religious groups.

Anti-choice vandals tried to torch a clinic in York, PA, in November with Molotov cocktails. No damage beyond broken glass resulted because the bombs failed to ignite.

Villanova University officials in November blocked a student group from having Planned Parenthood representatives speak on the campus of the Catholic college. Philadelphia ACLU director Deborah Leavy wrote in the *Philadelphia Inquirer* that as a recipient of federal funding, Villanova is in a weak position to censor what students may hear.

## Parochialism

Both the Ohio State Board of Education and the Ohio School Boards Association have passed resolutions opposing a voucher plan being proposed in the state legislature. Under the plan, the state would provide \$25 million for a two-year pilot project which would provide vouchers worth \$2,200 each for private school tuition.

The conservative Landmark Legal Foundation filed suit in September to compel Milwaukee to include religious schools among those eligible to participate in the city's voucher experiment.

Brooklyn Roman Catholic bishop Thomas V. Daily declared in a pastoral letter in November that the primary mission of parochial schools remains "the teaching of the Catholic religion" and that "Each school will be mandated to develop and publish a mission statement, which will include a statement of 'Catholic identity.'" That identity, Daily said, "is paramount," for without it the school "has no reason for existence."

## Religion in the Schools

Pat Robertson's American Center for Law and Justice (ACLJ), (a name apparently chosen to be confused with the ACLU), has

been flooding letters to the more than 15,000 local public school superintendents urging them to ignore or be lax in applying the church-state separation principle in their schools. In response, the American Civil Liberties Union (ACLU) has distributed a new legal bulletin to the superintendents and has produced a 35-minute video titled "America's Constitutional Heritage: Religion and Our Public Schools." The video is a direct response to a video, "America's Godly Heritage," being distributed by a fundamentalist group.

The legal bulletin, "The Establishment Clause and Public Schools," was prepared by the ACLU legal staff to help school administrators who are being pressured to permit graduation prayers, Bible distribution in public schools, religious displays, and religious holiday observances. The video, narrated by the Rev. W.W. Finlator, a North Carolina Baptist minister, features the stories of several courageous families who challenged improper religious practices in their public schools.

The ACLU video may be ordered for \$20 from ACLU Dept. L, P.O. Box 794, Medford, NY 11763. The video is a useful supplement to ARL's book *Religion and Public Education: Common Sense and the Law* (see ad elsewhere in this issue).

## Scouts and Discrimination

On December 6 the U.S. Supreme Court, without comment, left standing the U.S. Seventh Circuit Court of Appeals ruling that the Boy Scouts of America is not a "place" of public accommodation and therefore not covered by federal anti-discrimination law. The case arose in 1990 when seven-year-old Mark Welsh was excluded by the Tiger Cubs, the youngest category of Scout membership, for being an agnostic. The Scout oath requires members to "do my duty to God and country," though many Scout packs and troops do not enforce the matter.

Mark Welsh's father, Elliott Welsh, won a major ruling from the Supreme Court in 1970 establishing the right to exemption from military service on moral and ethical grounds instead of traditional religious grounds.

The Welshes brought the case because the Scouts meet in public schools and widely advertise that they are open to all boys.

This ruling is not the end of the matter. When William and Michael Randall were ousted from their Cub Scout pack in California in 1991 for refusing to include the word "God" in

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their oath, they sued in a state court and won in 1992. The case is still on appeal by the Scouts.

We agree with the *New York Times* that the Boy Scout policy "is needlessly and harmfully exclusionary in a society with a wide range of moral and ethical beliefs, not all of which are founded on God." The *Times* urges the Scouts "not [to] wait for the courts to order them to open the doors wider." After all, the *Times* points out, "formal avowal of religious faith is not a magically accurate test of each other's moral worth."

As long as the Boy Scouts choose to discriminate along religious lines in admissions, should they be permitted to operate and recruit in public schools and to receive funding from United Way programs? Many charities and corporations are questioning whether they should continue to help a group that discriminates against kids because of their religious beliefs.

Americans for Religious Liberty has provided some support to the Welsh family in their efforts to end this discrimination.

### School Prayer

In Jackson, MS, high school principal Bishop Knox thought it would be a good idea to reinstitute school sponsored prayer. A 5-1 vote of the student body approved the idea and Knox allowed students to read a short prayer over the school's public address system. School superintendent Ben Canada ordered Knox to stop, and when he refused, fired him in November. The school board voted to change the dismissal to a suspension without pay until the end of the school year.

Rallies in support of school prayer were held around the state, and students staged walkouts. Several Mississippi legislators plan to offer a bill to stop state funding for any school not allowing school sponsored prayer.

Clearly the Mississippi protesters are misguided. Individual voluntary prayer has never been outlawed, but the Supreme Court was surely correct thirty years ago when it ruled that school sponsored prayer violates the U.S. Constitution.

### Hawaii Religious Discrimination Ended

The U.S. Supreme Court allowed a further refinement of the 1964 Civil Rights Act's religious discrimination section (Title VII) when it let stand a March ruling by the Ninth Circuit Court of Appeals. The decision, *Kamehameha Schools v. E.E.O.C.*, 990 F2d 458, held that a Hawaii private school could no longer discriminate against non-Protestant teachers because it was not formally affiliated with any denomination or with any organization or association of religious schools.

The Kamehameha Schools, segregated by gender, are among the largest and wealthiest private schools in the United States. They were established when a member of the Hawaiian royal family died in 1884 and provided that the bulk of her estate be used to establish two schools where "the teachers shall forever be persons of the Protestant religion."

In recent years the schools have taken on a primarily secular character. Though teachers have to be Protestant, the schools do not inquire into their beliefs or their membership and/or attendance at church services. The religious affiliations of the students are diverse, and fewer than a third are Protestants. No effort is made to instruct students in Protestant doctrine, nor do the schools try to convert the non-Protestant pupils.

Comparative religion studies, Bible verses in school publications, and religious services are features of school life. Proselytism is explicitly disavowed, though religion courses are a

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required part of the curriculum.

A district court had held that the schools were religious enough to qualify for the Title VII religious exemption. (That passage has been interpreted to mean that religious schools may discriminate in favor of their denomination in hiring faculty.) The Ninth Circuit overruled and held that the schools "have embraced a broad mandate . . . by providing a solid education in traditional secular subjects and the moral guidance necessary to help students define a system of values." Therefore, the requirement that teachers be Protestant is irrelevant to the current mission of the school.

The original suit was filed when an applicant for a substitute French teacher position was rejected because of the Protestant-only requirement.

### Christmas Wins at the Polls

Pittsburgh attorney Jon Pushinsky discovered on election day that Pennsylvania voters did not understand or appreciate his commitment to church-state separation. Pushinsky had argued the ACLU suit against a government-sponsored Nativity scene at the Allegheny County courthouse which went all the way to the U.S. Supreme Court. The nation's highest court agreed that a government-sponsored religious symbol was unconstitutional.

However, when Pushinsky was the Democratic candidate for the Superior Court, a statewide post, his Republican opponent, Thomas G. Saylor, ran radio ads portraying Pushinsky as a radical who would prevent people from celebrating Christmas. The political message was accompanied by a boys choir singing "Silent Night." Pushinsky did not help his cause by claiming the ad was anti-Semitic because the carol was sung in German, though it was composed in German by an Austrian priest in 1818 and is frequently sung in its original language in Pennsylvania.

Republican Saylor won 54% to 46% in a low-turnout election. All other Republican statewide court candidates were also victorious.

### Exorcist Delicensed

The Arizona Board of Psychologist Examiners has voted 8 to 0  
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## Update

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to revoke the license of Phoenix psychologist Ken Olson for performing an exorcism on a minor sent to him for treatment by Arizona Child Protective Services. Olson had billed the state for the exorcism. The Board censured Olson for unprofessional conduct. Olson, an ordained Lutheran minister, had earlier been forced to resign as a pastor because of his exorcism activity.

### Cleveland Airport Chapel

The ACLU's challenge to a Catholic chapel at Cleveland's Hopkins Airport has been stalled by the death of a court reporter. The ACLU is appealing a lower court ruling to the U.S. Sixth Circuit Court of Appeals. Although the chapel is supposed to be an interfaith facility, it appears to be a denominational Catholic chapel.

### International

**Paris:** France's new conservative government hastily passed a bill on December 15 to increase public funding of Catholic and other nonpublic schools. President Francois Mitterand denounced the bill as a further weakening of church-state separation, while thousands of public school teachers and students stayed away from school in protest.

**Vatican City:** On the 25th anniversary of *Humanae Vitae*, the papal encyclical condemning contraception, the Catholic Church hierarchy issued a new condemnation claiming that birth control "tears families apart and enables men to take advantage of women." Polls have consistently shown that the vast majority of Catholics reject this view.

**Cairo:** An Egyptian court is hearing a divorce case against linguistics professor Nasr Hamid Abu Zeid brought not by his wife but by fundamentalist Muslim third parties. The fundamentalists are using the gimmick of a divorce action to paint Abu Zeid as an "apostate" because of his linguistic research, which differentiates between religion and "human understanding of religion." Fundamentalist lawyer Abu Samad is asking the court to divorce Abu Zeid from his wife Ebtahal Younes on the ground that a Muslim woman cannot be married to an apostate.

**Warsaw:** Poland's strict anti-abortion law, passed a year ago as a result of strong pressure from the country's conservative Catholic hierarchy, bans all abortions except those where a woman's health is threatened, the fetus is defective, or the pregnancy resulted from rape or incest. The law has only driven abortion underground. Women travel for the procedure to Russia, Slovakia, the Netherlands, or Spain, though some manage to get illegal procedures in Poland. The Polish Feminist Association and women members of Parliament are promoting an initiative to legalize abortion for social reasons.

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## Books

*A Justice for All*, by Kim Isaac Eisler, Simon and Schuster, 303 pp., \$22.00.

Legal correspondent Kim Eisler has produced a first-rate biography and legal study of Justice William Brennan, whose 34 years on the Supreme Court represented a high point for church-state separation and civil liberties.

Ironically, Brennan was selected because Cardinal Francis Spellman lobbied President Eisenhower to have a Catholic on the Court. There had been none on the Court for a number of years until the vacancy in 1956. Eisenhower, playing politics just before the 1956 election, agreed that his next appointment should be a Catholic and preferably a Democrat. Ike, totally uninterested in the judicial philosophy of his Court nominees, selected Brennan. Spellman was furious. He had good reason, as Brennan became a leader for women's rights, reproductive choice, and church-state separation.

Brennan was a major player in the school prayer decisions. "His *Schempp* opinion was a tour de force," says Eisler. Brennan helped shape the Court's opinion that government sponsored school prayer was unconstitutional, an opinion written by Justice Tom Clark. Eisler says that *Schempp* was "the most wrenching personal decision of his career." Brennan had, after all, gone to parochial schools, attended Mass every week, and was a very firm Catholic. "He was a religious man, but on the Court, the constitution was the Bible," writes Eisler. Brennan, in fact, frequently made clear that he was sworn to uphold the Constitution and would not allow his personal religious opinions to have any sway over his rulings.

Brennan was a major player in *Griswold v. Connecticut*, which guaranteed the right to birth control. He lobbied

exhaustively to concentrate on the Ninth Amendment and the right to privacy, while other justices, like Douglas, wanted to promote the freedom of association argument. Brennan wrote that the rights actually listed in the Constitution were "just examples which do not preclude applications or extensions of those rights to situations unanticipated by the Framers." He thus laid the groundwork in *Griswold* for *Roe v. Wade*.

Brennan played a major role in the great abortion rights decision, though he did not write the majority opinion. He lobbied strongly for defense of a woman's right, while other justices, particularly Blackmun, were mainly concerned with the right of doctors to practice their profession. Blackmun and others were interested in a narrow definition but Brennan was "outspoken in his belief that the anti-abortion laws of the states (Georgia and Texas) were definitely unconstitutional." Brennan's concern "from the outset was for the pregnant woman," and said that abortion "should be held to involve a basic constitutional right." He also fought hard in the *Eisenstadt v. Baird* case from Massachusetts concerning the distribution of contraceptives to unmarried women. Brennan wrote, "if the right to privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion in matters so fundamentally affecting a person as the decision whether or not to bear a child." Thus, "It was William Joseph Brennan, not Blackmun, the opinion's author, who laid the framework for the most controversial decision in Supreme Court history." Eisler adds that, "If Blackmun's original draft had come down as an opinion of the Court, it would have meant that states did not have the power to restrict abortions, they just had to be clear and reasonable about it." Brennan insisted on a very

strong defense of freedom of conscience in this area.

Eisler regards Brennan as one of the brightest stars in our judicial firmament. It will be a long time before we see his like again.

— Al Menendez

**Public Education: An Autopsy**, by Myron Lieberman, Harvard University Press, 1993, 379 pp., \$27.95.

Concentrated in this wretched book is more venom against both the idea and reality of public education than a dozen toxic waste dumps. Lieberman doesn't want to improve public education but, he makes quite clear, to destroy it. Not only does he favor vouchers for tax support for denominational private schools, but also for profit making schools. While endlessly chanting the mantra "market forces," he advocates that government compel all taxpayers to support nonpublic schools which balkanize children along religious, ideological, socio-economic, ability level, and other lines. He proposes scrapping the principle that Americans should control what they pay taxes for, trashing our time-tested constitutional arrangement of separation of church and state, and virtually abandoning the poor, the handicapped, and the slow.

Although Lieberman has been an educational professional himself, his book gives no hint that he understands the difference between democratic public education and special interest private schooling. He feigns unfamiliarity with the constitutional and public policy objections to his voucher proposal, with the measures of public opinion showing strong support for public education, and with the repeated referendum defeats for his views.

Harvard University Press should be embarrassed to have published such a nasty little *Mein Kampf*, a book even worse than the author's previous works.

While this book has nothing to commend it, defenders of church-state separation and public education need to be familiar with the author's propaganda devices: we will need to confront them in the months ahead.

— Edd Doerr

**The Bible and the Ballot Box: Religion and Politics in the 1988 Election**, edited by James L. Guth and John C. Green, Westview Press, 236 pp., \$43.00.

Guth and Green, both political science professors, have edited a dozen illuminating essays on the religious factors of the 1988 election season when two ministers, Pat Robertson and Jesse Jackson, sought their respective parties' nominations for president. Essayists concentrate on religious leaders as opinion formulators, currents within the Protestant, Catholic and Jewish communities, and religion as a set of values and factors which influence how people vote. One significant finding is that Democratic and Republican activists and convention delegates differ dramatically in their religious views and participation, far more so than rank and file party members.

Closer ties between religious groups and partisan politics may be in the offing. Say Green and Guth: "This would set the stage for a new kind of electoral conflict in America, strikingly reminiscent of European politics: religious supporters of order and tradition struggling with secular forces of rights and reform over the role of religion in public life, control of schools and curricula, sexual morality, and traditional social arrangements."

— Al Menendez

**One Nation Under God: Religion in Contemporary American Society**, by Barry A. Kusmin and Seymour P. Lachman, Harmony Books, 312 pp., \$25.00.

"There are no guaranteed religious monopolies in the United States." So concludes sociologist Barry Kusmin and CUNY Dean Seymour Lachman in this overview of the geography, politics and demography of religion in the U.S. Based on a national telephone survey of religious identification in 1990, this study complements and in some respects exceeds the Gallup and NORC studies by adding detailed data relating religious belief and practice to every area of public life.

While 86% of Americans identify themselves as Christians, 8% reject all religious traditions and the others adhere to a wide variety of faith traditions. Interpreting statistics is a tricky business, but these authors have done an excellent job, making wise and reasonable inferences from the data. They explain, for example, why rural America seems more overtly religious than the cities and suburbs, why most Asian-American immigrants are Christians, not Muslim, Hindu, or Buddhist, and why contemporary adult Americans change their religious allegiance with such frequency.

— Al Menendez

**The New Cold War? Religious Nationalism Confronts the Secular State**, by Mark Juergensmeyer, University of California Press, 292 pp., \$27.95.

Concentrating on South Asia, the Middle East, and the former Marxist states of Eastern Europe, Juergensmeyer, a professor of religion and political science at the University of Hawaii, argues that religion-based nationalism will confront and supplant secular nationalism in the years to come. He suggests that religious nationalism grows "in times of social turbulence and political confusion" when "new panaceas abound." "It was inevitable," he adds, "that many of these would involve religion, sometimes perceived as the only stable point in a swirl of economic and political indirection."

The author warns that "even ordinary religion contains a strand of violence. Some of the world's most significant religious symbols are stained with blood. . . . In virtually every religious tradition, images of violence occupy a central place." One additional insight he makes is this: "Even though virtually all religions preach the virtues of nonviolence, it is their ability to sanction violence that gives them political power."

— Al Menendez

**Free to Hate: The Rise of the Right in Post-Communist Eastern Europe**, by Paul Hockenus, Routledge, 332 pp., \$25.00.

"Anti-Semitism is alive and flourishing throughout Eastern Europe even in the virtual absence of Jews," says Berlin-based  
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## Books

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journalist Paul Hockenus. Russia and Romania have the "most rabid and open" anti-Semites and ultranationalists in a region where the Jewish population was decimated by the Holocaust. Opinion polls throughout the new democracies, which promptly recognized Israel after the fall of their Communist governments, show between one-fifth and one-half the people harboring anti-Jewish sentiments.

Hockenus concentrates on Germany, Hungary, Romania, Slovakia, the Czech Republic, and Poland in this account. He says that anti-Semitism still remains firm in culturally backward and economically stagnant regions, where scapegoating helps explain the bleakness of life.

In his chapter on Poland he suggests that President Lech Walesa "used anti-Semitic language and refused to distance himself from anti-Semitism" in his 1990 election campaign. Hockenus is critical of some Catholic Church leaders. "At first cautiously, and then with striking audacity, the arch-conservative Church hierarchy has battled to impose its vision of a fundamentalist Catholic state upon Poland. . . . The Church has gone to controversial lengths to preserve and expand its leverage in Polish society. It has flexed its considerable muscle to make its Christian agenda the order of the day in Poland, dangerously blurring the separation of church and state. The ecclesiastical hierarchy has fostered intimate links with those political parties who endorse traditional Catholic values." Many Poles feel their country is at a crossroads between a genuine democracy and "an authoritarian Poland of de facto theocracy." The Polish Church's ambivalence toward anti-Semitism is disturbing and has even placed it at odds with the Vatican.

Hockenus concludes that pluralistic, religiously tolerant democracy is fragile in Eastern Europe because "the new fascisms in Europe are genuine, organized and interconnected political movements grounded in prejudices and bigotry which penetrate to the heart of society."

— Al Menendez

***Redeeming America: Piety and Politics in the New Christian Right***, by Michael Lienesch, University of North Carolina Press, 332 pp., \$45.00 (\$17.95 paper).

University of North Carolina political scientist Michael Lienesch has accepted a daunting challenge: a theological analysis of conservative Christian beliefs and values which are, he says, "the meteors of our political atmosphere." He warns those who think the movement dead that "the new Christian Right seems certain to emerge again as a political force in this country." Indeed, the Religious Right only vanished in the minds of the uninformed.

Lienesch looks at such subjects as obedience, revivalism, human nature, gender roles, the use of power, America as God's New Israel, and a host of other issues on which Religious Right spokespersons concentrate their efforts.

He notes Religious Right hatred for humanists, "sons of the Devil and intellectual termites" to Tim LaHaye. Interestingly, Lienesch says many Religious Right leaders trace the birth of humanism to the Roman Catholic Counter Reformation. They blame Catholicism for "compromising with humanism" and castigate Thomas Aquinas for "reviving a dead philosophy, which has become the most dangerous religion in the world today—humanism" (Quoting John Whitehead and Tim LaHaye).

One Religious Right guru, Francis Schaeffer, claimed that "Catholics from southern and eastern Europe were particularly responsible for carrying humanist ideas," which may come as a real surprise to students of immigration history.

Lienesch concludes that "religious conservatives have trouble with the concept of religious freedom" because they are, at best, "reluctant pluralists" who have little or no respect for other religious traditions or for the people who adhere to them.

— Al Menendez

***The State of Religion Atlas***, by Joanne O'Brien and Martin Palmer, Simon & Schuster Touchstone Books, 126 pp., \$16.00.

An ideal reference book for those who are interested in comparative religion, geography and history, this British-flavored work has much of value. Consisting essentially of 34 maps and some textual material, it includes maps depicting religious political parties, established religions, wars with religious involvement, religious education patterns, the status of women in the world's religions, and the extent of Islamic law in Islamic nations. The maps on the United States, though, could use some updating. Map 11, for example, uses 1982 data when there are several studies from the 1990s available to scholars. Most of the bibliographical references are British publications.

— Al Menendez

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